CHAPTER 17

Reciprocal Insurance

**SECTION 38‑17‑10.** Subscribers authorized to exchange reciprocal or interinsurance contracts.

Individuals, partnerships, and corporations of this State, designated as “subscribers”, may exchange reciprocal or interinsurance contracts with each other or with individuals, partnerships, and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of law, excepting life insurance.

HISTORY: Former 1976 Code Section 38‑17‑10 [1962 Code Section 37‑561; 1972 (57) 2776] recodified as Section 38‑29‑10 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑10 [1947 (45) 322; 1952 Code Section 37‑801; 1962 Code Section 37‑801] recodified as Section 38‑17‑10 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Service of process on the attorney for subscribers to reciprocal or interinsurance contracts, see Section 15‑9‑310.

Library References

Insurance 1206.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2355, 2362, 2369.

**SECTION 38‑17‑30.** Verified declaration to be filed with Director.

The subscribers shall, through their attorney, file with the department a declaration verified by the oath of the attorney setting forth:

(1) The name of the office at which the subscribers propose to exchange the indemnity contracts. This name may not be so similar to any name previously adopted by a similar organization or by any insurance corporation or association that in the opinion of the director or his designee is calculated to result in confusion or deception.

(2) The kind of insurance to be effected or exchanged.

(3) A copy of the form of policy contract or agreement under or by which the insurance is to be effected or exchanged.

(4) A copy of the form of power of attorney or other authority of the attorney under which the insurance is to be effected or exchanged.

(5) The location of the office or offices from which the contracts or agreements are to be issued.

(6) That applications have been made for indemnity upon at least one hundred separate risks aggregating not less than one and one‑half million dollars represented by executed contracts or bona fide applications to become concurrently effective. In the case of automobile insurance, applications must have been made for indemnity upon at least one thousand motor vehicles or for insurance aggregating not less than one and one‑half million dollars represented by executed contracts or bona fide applications to become concurrently effective on any or all classes of automobile insurance effected by the subscribers through the attorney.

(7) That there are assets conforming to the requirements of Section 38‑17‑100 in the possession of the attorney and available for the payment of losses.

HISTORY: Former 1976 Code Section 38‑17‑30 [1962 Code Section 37‑562; 1972 (57) 2776] recodified as Section 38‑29‑30 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑30 [1947 (45) 322; 1952 Code Section 37‑803; 1962 Code Section 37‑803] recodified as Section 38‑17‑30 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 542.

Library References

Insurance 1206(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2355, 2362, 2369.

**SECTION 38‑17‑40.** Maximum liability of subscribers.

The maximum liability of any subscriber for losses and expenses must be fixed and determined by the power of attorney.

HISTORY: Former 1976 Code Section 38‑17‑40 [1962 Code Section 37‑563; 1972 (57) 2776] recodified as Section 38‑29‑40 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑40 [1947 (45) 322; 1952 Code Section 37‑804; 1962 Code Section 37‑804; 1964 (53) 2054] recodified as Section 38‑17‑40 by 1987 Act No. 155, Section 1.

Library References

Insurance 1211(4).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2352, 2354, 2357, 2359, 2362, 2369.

**SECTION 38‑17‑50.** Deposit of securities.

The director or his designee shall require every reciprocal exchange to provide security deposits pursuant to Sections 38‑9‑80 to 38‑9‑140 as required for other insurers doing business in this State.

HISTORY: Former 1976 Code Section 38‑17‑50 [1962 Code Section 37‑566; 1972 (57) 2776] recodified as Section 38‑29‑50 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑50 [1947 (45) 322; 1952 Code Section 37‑805; 1962 Code Section 37‑805; 1964 (53) 2054] recodified as Section 38‑17‑50 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 543.

Library References

Insurance 1209(2).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2357, 2362, 2369.

**SECTION 38‑17‑60.** Director shall be appointed agent for service of process on exchanges.

When filing the declaration provided for in Section 38‑17‑30, the attorney shall also file with the department a written instrument executed by him for the subscribers stipulating that upon the issuance of a certificate of authority provided for in Section 38‑17‑70 service of process may be had upon the director in all suits in this State arising out of the policies, contracts, or agreements and that this service is valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through the attorney.

HISTORY: Former 1976 Code Section 38‑17‑60 [1962 Code Section 37‑567; 1972 (57) 2776] recodified as Section 38‑29‑60 by 1987 act No. 155, Section 1; Former 1976 Code Section 38‑45‑60 [1947 (45) 322; 1952 Code Section 37‑806; 1962 Code Section 37‑806] recodified as Section 38‑17‑60 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 544.

CROSS REFERENCES

Service of process on the attorney for subscribers to reciprocal or interinsurance contracts, see Section 15‑9‑310.

Library References

Insurance 1208(2), 3569.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2132, 2361 to 2362, 2369.

