CHAPTER 43

Insurance Producers and Agencies

ARTICLE 1

General Provisions

**SECTION 38‑43‑10.** Persons considered producers of insurers; excess and surplus lines brokers; using assumed name.

 (A) A person who:

 (1) sells, solicits, or negotiates insurance on behalf of an insurer;

 (2) takes or transmits other than for himself an application for insurance or a policy of insurance to or from an insurer;

 (3) advertises or otherwise gives notice that he will receive or transmit insurance applications or policies;

 (4) receives or delivers a policy of insurance of an insurer;

 (5) receives, collects, or transmits any premium of insurance; or

 (6) performs any other act in the making of an insurance contract for or with an insurer, other than for himself; whether these acts are done by an employee of an insurer or at the instance or request of an insurer, must be an appointed producer of the insurer for which the act is done or the risk is taken unless provided otherwise in Section 38‑43‑20.

 (B) This chapter does not apply to excess and surplus lines brokers licensed pursuant to Section 38‑45‑30 except as provided in Section 38‑43‑70.

 (C) An insurance producer doing business under any name other than the producer’s legal name is required to notify the director or his designee prior to using the assumed name.

HISTORY: Former 1976 Code Section 38‑43‑10 [1947 (45) 322; 1952 Code Section 37‑651; 1962 Code Section 37‑651] recodified as Section 38‑73‑10 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑10 [1947 (45) 322; 1952 Code Section 37‑233; 1962 Code Section 37‑233] and Section 38‑51‑15 [1986 Act No. 518, Section 2] recodified as Section 38‑43‑10 by 1987 Act No. 155, Section 1; 1988 Act No. 371, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003; 2003 Act No. 73, Section 6, eff June 25, 2003.

CROSS REFERENCES

Licensing, long term care insurance, see S.C. Code of Regulations R. 69‑44 Section 16.

Requirement that persons soliciting, negotiating, or procuring insurance from a risk retention group, or for a purchasing group, be licensed in accordance with Chapters 43 or 45 of this Title, see Section 38‑87‑120.

Suitability in annuity transactions, see S.C. Code of Regulations R. 69‑29.

Library References

Insurance 1605, 1626, 1628.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 260 to 268, 2336 to 2337, 2340 to 2341.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Insurance Law—Automobile Insurers’ Right to Cancel Contracts with Independent Agencies. 31 S.C. L. Rev. 11.

The South Carolina Unauthorized Insurers Act—Problems and Possibilities. 17 S.C. L. Rev. 717.

Attorney General’s Opinions

The holding of the South Carolina Supreme Court in Allstate Insurance Company v. Smoak, 256 S.C. 382, 182 S.E.2d 749, (1971), does not abrogate statutory law which would prohibit an agent, who is not licensed with an admitted carrier, from “dealing” with that carrier through an excess and surplus lines wholesaler, if, by such dealings, the agent engages in any of the activities described in Section 38‑43‑10. S.C. Op.Atty.Gen. (Nov. 3, 1989) 1989 WL 508604.

A broker, who does not come within any of the exemptions set forth in Section 38‑43‑20, is prohibited from performing any of the acts described in Section 38‑43‑10, unless he is a licensed agent for the insurer for which the act is done or the risk is taken. S.C. Op.Atty.Gen. (Oct. 12, 1989) 1989 WL 508599.

It would be unlawful for an agent, who is not licensed for the insurer with which business is placed, to perform any of the acts enumerated in Section 38‑43‑10 with respect to the business placed with that insurer. S.C. Op.Atty.Gen. (Oct. 12, 1989) 1989 WL 508599.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 5

Agency 2

Brokers 3

Estoppel 4

Questions of fact 6

Sufficiency of evidence 7

1. In general

Former Code 1962 Section 37‑233 encompassed two classes of persons: employees of insurance companies and those acting at the instance or request of such insurance company. Allstate Ins. Co. v. Smoak (S.C. 1971) 256 S.C. 382, 182 S.E.2d 749.

2. Agency

Former Code 1962 Section 37‑233 did not prohibit insurance companies who necessarily had to transact their business through agents from limiting or restricting the power of such agents. Cauthen v Metropolitan Life Ins. Co. (1939) 189 SC 356, 1 SE2d 147. Allstate Ins. Co. v Smoak (1971) 256 SC 382, 182 SE2d 749.

Where defendant insurance company’s agent permitted the plaintiff to sign an application without telling him how he had misrepresented in the application the information plaintiff and his wife had given him, and then fraudulently assured plaintiff and his wife that the policy of insurance would cover the expenses of a pending operation, and then and there collected from the plaintiff a premium for the defendant insurance company, the agent in all his actions and representations was acting in the scope and course of his employment as an agent of the defendant (decided under former law). Fudge v. Physicians Ins. Co., 1954, 125 F.Supp. 653.

If individual becomes agent of insurer through operation of statute governing persons considered agents of insurers, extent of authority of statutory agent must still be determined; not every statutory agent is general or unlimited agent. Hiott v. Guaranty Nat. Ins. Co. (S.C.App. 1997) 329 S.C. 522, 496 S.E.2d 417. Insurance 1633

Insurance agency was found to be agent of insurance company where facts presented could have served as basis for jury to have found agency relationship based on certain actions taken by insurance agency at insurance company’s request. Republic Textile Equipment Co. of South Carolina, Inc. v. Aetna Ins. Co. (S.C.App. 1987) 293 S.C. 381, 360 S.E.2d 540.

An employer that deducted life insurance premiums from its employee’s pay check was the agent of the insurance company, so that the knowledge and acts of the employer were those of the insurer (decided under former law). Jost v. Equitable Life Assur. Soc. of U. S. (S.C. 1978) 271 S.C. 492, 248 S.E.2d 778.

