CHAPTER 3

The Department of Insurance

ARTICLE 1

General Provisions

**SECTION 38‑3‑10.** Department of Insurance and Insurance Commission established.

 There is established a separate and distinct department of this State, known as the Department of Insurance. The department must be managed and operated by a director appointed by the Governor upon the advice and consent of the Senate. The director is subject to removal by the Governor as provided in Section 1‑3‑240(B). The director shall be selected with special reference to his training, experience, technical knowledge of the insurance industry, and demonstrated administrative ability. The director may appoint or designate the person or persons who shall serve at the pleasure of the director to carry out the objectives or duties of the department as provided by law. Furthermore, the director may bestow upon his designee or deputy director any duty or function required of him by law in managing or supervising the Department of Insurance.

HISTORY: 1947 (45) 322; 1952 Code Section 37‑51; 1960 (51) 1646; 1962 Code Section 37‑51; 1976 Code Section 38‑3‑10; 1980 Act No. 488, Section 2; 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Department of Insurance reorganized, see Section 1‑30‑55.

Library References

Insurance 1024.

Westlaw Topic No. 217.

C.J.S. Insurance Section 53.

Attorney General’s Opinions

Act 488, Acts and Joint Resolutions, 1980 [Section 38‑3‑10] reconstituted the Insurance Commission and realigned its duties and responsibilities; any section of Title 38, South Carolina Code of Laws, 1976, which conveys upon the Insurance Commission the power or duty to perform or approve a purely routine or administrative function has been implicitly amended or repealed by ACT 488. 1981 Op.Atty.Gen, No 81‑62, p 87, 1981 WL 96588.

**SECTION 38‑3‑40.** Compensation and expenses of Commission members.

 The director or his designee shall receive annual compensation as may be provided by the General Assembly and official expenses as provided by law for executing the duties and functions of the department.

HISTORY: 1960 (51) 1646; 1962 Code Section 37‑54; 1976 Code Section 38‑3‑40; 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

**SECTION 38‑3‑60.** Powers and duties of Commission and Director of the Department of Insurance.

 The director or his designee must follow the general policies and broad objectives enacted by the General Assembly regarding the operation of the insurance industry in this State.

HISTORY: 1947 (45) 322; 1949 (46) 600; 1952 Code Section 37‑58; 1960 (51) 1646; 1962 Code Section 37‑56; 1976 Code Section 38‑3‑60; 1980 Act No. 488, Section 4; 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Life insurance disclosure regulation, see S.C. Code of Regulations R. 69‑30.

Powers and duties of the Director of the Department of Insurance with respect to Risk Retention Groups and Purchasing Groups, see Section 38‑87‑10 et seq.

Powers of commissioner to promulgate regulations to implement provisions providing reinsurance credits and liability deductions for domestic ceded insurers, see Section 38‑9‑200.

Advertising of accident and health insurance, see S.C. Code of Regulations R. 69‑17.

Library References

Insurance 1025, 1034.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 42, 53 to 54, 56.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 28, Other Executive Department Offices‑Statutory Origin.

NOTES OF DECISIONS

In general 1

1. In general

Nothing in former Code 1962 Section 37‑56 gives the Insurance Commission the implied power to fix the commission or premium rates with respect to all credit life and credit accident and health insurance written by all companies. Calhoun Life Ins. Co. v. Gambrell (S.C. 1965) 245 S.C. 406, 140 S.E.2d 774.

**SECTION 38‑3‑80.** Seal.

 The department shall have a seal with a suitable inscription, an impression of which must be filed with the Secretary of State.

HISTORY: Former 1976 Code Section 38‑3‑80 [1947 (45) 322; 1952 Code Section 37‑52; 1960 (51) 1646; 1962 Code Section 37‑58; 1973 (58) 623; 1980 Act No. 488, Section 6] recodified as Section 38‑3‑100 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑3‑140 [1947 (45) 322; 1952 Code Section 37‑57; 1960 (51) 1646; 1962 Code Section 37‑64] recodified as Section 38‑3‑80 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

**SECTION 38‑3‑100.** Director of the Department of Insurance; removal; status; term of employment, salary, and qualifications.