**SECTION 38‑17‑70.** Annual certificate of authority.

Each attorney by or through whom are issued any policies of or contracts for indemnity referred to in this chapter shall annually procure from the director or his designee a certificate of authority, stating that all of the requirements of this chapter have been complied with and, upon compliance and the payment of the fees required by this chapter, the director or his designee shall issue the certificate of authority. The director or his designee may revoke or suspend the certificate of authority upon breach of any condition imposed by this chapter after reasonable written notice has been given to the attorney so that he may appear and show cause why action should not be taken. Any attorney who may have procured a certificate of authority under this section may renew it annually.

HISTORY: Former 1976 Code Section 38‑17‑70 [1962 Code Section 37‑568; 1972 (57) 2776; 1977 Act No. 69 Section 2] recodified as Section 38‑29‑70 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑70 [1947 (45) 322; 1952 Code Section 37‑807; 1962 Code Section 37‑807] recodified as Section 38‑17‑70 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 545.

Library References

Insurance 1206(2).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2355, 2362, 2369.

**SECTION 38‑17‑80.** Domestic corporations may exchange reciprocal or interinsurance contracts.

Any domestic corporation may, in addition to the rights, powers, and franchises specified in its articles of incorporation, exchange reciprocal or interinsurance insurance contracts. The right to exchange these contracts is incidental to the purposes for which domestic corporations are organized and is granted the same as rights and powers expressly conferred.

HISTORY: Former 1976 Code Section 38‑17‑80 [1962 Code Section 37‑569; 1972 (57) 2776; 1977 Act No. 69 Section 3; 1980 Act No. 345, Section 2] recodified as Section 38‑29‑80 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑80 [1947 (45) 322; 1952 Code Section 37‑808; 1962 Code Section 37‑808] recodified as Section 38‑17‑80 by 1987 Act No. 155, Section 1.

Library References

Insurance 1130, 1207.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 166, 177, 2362, 2369.

**SECTION 38‑17‑90.** Maximum indemnity on fire risk; statement required.

The attorney shall file a sworn statement with the department showing the maximum amount of indemnity upon any single fire insurance risk. The attorney shall also file, whenever required, a sworn statement with the department that he has examined the commercial rating of the subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers and that from this examination or other information in his possession it appears that no subscriber has assumed more than ten percent of its net worth on any single fire insurance risk.

HISTORY: Former 1976 Code Section 38‑17‑90 [1962 Code Section 37‑570; 1972 (57) 2776] recodified as Section 38‑29‑90 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑90 [1947 (45) 322; 1952 Code Section 37‑809; 1962 Code Section 37‑809] recodified as Section 38‑17‑90 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 546.

Library References

Insurance 1141, 1147.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 167, 175, 204.

**SECTION 38‑17‑100.** Maintenance of assets and guaranty fund.

There must at all times be maintained as a reserve assets in cash or securities equal to fifty percent of the net annual advance premiums or deposits collected and credited to the accounts of subscribers on policies having one year or less to run and prorata on those for longer periods or, in lieu thereof, one hundred percent of the net unearned premiums or deposits collected and credited to the accounts of subscribers. There must also be maintained as a guaranty fund or surplus an additional sum in cash or securities in the amount required of mutual insurers by Section 38‑9‑20 or 38‑9‑30. In addition to the foregoing requirements, in the case of liability insurance there must be maintained as a claim or loss reserve in cash or securities assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, these losses to be calculated in accordance with the law of the state relating to similar reserve companies insuring similar risks. The securities referred to in this section must be securities authorized by the laws of the state in which the principal office of the attorney is located for the investments of similar funds of insurers doing the same kind of business. If at any time the amounts on hand are less than the foregoing requirements, the subscribers or their attorney shall make up the deficiency.

HISTORY: Former 1976 Code Section 38‑17‑100 [1962 Code Section 37‑571; 1972 (57) 2776] recodified as Section 38‑29‑100 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑100 [1947 (45) 322; 1952 Code Section 37‑810; 1962 Code Section 37‑810; 1964 (53) 2054] recodified as Section 38‑17‑100 by 1987 Act No. 155, Section 1.

CROSS REFERENCES

Requirement that subscribers seeking to exchange reciprocal or interinsurance contracts include with their verified declaration filed with the Commissioner a statement that there are assets conforming to the requirements of this section in the possession of their attorney and available for the payment of losses, see Section 38‑17‑30.

Library References

Insurance 1209.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2357 to 2358, 2362, 2369.

**SECTION 38‑17‑110.** “Net annual advance premiums or deposits” defined.

“Net annual advance premiums or deposits”, as used in this chapter, means the advance premiums or deposits made by subscribers after deducting the amounts specifically provided in the subscribers’ agreements for expenses.

HISTORY: Former 1976 Code Section 38‑17‑110 [1962 Code Section 37‑572; 1972 (57) 2776] recodified as Section 38‑29‑110 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑110 [1947 (45) 322; 1952 Code Section 37‑811; 1962 Code Section 37‑811] recodified as Section 38‑17‑110 by 1987 Act No. 155, Section 1.