While under former Code 1962 Section 37‑233, a person may have become the insurance company’s agent for certain purposes, the extent of that agency authority was a question of fact for the jury. Allstate Ins. Co. v. Smoak (S.C. 1971) 256 S.C. 382, 182 S.E.2d 749.

The employer‑policyholder of a group insurance policy and its office manager were both agents of the insurer, as a matter of law, by virtue of former Code 1962 Section 37‑233, in that they transmitted applications for insurance and collected premiums for the insurer. Weeks v. Pilot Life Ins. Co. (S.C. 1971) 256 S.C. 81, 180 S.E.2d 875.

Insurance agent who, although not licensed by or for insurer, solicited policy using insurer’s forms and delivered application to insurer and policy to insured, collecting premiums and transmitting them to insured, was agent of insurer rather than of insured. Hann v. Carolina Cas. Ins. Co. (S.C. 1969) 252 S.C. 518, 167 S.E.2d 420.

It is true that agency may not be established solely by the declarations and conduct of the alleged agent, but such declarations and conduct are admissible as circumstances in connection with other evidence tending to establish the agency (decided under former law). Fuller v. Eastern Fire & Cas. Ins. Co. (S.C. 1962) 240 S.C. 75, 124 S.E.2d 602. Principal And Agent 22(2); Principal And Agent 23(1)

In action for damages on the bond of a contractor for failure to complete a building, admitting a letter, written in reply to the plaintiff’s letter to his uncle with reference to the bond covering the building contract, was not erroneous, since under former Code 1962 Section 37‑233 the uncle in procuring the bond was the agent of the surety company and not of the plaintiff. Simon v. Aetna Cas. & Sur. Co. (S.C. 1929) 151 S.C. 44, 148 S.E. 648.

Notwithstanding former Code 1962 Section 37‑233, the act of an insurer’s soliciting agent in receiving and receipting a premium on a policy after it had lapsed for nonpayment of such premium, did not prejudice the right of the insurer to insist on the forfeiture, where the agent, to the knowledge of the insured and the beneficiary, had no authority, real or apparent, to receive the premium, and the application and policy provided for payment of the premium on delivery of a receipt signed by specified officers, and provided that the agent taking the application had no authority to make, modify, or discharge contracts or waive any of the company’s rights or requirements, since the statute did not restrict the power of insurance companies to place reasonable limits upon the authority of their agents (decided under former law). Rabb v. New York Life Ins. Co. (S.C. 1917) 108 S.C. 137, 93 S.E. 711.

Where an agent of an insurance company issued a policy having knowledge that another company, of which he was also agent, had a policy on the same goods, issued by his predecessor, his knowledge would be imputed to the latter company, and on its failure to cancel the policy, tended to show waiver of a provision prohibiting other insurance (decided under former law). L.T. Madden & Co. v. Phoenix Assur. Co. (S.C. 1904) 70 S.C. 295, 49 S.E. 855. Insurance 3091

An agent of a company who takes an application for insurance, receives the premiums, delivers the policy, notifies the company of the loss, and inspects the ruins with the adjuster, is an agent whose knowledge of a forfeiture of the policy is imputable to the insurer (decided under former law). Norris v. Hartford Fire Ins. Co. (S.C. 1900) 57 S.C. 358, 35 S.E. 572.

3. Brokers

Under former Code 1962 Section 37‑233 an insurance agent, who, because he cannot write a policy in his own company, “brokers” it to the agent of another company, is the agent of such other company, and his knowledge is imputable to it. Maryland Casualty Co. v Gaffney Mfg. Co. (1913) 93 SC 406, 76 SE 1089. Bost v Bankers Fire & Marine Ins. Co. (1963) 242 SC 274, 130 SE2d 907.

Under South Carolina law, an “insurance broker” represents people seeking insurance, while an “insurance agent” represents the insurance company. Gunnells v. Healthplan Services, Inc. (C.A.4 (S.C.) 2003) 348 F.3d 417, certiorari denied 124 S.Ct. 2837, 542 U.S. 915, 159 L.Ed.2d 287. Insurance 1606; Insurance 1609

Insurance broker, who is agent of insured, cannot be converted by statute into agent of insurer without evidence creating inference that he was acting at instance or request of insurer. Hiott v. Guaranty Nat. Ins. Co. (S.C.App. 1997) 329 S.C. 522, 496 S.E.2d 417. Insurance 1609

Generally, insurance broker is agent of insured, not insurer, and mere fact that he receives commission from insurer for placing insurance does not change his character as agent of insured. Hiott v. Guaranty Nat. Ins. Co. (S.C.App. 1997) 329 S.C. 522, 496 S.E.2d 417. Insurance 1609

A broker is ordinarily one who acts as a middleman between the insured and insurer and who solicits insurance from the public under no employment from any special company, but having secured an order, either places the insurance with a company selected by the insured or with a company selected by the broker himself. Allstate Ins. Co. v. Smoak (S.C. 1971) 256 S.C. 382, 182 S.E.2d 749. Insurance 1609

Where one has no agency license with the insurer, and is requested by the insured to place the business, he is a broker. Allstate Ins. Co. v. Smoak (S.C. 1971) 256 S.C. 382, 182 S.E.2d 749.

A broker is ordinarily employed by a person seeking insurance, and when so employed, is to be distinguished from the ordinary insurance agent who is employed by an insurance company to solicit and write insurance in the company. Allstate Ins. Co. v. Smoak (S.C. 1971) 256 S.C. 382, 182 S.E.2d 749.

A broker acting for the insured has no authority to bind the insurer. Allstate Ins. Co. v. Smoak (S.C. 1971) 256 S.C. 382, 182 S.E.2d 749.

An insurance broker, who is the agent of the insured, cannot be converted by reason of this section [Code 1962 Section 37‑233] into an agent of the insurer without evidence creating an inference that he was acting at the instance or request of the company. Allstate Ins. Co. v. Smoak (S.C. 1971) 256 S.C. 382, 182 S.E.2d 749. Insurance 1607

4. Estoppel

Insurance premium finance company was estopped from denying that insurance agent was its agent for collection of payments on insured’s finance contract where agent solicited business at company’s request and collected installments on insured’s contract with company’s full knowledge. Maryland Cas. Co. v. Conner, 1961, 200 F.Supp. 647.