 The director or his designee is not subject to the State Employee Grievance Committee or any internal grievance procedure established at the Insurance Department. The director or his designee shall devote all of his working time to the duties of his office. Before taking the oath of office he shall sever all connections, either direct or indirect, except as a policyholder, with any insurance company or agency and shall maintain the severance during his tenure of office. If he becomes a candidate for public office or becomes a member of a political committee during tenure, his office as director or his designee must be immediately vacated.

HISTORY: Former 1976 Code Section 38‑3‑100 [1947 (45) 322; 1952 Code Section 37‑55; 1960 (51) 1646; 1962 Code Section 37‑60] has no comparable provision in 1987 Act No. 155; Former 1976 Code Section 38‑3‑80 [1947 (45) 322; 1952 Code Section 37‑52; 1960 (51) 1646; 1962 Code Section 37‑58; 1973 (58) 623; 1980 Act No. 488, Section 6] recodified as Section 38‑3‑100 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

Library References

Insurance 1028.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 42, 53 to 54, 56, 59.

Attorney General’s Opinions

Chief Insurance Commissioner must be elected for a definite term, and that term, by implication, may not exceed four years. 1969‑70 Op.Atty.Gen, No 2926, p 175. [Under former law.], 1970 WL 12207.

A Chief Insurance Commissioner may be appointed by the Insurance Commission to succeed himself. 1963‑64 Op.Atty.Gen, No 1774, p 292. [Under former law.], 1964 WL 8392.

At the expiration of whatever term the Commissioner may be appointed to serve, he is eligible to reappointment to another succeeding term. 1963‑64 Op.Atty.Gen, No 1774, p 292. [Under former law.], 1964 WL 8392.

In the absence of a designation by the Commission of the length of the term for which the appointment is made, an appointment made for an unspecified period would expire four years from the date of such appointment. 1963‑64 Op.Atty.Gen, No 1774, p 292. [Under former law.], 1964 WL 8392.

It is the intent of former Code 1962 Section 37‑58 that the Insurance Commission be authorized to appoint a Commissioner for whatever term it may desire so long as that term does not exceed four years. 1963‑64 Op.Atty.Gen, No 1774, p 292. [Under former law.], 1964 WL 8392.

The limitation of the term of office of the Insurance Commissioner refers to the limitation of the term only, and it in nowise prohibits the reappointment of the Commissioner to succeed himself after the expiration of the designated term. 1963‑64 Op.Atty.Gen, No 1774, p 292. [Under former law.], 1964 WL 8392.

NOTES OF DECISIONS

Rehabilitation of insurance company 1

1. Rehabilitation of insurance company

Court properly held that administrative order of insurance commission relating to rehabilitation of insurance company was without authority, since insurance commission is not rehabilitator, nor does statute impose upon commission any duties or authority incident to rehabilitation (decided under former Section 38‑3‑80). Insurance Commission v. New South Life Ins. Co. (S.C. 1978) 270 S.C. 612, 244 S.E.2d 289. Insurance 1402

Responsibility for rehabilitation is imposed upon Chief Commissioner, and not upon Insurance Commission, nor does statute impose upon Commission any duties or authority incident to rehabilitation (decided under former Section 38‑3‑80). Insurance Commission v. New South Life Ins. Co. (S.C. 1978) 270 S.C. 612, 244 S.E.2d 289.

**SECTION 38‑3‑110.** Duties of Director of the Department of Insurance.

 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)(a) 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 publicized notice of the hearing at least thirty days before the date of the public hearing.

 (b) The director must engage in efforts to provide market assistance and promote consumer education to South Carolina residential property insurance consumers. These efforts may include, but are not limited to:

 (i) posting on its website information to assist consumers in understanding the general provisions of homeowners insurance policies;

 (ii) providing information on the mitigation discounts and credits available pursuant to Section 38‑73‑1095(C), including a summary of those offered by the twenty largest homeowners property insurance issuers by premium volume;

 (iii) providing premium comparison information;

 (iv) providing information to assist consumers in identifying insurers writing property insurance coverage in their area;

 (v) providing a listing of licensed property and casualty producers in their area; and

 (vi) providing information on catastrophe savings accounts available pursuant to Article 11, Chapter 6, Title 12.