**SECTION 38‑17‑120.** Disposition of funds advanced to make up deficiencies.

When funds other than those which have accrued from premiums or deposits of subscribers are supplied to make up a deficiency as provided in Section 38‑17‑100, they must be deposited and held for the benefit of subscribers under any terms and conditions the director or his designee may require as long as a deficiency exists and thereafter returned to the depositors.

HISTORY: Former 1976 Code Section 38‑17‑120 [1962 Code Section 37‑573; 1972 (57) 2776] recodified as Section 38‑29‑120 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑120 [1947 (45) 322; 1952 Code Section 37‑812; 1962 Code Section 37‑812] recodified as Section 38‑17‑120 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 547.

Library References

Insurance 1209(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2357, 2362, 2369.

**SECTION 38‑17‑130.** Exchanges may sue and be sued.

A reciprocal exchange transacting business in this State may sue or be sued in the name in which its contracts are authorized to be exchanged.

HISTORY: Former 1976 Code Section 38‑17‑130 [1962 Code Section 37‑574; 1972 (57) 2776] recodified as Section 38‑29‑130 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑130 [1947 (45) 322; 1952 Code Section 37‑813; 1962 Code Section 37‑813] recodified as Section 38‑17‑130 by 1987 Act No. 155, Section 1.

**SECTION 38‑17‑140.** Exchanges subject to examinations.

The business affairs and assets of reciprocal or interinsurance exchanges, as shown at the office of its attorney, are subject to examination by the director or his designee as often as he sees fit. The cost of the examination must be paid by the exchange examined.

HISTORY: Former 1976 Code Section 38‑17‑140 [1962 Code Section 37‑575; 1972 (57) 2776] recodified as Section 38‑29‑140 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑140 [1947 (45) 322; 1952 Code Section 37‑814; 1962 Code Section 37‑814] recodified as Section 38‑17‑140 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 548.

Library References

Insurance 1048.

Westlaw Topic No. 217.

**SECTION 38‑17‑150.** Annual report of business.

Each attorney shall annually make and file by March first with the department a sworn statement, upon a form to be prescribed and furnished by the director or his designee, showing that the financial condition of affairs at the office where the reciprocal or interinsurance contracts are issued is in accordance with the standard of solvency provided for in this chapter and stating:

(1) the amount of all premiums or deposits collected from subscribers in this State during the previous calendar year;

(2) the amounts actually paid subscribers on losses;

(3) the total amounts returned to subscribers as savings and the amounts retained for expenses;

(4) the amount of insurance reinsured in other insurers licensed in this State, naming them and the amount of premiums paid;

(5) the amount of insurance reinsured in insurers not licensed in this State, naming them and the amount of premiums paid; and

(6) the amount of reinsurance accepted from admitted companies and the premiums received for that reinsurance on risks located in this State, with the names of the insurers so reinsured.

However, the attorney may not be required to furnish the names and addresses of any subscribers.

HISTORY: Former 1976 Code Section 38‑17‑150 [1962 Code Section 37‑576; 1972 (57) 2776] recodified as Section 38‑29‑150 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑150 [1947 (45) 322; 1952 Code Section 37‑815; 1962 Code Section 37‑815] recodified as Section 38‑17‑150 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 549.

Library References

Insurance 1215(2).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2362, 2369.

**SECTION 38‑17‑160.** Fees, taxes, and bond of attorney.

Each attorney shall pay a license fee of four hundred dollars every two years for the issuance of the certificate of authority or its renewal. In addition to the license fee, each attorney shall pay all of the taxes provided by law on companies doing a like business in this State and shall file the bond required of other companies doing a like class of business.

HISTORY: Former 1976 Code Section 38‑17‑160 [1962 Code Section 37‑577; 1972 (57) 2776] recodified as Section 38‑29‑160 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑160 [1947 (45) 322; 1952 Code Section 37‑816; 1962 Code Section 37‑816; 1971 (57) 709; 1980 Act No. 306, Section 3] recodified as Section 38‑17‑160 by 1987 Act No. 155, Section 1; 1992 Act No. 501, Part II Section 11E.

Library References

Insurance 1206(2).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 2355, 2362, 2369.

**SECTION 38‑17‑170.** Violations of chapter; conditional permit to organize.

Any attorney who exchanges any contract for indemnity specified in this chapter or directly or indirectly solicits or negotiates any applications for this contract without first complying with this chapter is guilty of a misdemeanor. The director or his designee, in his discretion and on terms he may prescribe, may issue a permit for organization purposes which must continue in force or be canceled at his pleasure.

HISTORY: Former 1976 Code Section 38‑17‑170 [1962 Code Section 37‑578; 1972 (57) 2776] recodified as Section 38‑29‑170 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑45‑170 [1947 (45) 322; 1952 Code Section 37‑817; 1962 Code Section 37‑817] recodified as Section 38‑17‑170 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 8; 1993 Act No. 181, Section 550.

CROSS REFERENCES

Penalties for violations of the insurance laws of this state, see Section 38‑2‑10 et seq.

Library References

Insurance 3642.

Westlaw Topic No. 217.

C.J.S. Insurance Section 146.