5. Admissibility of evidence

The statements and conduct of a local agent are admissible against the insurer on the issue of waiver (decided under former law). Whaley v. Guardian Fire Ins. Co. (S.C. 1923) 124 S.C. 173, 117 S.E. 209. Insurance 3130

6. Questions of fact

Extent of authority of statutory agent of insurer is question of fact for factfinder. Hiott v. Guaranty Nat. Ins. Co. (S.C.App. 1997) 329 S.C. 522, 496 S.E.2d 417. Insurance 1636

7. Sufficiency of evidence

Evidence did not support finding that insurance agency was agent of insurer, despite notice sent by premium service company which named agency as agent; notice did not identify for whom agency was agent, company had no authority to declare agency to be insurer’s agent, agency employee testified that agency was agent for insured, and record did not show that either insurer recognized agency as its agent, or that agency held itself out as insurer’s agent with knowledge. Hiott v. Guaranty Nat. Ins. Co. (S.C.App. 1997) 329 S.C. 522, 496 S.E.2d 417. Insurance 1606

Finding of apparent authority to issue valid insurance policy was amply supported by evidence that equipment salesman and equipment dealer represented selves as authorized to write credit insurance, even though buyer financed equipment purchases through bank rather than International Harvester Credit Corporation, and where dealer had insurer’s certificates of insurance in its possession, collected premium from buyer, and later even mailed insurance certificates to buyer (decided under former law). Hutson v. Continental Assur. Co. (S.C. 1977) 269 S.C. 322, 237 S.E.2d 375.

**SECTION 38‑43‑20.** Producer’s license required; exceptions.

 (A) A person may not sell, solicit, or negotiate insurance in this State for any line or lines of insurance unless the person is licensed for that line of authority in accordance with this chapter.

 (B) No person may act as a producer for an insurer or for a fraternal benefit association unless a producer’s license has been issued to him by the director or his designee.

 (C) Nothing in this chapter may be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries, or affiliates.

 (D) A license as an insurance producer is not required of the following:

 (1) an officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this State and:

 (a) the officer, director, or employee’s activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;

 (b) the officer, director, or employee’s function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance;

 (c) the officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person’s activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

 (d) an employee of a licensed producer who is under the producer’s direct supervision or an employee of a licensed insurer, who performs only clerical duties, and who is paid on an hourly or salary basis and not on a commission basis; or an agency office employee acting within the confines of the producer’s office, under the direction and supervision of the licensed producer and within the scope of the producer’s license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties;

 (2) a person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;

 (3) an employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director, or trustees are engaged in the administration or operation of a program of employee benefits for the employer’s or association’s own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

 (4) employees of insurers or organizations employed by the insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

 (5) a person whose activities in this State are limited to advertising without the intent to solicit on its own behalf insurance in this State through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the State, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this State;

 (6) a person who is not a resident of this State who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

 (7) a salaried full‑time employee who counsels or advises his employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell, solicit, or negotiate insurance or receive any commission.

HISTORY: Former 1976 Code Section 38‑43‑20 [1947 (45) 322; 1952 Code Section 37‑652; 1962 Code Section 37‑652] recodified as Section 38‑73‑20 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑20 [1947 (45) 322; 1952 Code Section 37‑231; 1957 (50) 280; 1962 Code Section 37‑231; 1972 (57) 2468] recodified as Section 38‑43‑20 by 1987 Act No. 155, Section 1; 1988 Act No. 371, Section 2; 1988 Act No. 471; 1989 Act No. 140, Section 1; 1993 Act No. 181, Section 655; 2002 Act No. 196, Section 1, eff March 27, 2002; 2002 Act No. 323, Section 2, eff January 31, 2003; 2008 Act No. 326, Section 1, eff June 16, 2008.

CROSS REFERENCES

Licensing, long term care insurance, see S.C. Code of Regulations R. 69‑44 Section 16.

Requirement that persons soliciting, negotiating, or procuring insurance from a risk retention group, or for a purchasing group, be licensed in accordance with Chapters 43 or 45 of this Title, see Section 38‑87‑120.

Library References

Insurance 1611.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 138 to 139, 142.

Attorney General’s Opinions

A broker, who does not come within any of the exemptions set forth in Section 38‑43‑20, is prohibited from performing any of the acts described in Section 38‑43‑10, unless he is a licensed agent for the insurer for which the act is done or the risk is taken. S.C. Op.Atty.Gen. (Oct. 12, 1989) 1989 WL 508599.

NOTES OF DECISIONS

In general 1

1. In general

The South Carolina insurance laws prevent a corporation from qualifying as an insurance agent (decided under former law). Ray Waits Motors, Inc. v. U.S., 1956, 145 F.Supp. 269.

A policy of insurance is not rendered void nor is the insured precluded from recovery upon such policy by reason of the fact that the person soliciting or issuing it was not duly licensed. This result has followed where such person was originally licensed but failed to keep his certificate renewed (decided under former law). Fuller v. Eastern Fire & Cas. Ins. Co. (S.C. 1962) 240 S.C. 75, 124 S.E.2d 602. Insurance 1611

The failure of a person, contracting with the authorized representative of an insurance company to work as insurance agent, to procure the license does not preclude his bringing action for breach of such contract, particularly in view of the fact that the insurer agreed to procure such license and that the question of license did not enter into his discharge (decided under former law). Brunson v. Bankers’ Nat. Life Ins. Co. (S.C. 1927) 140 S.C. 31, 138 S.E. 522.

**SECTION 38‑43‑30.** License required of agencies and their stockholders, officers, directors, members, employees, and associates.