 (c) The director must submit a report to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Banking and Insurance Committee, and the Chairman of the House Labor, Commerce and Industry Committee by January thirty‑first of each year regarding the status of the coastal property insurance market. The report shall be posted in an electronic format on the department’s website within five days of its submission. The report shall include, but not be limited to, the following:

 (i) 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;

 (ii) status of operations and grants issued under the South Carolina Hurricane Damage Mitigation Program as provided for in Section 38‑75‑485;

 (iii) availability and affordability of coverage in the coastal area as defined in Section 38‑75‑310(5), including any portion of the area as it may be expanded pursuant to Section 38‑75‑460;

 (iv) consumer outreach and education efforts relating to coastal property insurance issues, including, but not limited to:

 (a) summary of the annual meeting as required pursuant to item (5)(a); and

 (b) specific projects and efforts undertaken pursuant to item (5)(b).

HISTORY: Former 1976 Code Section 38‑3‑110 [1947 (45) 322; 1960 (51) 1646; 1962 Code Section 37‑61] recodified as Section 38‑3‑130 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑3‑85 [En, 1980 Act No. 488, Section 7] recodified as Section 38‑3‑110 by 1987 Act No. 155, Section 1; 1988 Act No. 335, Section 2; 1993 Act No. 181, Section 532; 2000 Act No. 312, Section 1; 2007 Act No. 78, Section 7, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006; 2014 Act No. 191 (S.569), Section 1.A, eff August 1, 2014.

Editor’s Note

2014 Act No. 191, Section 1.B, provides as follows:

“B. The provisions of this section take effect sixty days after the effective date of this act [June 2, 2014].”

Effect of Amendment

2014 Act No. 191, Section 1.A, rewrote subsection (5).

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Annual audited financial reporting regulation, see S.C. Code of Regulations R. 69‑70.

Regulations pertaining to the Insurance Department, see S.C. Code of Regulations R. 69‑1 et seq.

Powers and duties of the Director of the Department of Insurance with respect to Risk Retention Groups and Purchasing Groups, see Section 38‑87‑10 et seq.

Library References

Insurance 1034.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 42, 54, 56.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 28, Other Executive Department Offices‑Statutory Origin.

NOTES OF DECISIONS

Attorneys hired by Commissioner 1

Refunds 2

Review 3

1. Attorneys hired by Commissioner

Attorney hired by Chief Insurance Commissioner of South Carolina to provide legal advice and assistance in conducting insolvency proceedings against insurers is employed pursuant to Section 38‑3‑110 and thus can be removed by the Commissioner at his will or pleasure and without assigning any cause; the relationship thus formed is not the usual attorney‑client relationship, which is controlled by the parties, but is instead a relationship largely controlled by specific statutory provisions (decided under former Section 38‑3‑110). DeBerry v. McCain (S.C. 1981) 275 S.C. 569, 274 S.E.2d 293.

2. Refunds

The Insurance Commissioner has the implied power to direct refunds pursuant to a determination that a rate increase has been found to be unlawfully established. Section 38‑3‑110(1), which imposes the duty on the Commissioner to supervise and regulate rates, by reasonable and necessary implication, confers the authority upon the Commissioner to make refunds of monies collected under an unlawful rate. The authority of the Commissioner to order refunds in such a case is a logical and consequential incident of his right to regulate rates. Where a statute, such as Section 38‑3‑110, imposes a duty on the Commissioner to regulate rates, it also implicitly confers every particular power and every reasonable means necessary for the exercise or performance of that power. Hamm v. Central States Health and Life Co. of Omaha (S.C. 1989) 299 S.C. 500, 386 S.E.2d 250.

3. Review

In reviewing Insurance Department’s decision in insurance rate case, decision can be set aside if it is unsupported by substantial evidence, substantial evidence being such relevant evidence as a reasonable mind might accept as adequate to support conclusion; Insurance Department’s decision to allow insurance company 9 percent rate increase for its major medical policy, partly on grounds of “medical intensity”, which is development of more effective medical technologies which engender more expensive methods to combat same medical problems, was not supported by relevant evidence adequate to warrant increase in rate where insurance company introduced only results of study which was conducted from 1969 to 1978 and published in 1981 (decided under former Section 38‑3‑85). Hamm v. Central States Health and Life Co., of Omaha (S.C. 1987) 292 S.C. 408, 357 S.E.2d 5.

**SECTION 38‑3‑120.** Oath and bond of director.

 The director shall take the oath of office as prescribed for all state officers. Before entering upon or continuing the discharge of the duties of his office, he shall give bond to the State for the benefit of any person aggrieved by his unlawful or wrongful actions. This bond must be in the sum of fifty thousand dollars, with sufficient surety, to be approved by the State Treasurer, for the faithful performance of all the duties required of him under the law during the term of his office. The premium of the bond must be paid by the State.

HISTORY: Former 1976 Code Section 38‑3‑120 [1956 (49) 1742; 1960 (51) 1646; 1962 Code Section 37‑62; 1972 (57) 2451] has no comparable provisions in 1987 Act No. 155; Former 1976 Code Section 38‑3‑90 [1947 (45) 322; 1952 Code Section 37‑53; 1960 (51) 1646; 1962 Code Section 37‑59] recodified as Section 38‑3‑120 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Library References

Insurance 1032.

Westlaw Topic No. 217.

**SECTION 38‑3‑130.** Actuaries, examiners, clerks, and employees.

 The director shall appoint or employ actuaries, examiners, clerks, and other employees necessary for the proper execution of the work of the department.

HISTORY: Former 1976 Code Section 38‑3‑130 [1956 (49) 1761; 1960 (51) 1646; 1962 Code Section 37‑63] has no comparable provisions in 1987 Act No. 155; Former 1976 Code Section 38‑3‑110 [1947 (45) 322; 1952 Code Section 37‑56; 1960 (51) 1646; 1962 Code Section 37‑61] recodified as Section 38‑3‑130 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Library References

Insurance 1038.

Westlaw Topic No. 217.

C.J.S. Insurance Section 53.

**SECTION 38‑3‑140.** Violations considered committed in part at office of director.

 The failure to do any act required by this title is considered a violation committed in part at the office of the director in Columbia.

HISTORY: Former 1976 Code Section 38‑3‑140 [1947 (45) 322; 1952 Code Section 37‑57; 1960 (51) 1646; 1962 Code Section 37‑64] recodified as Section 38‑3‑80 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑1‑90 [1979 Act No. 63] recodified as Section 38‑3‑140 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

**SECTION 38‑3‑150.** Director, assistants, or agents may conduct examinations, investigations, and hearings.

 All examinations or investigations provided by this title, unless otherwise provided by any other insurance laws of this State, may be conducted by the director or by one or more of his duly authorized assistants or agents. All hearings must be held by the director or by one of his duly authorized assistants or agents when authorized to do so in writing by the director. However, in any hearing concerning the adjustment of insurance rates the director or his designee may conduct the hearing.

HISTORY: 1947 (45) 322; 1952 Code Section 37‑59; 1960 (51) 1562, 1646; 1962 Code Section 37‑65; 1971 (57) 46; 1976 Code Section 38‑3‑150; 1981 Act No. 10, Section 1; 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Grievances against South Carolina Windstorm and Hail Underwriting Association, see Section 38‑75‑410.

Library References

Insurance 1034, 1051, 1055.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 42, 53 to 54, 56 to 58.

**SECTION 38‑3‑160.** Administration of oaths.

 The director or his duly appointed assistants or agents shall administer all oaths required in the discharge of his official duties.