 (A) Every agency, whether corporation, partnership, association, person, or other aggregation of individuals, transacting or purporting to transact the business of an insurance producer under a corporate or trade name must be licensed by the director or his designee. The term “producer” as used in this title is considered to include an agency, unless the context requires otherwise. Single‑owner, sole proprietorships are not required to be licensed as an agency.

 (B) Every stockholder, officer, director, member, employee, or associate of an agency, performing any act of a producer as enumerated in Section 38‑43‑10, shall possess a current producer’s license giving authority to transact that particular business.

HISTORY: Former 1976 Code Section 38‑43‑30 [1947 (45) 322; 1952 Code Section 37‑653; 1962 Code Section 37‑653] recodified as Section 38‑73‑20 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑30 [1962 Code Section 37‑231.1; 1964 (53) 2290] recodified as Section 38‑43‑30 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 656; 2002 Act No. 323, Section 2, eff January 31, 2003.

CROSS REFERENCES

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

Requirement that persons soliciting, negotiating, or procuring insurance from a risk retention group, or for a purchasing group, be licensed in accordance with Chapters 43 or 45 of this Title, see Section 38‑87‑120.

Library References

Insurance 1611.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 138 to 139, 142.

**SECTION 38‑43‑40.** License confers right to appoint producers; notification to director.

 A license issued by the director or his designee pursuant to Chapter 5 of this title gives to the insurer obtaining it the right to appoint any number of producers to take risks or transact any business of insurance in the State. The notification to the director or his designee must give both the business address and residence addresses of the producer.

HISTORY: Former 1976 Code Section 38‑43‑40 [1947 (45) 322; 1952 Code Section 37‑654; 1962 Code Section 37‑654] recodified as Section 38‑73‑30 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑40 [1948 (45) 1734; 1952 Code Section 37‑232; 1962 Code Section 37‑232] recodified as Section 38‑43‑40 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 657; 2002 Act No. 323, Section 2, eff January 31, 2003; 2003 Act No. 73, Section 7, eff June 25, 2003.

CROSS REFERENCES

Limited licensing of self‑service storage facilities to sell or offer insurance, application for limited license, fee, renewal, advertising, see Section 38‑43‑630.

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

Requirement that persons soliciting, negotiating, or procuring insurance from a risk retention group, or for a purchasing group, be licensed in accordance with Chapters 43 or 45 of this Title, see Section 38‑87‑120.

Library References

Insurance 1130, 1626.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 166, 177, 268.

**SECTION 38‑43‑50.** Limited line and special producer licensure; appointment by insurer as producer or agent.

 (A) All applicants for a limited lines or special producer’s license must be vouched for by an official or a licensed representative of the insurer for which the applicant proposes to act, who shall certify whether the applicant has been appointed a producer to represent it and that it has duly investigated the character and record of the applicant and has satisfied itself that he is trustworthy and qualified to act as its producer and intends to hold himself out in good faith as an insurance producer. When a contract of a producer is canceled by the insurer represented, that insurer shall notify the department of the cancellation within thirty days stating the cause of the termination. The records furnished by insurers are for the use of the department solely and not for public inspection.

 (B) When appointing a producer, the insurer shall certify on a form prescribed by the director whether the applicant has been appointed a producer to represent it and that it has duly investigated the character and record of the applicant and has satisfied itself that he is trustworthy and qualified to act as its producer and intends to hold himself out in good faith as an insurance producer. An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

 (C) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the director or his designee, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted. An insurer also may elect to appoint a producer to all or some insurers within the insurer’s holding company system or group by the filing of a single appointment request. Each appointment must be accompanied by an appointment fee paid by the insurer as prescribed in Section 38‑43‑80.

 (D) Upon receipt of the notice of appointment, the director or his designee shall verify within a reasonable time not to exceed thirty days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the insurance director or his designee shall notify the insurer within five days of its determination.

 (E) When placing surplus lines insurance through a licensed insurance broker, a producer licensed for property and casualty insurance is not required to be appointed by the surplus lines insurer.

 (F) An insurer shall remit a renewal appointment fee in the amount set forth in Section 38‑43‑80.

HISTORY: Former 1976 Code Section 38‑43‑50 [1947 (45) 322; 1952 Code Section 37‑655; 1962 Code Section 37‑655; 1974 (58) 2718] recodified as Section 38‑73‑40 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑50 [1947 (45) 322; 1952 Code Section 37‑234; 1960 (51) 1646; 1962 Code Section 37‑234] recodified as Section 38‑43‑50 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003; 2003 Act No. 73, Section 8, eff June 25, 2003; 2016 Act No. 137 (H.4660), Section 1, eff March 2, 2016.

Effect of Amendment

2016 Act No. 137, Section 1, in (C), substituted “An insurer also may elect” for “An insurer may also elect”; added (E); and redesignated former (E) as (F).

CROSS REFERENCES

Limited licensing of self‑service storage facilities to sell or offer insurance, application for limited license, fee, renewal, advertising, see Section 38‑43‑630.

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

Library References

Insurance 1613, 1626.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 139, 268.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Insurance Law—Automobile Insurers’ Right to Cancel Contracts with Independent Agencies. 31 S.C. L. Rev. 11.

**SECTION 38‑43‑55.** Cancellation of producer contract by insurer; notification requirements; immunity from civil liability; confidentiality of documents.

 (A) When a contract of a producer is canceled by the insurer represented, that insurer shall notify the department of the cancellation within the following guidelines and time period required of this section. The records furnished by insurers are for the use of the department solely and not for public inspection.

 (B) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a producer shall notify the Director of Insurance within thirty days following the effective date of the termination, using a format prescribed by the director or his designee, if the reason for termination is one of the reasons set forth in Section 38‑43‑130 or the insurer has knowledge the producer was found by a court, government body, or self‑regulatory organization authorized by law to have engaged in any of the activities in Section 38‑43‑130. Upon the written request of the director or his designee, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.