HISTORY: 1947 (45) 322; 1949 (46) 600; 1952 Code Section 37‑58; 1960 (51) 1646; 1962 Code Section 37‑66; 1976 Code Section 38‑3‑160; 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

**SECTION 38‑3‑170.** Notice of hearings.

 All hearings, unless otherwise specifically provided, must be held at the time and place designated in a written notice given by the director or his designee to the person cited to appear at least thirty days before the designated date. The notice shall state the subject of the inquiry and specific charges, if any. It is sufficient to give notice either by delivering it to the person or by depositing it in the United States mail, postage prepaid, addressed to the last known address of the person and registered with return receipt requested.

HISTORY: 1947 (45) 322; 1952 Code Section 37‑60; 1960 (51) 1646; 1962 Code Section 37‑67; 1976 Code Section 38‑3‑170; 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Use of certified mail, see Section 2‑7‑90.

Library References

Insurance 1055.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 53, 57 to 58.

**SECTION 38‑3‑180.** Summoning witnesses; contempt; perjury.

 The director or any assistants or agents appointed to conduct examinations may summon and compel the attendance of witnesses to testify in relation to any matter which is, by the provisions of this title or by any other insurance laws of this State, a subject of inquiry and investigation. The director or his designee has the power of a circuit judge to punish for contempt any witness failing to answer any summons or failing or refusing to testify when so required. The director or any assistants or agents appointed to conduct examinations may also administer oaths and affirmations to persons appearing as witnesses before them, and false testimony in any matter or proceeding is considered perjury and must be punished in accordance with the laws of this State.

HISTORY: 1947 (45) 322; 1952 Code Section 37‑61; 1960 (51) 1646; 1962 Code Section 37‑68; 1976 Code Section 38‑3‑180; 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Criminal offense of perjury, see Section 16‑9‑10 et seq.

Power of a circuit judge to punish for contempt, see Section 14‑5‑320.

Library References

Insurance 1051.

Westlaw Topic No. 217.

C.J.S. Insurance Section 53.

NOTES OF DECISIONS

In general 1

Parties 2

1. In general

House resolution requesting Insurance Commissioner to make investigation of certain insurance companies did not have force and effect of law and added nothing to investigative powers of Commissioner. Ex parte Allstate Ins. Co. (S.C. 1966) 248 S.C. 550, 151 S.E.2d 849.

Insurance companies’ publication of pamphlets and advertisements opposing legislation considered by them to be against their best interests were not activities, “with respect to the business of insurance” within statute prohibiting publication of advertisements containing untrue, deceptive or misleading representations with respect to the business of insurance and Commissioner was without authority to investigate the questioned activities of companies and their agents. Ex parte Allstate Ins. Co. (S.C. 1966) 248 S.C. 550, 151 S.E.2d 849.

2. Parties

Where at least one purpose of investigation begun by Insurance Commissioner was to determine whether two insurance companies would be allowed to continue to do business in state, insurers had sufficient interest to maintain actions to determine authority of Commissioner to investigate activities in question and their actions to enjoin continuance of the investigation were not precluded on basis that they were not the real parties in interest on theory that activities of their agents and not the companies were under investigation. Ex parte Allstate Ins. Co. (S.C. 1966) 248 S.C. 550, 151 S.E.2d 849.

**SECTION 38‑3‑190.** Mileage payments for witnesses.

 Any person summoned by the Insurance Department to testify as a witness at any hearing must be paid for his actual mileage at the same rate as provided by law for state departments or divisions.

HISTORY: 1962 Code Section 37‑681; 1971 (57) 397; 1976 Code Section 38‑3‑190; 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Library References

Insurance 1051.

Westlaw Topic No. 217.

C.J.S. Insurance Section 53.

**SECTION 38‑3‑200.** Orders must be in writing and signed.

 No order of the director or his designee is effective unless made in writing and signed by the director or by his authority.

HISTORY: 1947 (45) 322; 1952 Code Section 37‑62; 1960 (51) 1646; 1962 Code Section 37‑69; 1976 Code Section 38‑3‑200; 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Library References

Insurance 1056.

Westlaw Topic No. 217.

C.J.S. Insurance Section 53.