 (C) An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in Section 38‑43‑130, shall notify the director or his designee within thirty days following the effective date of the termination, using a format prescribed by the director or his designee. Upon written request of the director or his designee, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

 (D) The insurer or the authorized representative of the insurer shall promptly notify the Director of Insurance in a format acceptable to the director or his designee if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the Director of Insurance in accordance with subsection (B) of this section had the insurer then known of its existence.

 (E)(1) Within fifteen days after making the notification required by subsections B, C, and D of this section, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in Section 38‑43‑130, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

 (2) Within thirty days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the director or his designee. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the director or his designee’s file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under subsection (G) of this section.

 (F)(1) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the insurance director, or an organization of which the Director of Insurance is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies shall not be subject to civil liability. No civil cause of action of any nature shall arise against these entities or their respective producers or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the Director of Insurance, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under subsection (B) of this section was reported to the Director of Insurance, provided that the propriety of any termination for cause under subsection (B) of this section is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

 (2) In any action brought against a person that may have immunity under item (1) of this subsection for making any statement required by this subsection or providing any information relating to any statement that may be requested by the insurance director, the party bringing the action shall plead specifically in any allegation that item (1) of this subsection does not apply because the person making the statement or providing the information did so with actual malice.

 (3) Item (1) or (2) of this subsection does not abrogate or modify any existing statutory or common law privileges or immunities.

 (G)(1) Any documents, materials, or other information in the control or possession of the Department of Insurance that is furnished by an insurer, producer, or an employee or agent of it acting on behalf of the insurer or producer, or obtained by the Director of Insurance in an investigation pursuant to this section is confidential by law and privileged, is not subject to the Freedom of Information Act request, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the Director of Insurance is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director’s duties.

 (2) Neither the director or his designee nor any person who received documents, materials, or other information while acting under the authority of the Director of Insurance is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to item (1) of this subsection.

 (3) In order to assist in the performance of the director’s duties under this chapter, the director or his designee:

 (a) may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to item (1), with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

 (b) may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

 (c) may enter into agreements governing sharing and use of information consistent with this subsection.

 (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the director under subsection (B) or as a result of sharing as authorized in item (3).

 (5) Nothing in this section shall prohibit the director or his designee from releasing final, adjudicated actions, including for cause terminations, that are open to public inspection pursuant to the Freedom of Information Act, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries of the National Association of Insurance Commissioners.

 (H) An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with Section 38‑2‑10.

HISTORY: 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 1627, 1653(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 273 to 275, 291, 295.

NOTES OF DECISIONS

In general 1

1. In general

The paramount purpose and intent of former Code 1962 Sections 37‑234 to 37‑242 is to safeguard the interest of policyholders by ascertaining that the agents through whom they deal are competent and trustworthy (decided under former law). Johnson v. Independent Life & Acc. Ins. Co. of Jacksonville, Fla., 1951, 94 F.Supp. 959. Insurance 1611

The requirement of former Code 1962 Section 37‑234 that the records furnished by the companies be for the use of the Commission only and not for public inspection is evidence of a legislative intent that they be confidential, and, by inference, privileged (decided under former law). Johnson v. Independent Life & Acc. Ins. Co. of Jacksonville, Fla., 1951, 94 F.Supp. 959. Libel And Slander 39

A letter written to the Commissioner by a representative of an insurance company, notifying the Commissioner of the termination of the employment of an agent and stating the reasons therefor, as required by former Code 1962 Section 37‑234, is an absolutely privileged communication, and cannot be made the basis of an action for libel (decided under former law). Johnson v. Independent Life & Acc. Ins. Co. of Jacksonville, Fla., 1951, 94 F.Supp. 959.

**SECTION 38‑43‑60.** Insurance business to be transacted by producers licensed in State; exceptions.

 All business done in this State by insurers doing the business of insurance as defined in this title must be transacted by their regularly authorized producers licensed in this State or through applications of the producers. Except as provided in Section 38‑43‑70, it is unlawful for a salaried officer, manager, or other representative of an insurer to transact for his company any of the business of a licensed producer for which the licensed producer received a commission, unless he himself is a bona fide licensed producer. No provision of this section applies to direct insurance covering the rolling stock of railroad corporations or property in transit while in possession and custody of railroad corporations or other common carriers or applies to bid bonds issued by a surety insurer in connection with any public or private contract.

HISTORY: Former 1976 Code Section 38‑43‑60 [1947 (45) 322; 1952 Code Section 37‑656; 1962 Code Section 37‑656] recodified as Section 38‑73‑50 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑60 [1947 (45) 322; 1949 (46) 600; 1952 Code Section 37‑247; 1957 (50) 534; 1959 (51) 303; 1962 Code Section 37‑247; 1964 (53) 2290; 1966 (54) 2666; 1981 Act No. 163, Section 1; 1986 Act No. 416] recodified as Section 38‑43‑60 by 1987 Act No. 155, Section 1; 1999 Act No. 30, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

CROSS REFERENCES

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

Library References

Insurance 1611.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 138 to 139, 142.

NOTES OF DECISIONS

In general 1

1. In general

Former Code 1962 Section 37‑247 mandatorily required that all policies be countersigned by a resident agent of the company (decided under former law). Martin v. Nationwide Mut. Ins. Co. (S.C. 1971) 256 S.C. 577, 183 S.E.2d 451.

There is no requirement that an endorsement to an existing valid policy should be countersigned by a resident agent in order to make such valid (decided under former law). Martin v. Nationwide Mut. Ins. Co. (S.C. 1971) 256 S.C. 577, 183 S.E.2d 451.

No right of action for commissions split in violation of former Code 1962 Section 37‑254. The legislature did not intend under former Code 1962 Sections 37‑246, 37‑247 and 37‑254 of the Insurance Law to give an agent a right to maintain an action for commissions which, in violation of former Code 1962 Section 37‑254 he has agreed to split or permit to be paid to another, thereby rendering him in pari delicto with such other person (decided under former law). Taggart v. Home Finance Group, Inc. (S.C. 1961) 239 S.C. 345, 123 S.E.2d 250.

**SECTION 38‑43‑70.** Nonresident producer licensure.

 (A) Unless denied licensure pursuant to Section 38‑43‑130, a nonresident person shall receive a nonresident producer license with the same lines of authority held in the home state if the:

 (1) person is currently licensed as a resident and in good standing in his home state;

 (2) person has submitted the proper request for licensure and the fees have been paid as provided for in Section 38‑43‑80;

 (3) person has submitted or transmitted to the director or his designee a certified copy of the application for licensure that the person submitted to his home state, or instead of the certified copy an original completed Uniform Application; and

 (4) person’s home state awards nonresident producer licenses to residents of this State on the same basis.

 (B) The director or his designee may verify the producer’s licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

 (C) A nonresident producer who moves from one state to another state or a resident producer who moves from this State to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required.

 (D) Notwithstanding any other provision of this section, a person licensed as a surplus lines broker in his home state shall receive a nonresident surplus lines broker license pursuant to subsection (A) of this section. Except as to subsection (A) of this section, nothing in this section otherwise amends or supersedes any provision of Section 38‑45‑30.

 (E) Notwithstanding any other provision of this section, a person licensed as a limited line credit insurer or other type of limited lines producer in his home state shall receive a nonresident limited lines producer license, pursuant to subsection (A) of this section, granting the same scope of authority as granted under the license issued by the producer’s home state.

HISTORY: Former 1976 Code Section 38‑43‑70 [1947 (45) 322; 1952 Code Section 37‑657; 1962 Code Section 37‑657] recodified as Section 38‑73‑60 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑80 [1947 (45) 322; 1952 Code Section 37‑246; 1957 (50) 534; 1962 Code Section 37‑246; 1964 (53) 2290; 1966 (54) 2666; 1967 (55) 132] recodified as Section 38‑43‑70 by 1987 Act No. 155, Section 1; 1992 Act No. 501, Part II Section 11G; 1993 Act No. 181, Section 658; 2002 Act No. 323, Section 2, eff January 31, 2003; 2003 Act No. 73, Section 9, eff June 25, 2003; 2008 Act No. 326, Section 2, eff June 16, 2008.

CROSS REFERENCES

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

Library References

Insurance 1624.

Westlaw Topic No. 217.

C.J.S. Insurance Section 128.

Attorney General’s Opinions

The 1964 amendments to former Code 1962 Section 37‑246 and to former Code 1962 Section 37‑247 authorize the appointment of nonresident insurance agents but require that business done by insurance companies in this State must be transacted by resident agents or through applications of resident agents. 1965‑66 Op.Atty.Gen., No 1974, p 22. [Under former Section 38‑51‑60.], 1966 WL 8455.

NOTES OF DECISIONS

In general 1

1. In general

Former Code 1962 Section 37‑246 prescribed the conditions under which a nonresident may be licensed as an agent to do business in South Carolina (decided under former law). Taggart v. Home Finance Group, Inc. (S.C. 1961) 239 S.C. 345, 123 S.E.2d 250.

The legislature did not intend under former Code 1962 Sections 37‑246, 37‑247 and 37‑254 of the Insurance Law to give an agent a right to maintain an action for commissions which in violation of former Code 1962 Section 37‑254, he has agreed to split or permit to be paid to another, thereby rendering him in pari delicto with such other person (decided under former law). Taggart v. Home Finance Group, Inc. (S.C. 1961) 239 S.C. 345, 123 S.E.2d 250.

**SECTION 38‑43‑75.** Lines of insurance for which producer may qualify for license; nonresident continuing education.

 (A) Unless denied licensure pursuant to Section 38‑43‑130, persons who have met the requirements of Section 38‑43‑100 must be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of insurance:

 (1) life insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

 (2) accident and health insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

 (3) property insurance coverage for the direct or consequential loss or damage to property of every kind;

 (4) casualty insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

 (5) variable life and variable annuity products‑insurance coverage provided under variable life insurance contracts, or variable annuities;

 (6) personal lines property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

 (7) limited line insurance;

 (8) any other line of insurance permitted under state laws or regulations.

 (B) The director or his designee shall waive any license application requirements for a nonresident license applicant with a valid license from his home state, except the requirements imposed by this section, if the applicant’s home state awards nonresident licenses to residents of this State on the same basis.

 (C) A nonresident producer’s satisfaction of his home state’s continuing education requirements for licensed insurance producers shall constitute satisfaction of this state’s continuing education requirements if the nonresident producer’s home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this State on the same basis.

HISTORY: 2002 Act No. 323, Section 2, eff January 31, 2003; 2008 Act No. 326, Section 3, eff June 16, 2008.

Library References

Insurance 1613, 1624.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 128, 139.

**SECTION 38‑43‑80.** License fees; payment by credit card.

 (A)(1) Unless otherwise changed by regulation or statute, the following fees are applicable to producer licenses, agency licenses, and insurer appointments:

 (a) initial producer license fee: twenty‑five dollars; biennial producer license renewal fee: twenty‑five dollars;

 (b) local appointment initial and biennial fee: forty dollars; special appointment initial and biennial fee: one hundred dollars; general appointment initial and biennial fee: one hundred dollars;

 (c) agency initial and biennial license fee: forty dollars.

 (2) However, the license and appointment fee applicable to a producer of a common carrier who sells only transportation ticket policies on accident and health insurance or baggage insurance on personal effects is twenty dollars.