**SECTION 38‑3‑210.** Petition for judicial review of order or decision; effect as stay.

 Any order or decision made, issued, or executed by the director or his designee is subject to judicial review in accordance with the appellate procedures of the South Carolina Administrative Law Court, as provided by law. An appeal from an order or decision under this section must be heard in the Administrative Law Court, as provided by law. The administrative law judge or judges may not, under any terms, order a stay of enforcement of any order of the director or his designee to make good an impairment of capital or surplus or a deficiency in the amount of admitted assets.

HISTORY: Former 1976 Code Section 38‑3‑210 [1947 (45) 322, 1952 Code Section 37‑63, 1960 (51) 1646, 1962 Code Section 37‑70], Section 38‑3‑220 [1947 (45) 322, 1952 Code Section 37‑64, 1960 (51) 1646, 1962 Code Section 37‑71], Section 38‑3‑230 [1947 (45) 322, 1952 Code Section 37‑65, 1960 (51) 1646, 1962 Code Section 37‑72], Section 38‑3‑240 [1947 (45) 322, 1952 Code Section 37‑66, 1960 (51) 1646, 1962 Code Section 37‑73], and Section 38‑3‑250 [1947 (45) 322, 1952 Code Section 37‑67, 1960 (51) 1646, 1962 Code Section 37‑74], recodified as Section 38‑3‑210 by 1987 Act No. 155, Section 1; 1989 Act No. 27, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Appeal provisions applicable to denial of reinsurance intermediary license, see Section 38‑46‑30.

Applicability to SPFC’s, see Section 38‑90‑430.

Determination of director regarding the Managing General Agents Act, see Section 38‑44‑70.

Determination that insurance subrogation provision is inequitable and unjust to insured is appealable to Administrative Law Court pursuant to this section, see Section 38‑71‑190.

Determination to terminate approval of certain individual insurance policy forms as not complying with minimum standards, is appealable to Administrative Law Court pursuant to this section, see Section 38‑71‑510.

Determinations of violation by reinsurance intermediaries, insurers, or reinsurers, see Section 38‑46‑110.

Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Withdrawal of approval of certain group accident and health insurance forms is appealable to Administrative Law Court pursuant to this section, see Section 38‑71‑720.

Library References

Insurance 1070.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 53, 60 to 64.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Exhaustion of administrative remedies 3

Federal courts 4

1. In general

Where an action is not for the review of any order or decision of the Insurance Commissioner but is one to have the court approve the adoption of a plan of rehabilitation for a company, the jurisdiction of the court cannot be sustained as a review of any order issued by the Insurance Commissioner (decided under former Code 1962 Section 37‑70). New South Life Ins. Co. v. Lindsay (S.C. 1972) 258 S.C. 198, 187 S.E.2d 794.

Former Code 1962 Section 37‑701, Code 1962 Sections 37‑70 through 37‑74, and Code 1962 Section 46‑719 are clear and afford any aggrieved person a simple and adequate remedy for review of any decision of the Chief Insurance Commissioner. Berry v. Lindsay (S.C. 1971) 256 S.C. 282, 182 S.E.2d 78.

An administrative agency functions in a quasi‑legislative capacity when the making of rates for the future is delegated to it (decided under former law). Berry v. Lindsay (S.C. 1971) 256 S.C. 282, 182 S.E.2d 78.

2. Constitutional issues

As to former provision held not exclusive and not violative of due process clause of the Federal Constitution as denying appeal to Federal courts, see King v. Aetna Ins. Co. (S.C. 1932) 168 S.C. 84, 167 S.E. 12. Constitutional Law 4016; Insurance 1070

3. Exhaustion of administrative remedies

In connection with the exhaustion of administrative remedies by a party before he can seek redress in the courts where such party does not challenge the authority or jurisdiction of the agency or officer, see Lominick v Aiken (1964) 244 SC 32, 135 SE2d 305, and Pullman Co. v Public Service Com. (1959) 234 SC 365, 108 SE2d 571. Berry v Lindsay (1971) 256 SC 282, 182 SE2d 78, .

While the Supreme Court has rather consistently applied the doctrine of exhaustion of administrative remedies to avoid interference with the orderly performance of administrative functions, it has recognized that it is not an invariable rule. Ex parte Allstate Ins. Co. (S.C. 1966) 248 S.C. 550, 151 S.E.2d 849.