 (B) The fees provided for in subsection (A)(1)(b) are subject to the following requirements on each appointment basis:

 (1) initial fees are due and payable in advance of the appointment;

 (2) fees are due on a biennial basis and must be paid to the department by September thirtieth of an even‑numbered year;

 (3) if a fee is not paid by September thirtieth of an even‑numbered year, the appointment must be canceled; and

 (4) an appointment must be reactivated if by December first of the even‑numbered year the appointment fee and a two hundred fifty‑dollar penalty has been paid to the department.

 (C) Fees must be paid in advance. The department shall promulgate regulations specifying the time and manner of payment of fees. If payment is rejected by the bank, the producer has thirty days from the rejection date to pay the license fee. If payment is not made to the department within this period, the license must be canceled. To reinstate the license, the producer is required to pay a license fee plus any charges resulting from rejection by the bank.

 (D) Fees provided for in subsection (A)(1)(a) and (B)(4) are to be retained by the department as other funds for purposes of implementing and administering individual licensing requirements and the provisions of this title. License and appointment fees must be deposited into the general fund of this State.

 (E) A fee provided for in this section may be paid by credit card.

HISTORY: Former 1976 Code Section 38‑43‑80 [1947 (45) 322; 1952 Code Section 37‑658; 1962 Code Section 37‑658] recodified as Section 38‑73‑70 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑90 [1947 (45) 322; 1952 Code Section 37‑235; 1955 (49) 329; 1956 (49) 1841; 1962 Code Section 37‑235; 1964 (53) 2290; 1986 Act No. 540, Part II, Section 31 M] recodified as Section 38‑43‑80 by 1987 Act No. 155, Section 1; 1992 Act No. 501, Part II Section 11H; 2001 Act No. 82, Section 17, eff July 20, 2001; 2002 Act No. 323, Section 2, eff January 31, 2003; 2008 Act No. 326, Section 4, eff June 16, 2008; 2009 Act No. 69, Section 3, eff June 2, 2009.

CROSS REFERENCES

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

Library References

Insurance 1623.

Westlaw Topic No. 217.

C.J.S. Insurance Section 141.

**SECTION 38‑43‑90.** Medical examiners of insurers exempt from license fees.

 No license fee may be charged by the State or any county or municipality to a resident, practicing physician in this State, duly licensed to practice by the State Board of Medical Examiners, for making medical examinations for life insurers or fraternal orders.

HISTORY: Former 1976 Code Section 38‑43‑90 [1960 (51) 1646; 1962 Code Section 37‑658.1; 1969 (56) 239; 1972 (57) 2750] recodified as Section 38‑73‑910 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑100 [1947 (45) 322; 1952 Code Section 37‑659; 1962 Code Section 37‑659] recodified as Section 38‑43‑90 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 1623.

Westlaw Topic No. 217.

C.J.S. Insurance Section 141.

**SECTION 38‑43‑100.** Individual and agency insurance producer licensing; written examinations; contents of license.

 (A) Business may not be done by the applicant except following issuance of a producer’s license, and the license may not be issued until the director or his designee has determined that the applicant is qualified as an insurance producer, generally, and is particularly qualified for the line of business in which the applicant proposes to engage. The department shall promulgate regulations setting forth qualifying standards of producers as to all lines of business and shall require the producer applicant to stand a written examination. For the purpose of interstate reciprocity, the department shall identify by bulletin which limited lines insurance are approved in South Carolina and which are exempt from examination. A bank, finance company, or other company handling credit transactions operating in this State and utilizing one or more credit life or accident and health or credit property producers in a particular geographical area who are licensed without having taken the written examination is required to have readily available at least one credit life or accident and health or credit property producer to answer customers’ questions concerning credit life, credit accident and health insurance, or credit property, or any combination of these.

 (B) A resident individual applying for an insurance producer license shall pass an examination. The examination must test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and regulations of this State. The examination required by this section must be developed and conducted under regulations prescribed by the director or his designee.

 (C) The director or his designee may make arrangements, including contracting with an outside testing service, for administering licensing examinations.

 (D) Each individual applying for a licensing examination shall remit a nonrefundable examination fee as required by the licensing exam administrator.

 (E) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

 (F) A person applying for a resident insurance producer license or a person applying on behalf of the applicant shall make application to the director or his designee on the Uniform Application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant’s knowledge and belief. Before approving the application, the director or his designee shall find that the applicant:

 (1) is at least eighteen years of age;

 (2) is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude within the last ten years that is a ground for denial, suspension, or revocation as provided for in Section 38‑43‑130;

 (3) has paid the fees provided for in Section 38‑43‑80; and

 (4) has successfully passed the examination or examinations for the line or lines of insurance for which the person has applied.

 (5) Before a license is issued to an applicant or is renewed permitting him to act as a resident producer, the applicant shall comply with the licensing and renewal requirements set forth in this section and by regulation. In addition to those licensing requirements, the applicant shall:

 (a) furnish a complete set of his fingerprints to the director or his designee; and

 (b) undergo a state criminal records check, supported by his fingerprints, by the South Carolina Law Enforcement Division (SLED) and a national criminal records check, supported by his fingerprints, by the Federal Bureau of Investigation (FBI). The results of these criminal records checks must be reported to the department. SLED is authorized to retain the fingerprints for use in identification purposes including, but not limited to, unsolved latent prints. The cost associated with the criminal history records checks must be borne by the applicant. The applicant’s fingerprints must be certified by a law enforcement officer authorized by SLED.

 (G) The individual’s producer license must contain the licensee’s name, address, personal identification number, the date of issuance, the line or lines of authority, and other information the director or his designee considers necessary.

 (H) An agency acting as an insurance producer is required to obtain an insurance producer license. Application must be made using the Uniform Business Entity Application. Before approving the application, the director or his designee shall find that:

 (1) the agency has paid the fees as prescribed by Section 38‑43‑80; and

 (2) the agency has designated a licensed producer or other person responsible for the business entity’s compliance with the insurance laws, rules, and regulations of this State.