4. Federal courts

Remedy under former statute was not adequate remedy at law such as to prevent the equitable jurisdiction of the Federal courts. Firemen’s Ins. Co. of Newark, N.J. v. King, 1929, 54 F.2d 941.

**SECTION 38‑3‑220.** Certificates and papers of director as evidence.

 Every certificate or other paper executed by the director or his designee in pursuance of any authority conferred upon him by law and sealed with the seal of the department and all copies of papers certified by the director or his designee and authenticated by the director’s or his designee’s seal may in all cases be used as evidence in any suit or proceeding in any court of this State with the same force and effect as the originals.

HISTORY: Former 1976 Code Section 38‑3‑220 [1947 (45) 322; 1952 Code Section 37‑64; 1960 (51) 1646; 1962 Code Section 37‑71] recodified as Section 38‑3‑210 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑3‑270 [1947 (45) 322; 1952 Code Section 37‑69; 1960 (51) 1646; 1962 Code Section 37‑76] recodified as Section 38‑3‑220 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Library References

Evidence 325, 334(1), 334(2).

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1080, 1098 to 1103, 1105 to 1106, 1125, 1129 to 1131, 1199, 1277.

**SECTION 38‑3‑230.** Director’s certificate as evidence of authority to do business.

 In any case or controversy where it is necessary to determine whether any insurance or other company, or agent thereof, is or has been licensed by the director or his designee to do business in this State, the certificate of the director or his designee under the seal of the department is admissible in evidence as proof of this authority.

HISTORY: Former 1976 Code Section 38‑3‑230 [1947 (45) 322; 1952 Code Section 37‑65; 1960 (51) 1646; 1962 Code Section 37‑72] recodified as Section 38‑3‑210 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑3‑280 [1947 (45) 322; 1952 Code Section 37‑70; 1960 (51) 1646; 1962 Code Section 37‑77] recodified as Section 38‑3‑230 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 532.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Library References

Evidence 334(1).

Insurance 1127.

Westlaw Topic Nos. 157, 217.

C.J.S. Evidence Sections 1106, 1125, 1129 to 1131, 1277.

C.J.S. Insurance Sections 67 to 69, 71.

**SECTION 38‑3‑240.** Conversion of licenses to biennial fee collection period; particular fee periods.

 (A) Beginning July 1, 1992, the department shall begin converting certain licenses required by statute or regulation to a biennial license fee collection period. These license fees must be collected as follows:

 (1) All insurers transacting business in this State including reciprocals, fraternal benefit associations, mutual insurers doing a property business only in no more than three counties, mutual insurers doing a property business only in a single county, and approved reinsurers shall pay a license fee for two years to the department by March 1, 1994, and every two years after that time by March first every even‑numbered year.

 (2) An agency transacting the business of insurance in this State shall pay a license fee for two years to the department within thirty days after January 1, 1994, and every two years after that time within thirty days after January first every even‑numbered year.

 (3) A broker transacting the business of insurance in this State shall pay a license fee for two years to the department within thirty days after May 1, 1994, and every two years after that time within thirty days after May first every even‑numbered year.

 (4) An adjuster transacting business in this State shall pay a license fee for two years to the department within thirty days after August 1, 1993, and every two years after that time within thirty days after August first every odd‑numbered year.

 (5) A motor vehicle damage appraiser transacting business in this State shall pay a license fee for two years to the department within thirty days after October 1, 1993, and every two years after that time within thirty days after October first every odd‑numbered year.

 (6) An agent transacting the business of insurance in this State shall pay a license fee for two years to the department within thirty days after September 1, 1992, and every two years after that time within thirty days after September first every even‑numbered year.

 (B) The fees described in this section must be earned fully when paid and are not refundable, proratable, or transferable. They must be collected in the amount and manner prescribed by statute or regulation before July 1, 1992, until the dates prescribed in subsection (A) when collections must be made pursuant to that subsection.

HISTORY: 1992 Act No. 501, Part II Section 11A; 1993 Act No. 181, Section 532; 1998 Act No. 411, Section 1.

CROSS REFERENCES

Applicability to SPFC’s, see Section 38‑90‑430.

Application of this section to Special Purpose Reinsurance Vehicles, see Section 38‑14‑20.

Library References

Insurance 1127.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 67 to 69, 71.

ARTICLE 3

Emergency Powers

**SECTION 38‑3‑410.** Promulgation of emergency regulations on declaration of state of emergency.

 (A) If the Governor declares a state of emergency pursuant to Section 1‑3‑420, the director may issue one or more emergency regulations pursuant to Section 1‑23‑130(A) applicable to all insurance companies, entities, and persons, as defined in Section 38‑1‑20, that are subject to Title 38.

 (B)(1) The provisions of Section 1‑23‑130(A), (B), and (D) are applicable to emergency regulations promulgated under this section.

 (2) The provisions of Section 1‑23‑130(C) are not applicable to emergency regulations promulgated under this section. An emergency regulation promulgated under this section becomes effective upon issuance and continues for one hundred twenty days unless terminated sooner by the director. The director may extend an emergency regulation for additional periods of one hundred twenty days, whether or not the General Assembly is in session, for as long as he determines that the conditions that gave rise to the emergency regulation still exist. Each extension of the emergency regulation must be published in the State Register as provided in Section 1‑23‑130(D). By concurrent resolution, the General Assembly may terminate an emergency regulation issued under this section.

 (C) The text of an emergency regulation promulgated under this section together with a statement explaining how the emergency regulation facilitates recovery from the emergency must be published in the State Register as provided in Section 1‑23‑130(D).

HISTORY: 2007 Act No. 78, Section 4.B, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1034, 1057.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 42, 53 to 56.

**SECTION 38‑3‑420.** Adoption of procedures to facilitate recovery by way of emergency regulations.

 (A) By an emergency regulation issued pursuant to Section 38‑3‑410, the director may adopt any procedure that facilitates recovery from the emergency and is fair under the circumstances if the:

 (1) procedure provides at least the procedural protection given by other statutes, the Constitution of this State, or the United States Constitution;

 (2) department takes only that action necessary to protect the public interest under the emergency procedure; and

 (3) department publishes in writing, at the time of or before its action, the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances.

 (B) Subject to applicable constitutional and statutory provisions, an emergency regulation becomes effective immediately on filing. After notice of the emergency regulation is published in the State Register as provided in Section 1‑23‑130(D) and Section 38‑3‑410, then the department’s findings of immediate danger, necessity, and procedural fairness are judicially reviewable under Section 38‑3‑210.

HISTORY: 2007 Act No. 78, Section 4.B, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1034.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 42, 54, 56.

**SECTION 38‑3‑430.** Promulgation of standardized requirements applicable to insurers by emergency regulation; areas to be addressed; issuance of orders following natural disaster.

 (A) The department may promulgate by emergency regulation, pursuant to Section 38‑3‑410, standardized requirements that may be applied to insurers as a consequence of a hurricane or other natural disaster. The emergency regulations must address the following areas:

 (1) claims reporting requirements;

 (2) grace periods for payment of premiums and performance of other duties by insureds;

 (3) temporary postponement of cancellations and nonrenewals; and

 (4) any other rule the director considers necessary.

 (B) The emergency regulations adopted under this section shall require the department to issue an order within ten days after the occurrence of a hurricane or other natural disaster specifying, by line of insurance, which of the standardized requirements apply, the geographic areas in which they apply, the time at which applicability commences, and the time at which applicability terminates. An order issued pursuant to this subsection must comply with the requirements of Section 1‑23‑140.

HISTORY: 2007 Act No. 78, Section 4.B, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

Library References

Insurance 1034, 1056.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 42, 53 to 54, 56.

**SECTION 38‑3‑440.** Promulgation of regulations to implement article.

 The department may promulgate the regulations pursuant to the South Carolina Administrative Procedures Act, Chapter 23 of Title 1, necessary to implement the provisions of this article.

HISTORY: 2007 Act No. 78, Section 4.B, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.