 (I) The director or his designee may require any documents reasonably necessary to verify the information contained in an application.

 (J) The agency’s license must contain the licensee’s name, address, personal identification number, the date of issuance, and other information the director or his designee considers necessary.

 (K) Each insurer that sells, solicits, or negotiates any form of credit insurance shall provide to each individual whose duties include selling, soliciting, or negotiating credit insurance, a program of instruction that has been filed with the director or his designee.

HISTORY: Former 1976 Code Section 38‑43‑100 [1947 (45) 322; 1952 Code Section 37‑659; 1962 Code Section 37‑659] recodified as Section 38‑73‑80 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑110 [1947 (45) 322; 1950 (46) 2268; 1952 Code Section 37‑236; 1962 Code Section 37‑236; 1985 Act No. 139] recodified as Section 38‑43‑100 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 659; 2002 Act No. 323, Section 2, eff January 31, 2003; 2003 Act No. 73, Section 10, eff June 25, 2003; 2004 Act No. 291, Section 1.A, eff January 1, 2005; 2008 Act No. 326, Section 5, eff June 16, 2008; 2016 Act No. 194 (H.4817), Section 8, eff May 26, 2016; 2017 Act No. 55 (S.463), Section 2, eff May 19, 2017.

Effect of Amendment

2016 Act No. 194, Section 8, in (F), added (5), relating to background checks.

2017 Act No. 55, Section 2, amended (F)(5), authorizing the South Carolina Law Enforcement Division to retain fingerprints for use in identification purposes.

CROSS REFERENCES

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

Library References

Insurance 1615.

Westlaw Topic No. 217.

C.J.S. Insurance Section 139.

NOTES OF DECISIONS

In general 1

1. In general

The Insurance Department was given quasi‑judicial powers with regard to the licensing of agents under former Code 1962 Sections 37‑234 to 37‑242. Johnson v. Independent Life & Acc. Ins. Co. of Jacksonville, Fla., 1951, 94 F.Supp. 959. Administrative Law And Procedure 327; Insurance 1611

**SECTION 38‑43‑101.** Insurance producer applicants licensed in another state; qualifying standards; application process.

 (A) An individual who applies for an insurance producer license in this State who was previously licensed for the same lines of insurance in another state is not required to complete an examination. This exemption only is available if the person is currently licensed in another state or if the application is received within ninety days of the cancellation of the applicant’s previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state’s Producer Database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of insurance requested.

 (B) A person licensed as an insurance producer in another state who moves to this State shall make application within ninety days of establishing legal residence to become a resident licensee pursuant to Section 38‑43‑100. An examination is not required of a person to obtain any line of insurance previously held in another state. However, the director or his designee reserves the right to reciprocate standards imposed by other states and territories, or both, on this state’s licensed producers.

 (C) A person applying for a nonresident insurance producer license or a person applying on behalf of the applicant shall make application to the director or his designee on the Uniform Application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant’s knowledge and belief.

HISTORY: 2002 Act No. 323, Section 2, eff January 31, 2003; 2004 Act No. 291, Section 2.A, eff January 1, 2005; 2008 Act No. 326, Section 6, eff June 16, 2008.

Library References

Insurance 1611, 1613, 1624.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 128, 138 to 139, 142.

**SECTION 38‑43‑102.** Temporary insurance producer license; limitation of temporary licensee authority.

 (A) The director or his designee may issue a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the director or his designee considers the temporary license is necessary for the servicing of an insurance business in the following cases:

 (1) to the surviving spouse or court‑appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer’s business;

 (2) to a member or employee of an agency licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;

 (3) to the designee of a licensed insurance producer entering active service in the armed forces of the United States of America; or

 (4) except for continuing education purposes, in any other circumstance where the director or his designee considers the public interest will best be served by the issuance of this license.

 (B) The director or his designee may by order limit the authority of any temporary licensee in any way considered necessary to protect insureds and the public. The director or his designee may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The director or his designee may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business for which the temporary license was issued.

HISTORY: 2002 Act No. 323, Section 2, eff January 31, 2003; 2008 Act No. 326, Section 7, eff June 16, 2008.

Library References

Insurance 1611.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 138 to 139, 142.

**SECTION 38‑43‑106.** Continuing education requirements; administrator; advisory committee; exemptions from requirements.

 (A)(1) An applicant or producer licensed to sell property and casualty insurance or to sell life, accident and health insurance, or both, or qualified for this licensure, shall complete biennially a minimum of twenty‑four hours of continuing insurance education in order to be eligible for licensure for the following two years. A person who falsely represents that he or another person has met the continuing insurance education requirements of this section, after being afforded notice and an opportunity for a hearing by the Administrative Law Court, is subject to the penalties provided in Section 38‑2‑10.

 (2) However, if a producer is licensed in both property and casualty and life, accident and health, the producer shall complete at least one‑third of the twenty‑four required biennial continuing insurance education hours in courses related to each of these types of licenses or qualification for licensure. Notwithstanding the provisions of this subsection or another provision of law, a maximum of eighteen credit hours earned may be carried forward to the next biennial continuing insurance education period, as long as the hours carried forward are in excess of the required minimum for a particular reporting period.

 (3) However, a licensed resident producer who has obtained one of the following designations may use the credit hours earned to maintain the designation toward the fulfillment of the twenty‑four hour requirement: Chartered Life Underwriter (CLU), Fellow, Life Management Institute (FLMI), Certified Financial Planner (CFP), Life Underwriter Training Council Fellow (LUTCF), Registered Health Underwriter (RHU), Registered Employee Benefit Consultant (REBC), or Chartered Financial Consultant (CHFC) for a life, accident, and health license, or Chartered Property and Casualty Underwriter (CPCU) or Certified Insurance Counselor (CIC) for a property and casualty license.

 (4) A producer may repeat a continuing education course, but credit must not be given more than once for a course repeated during a biennial compliance period.

 (B)(1) The director or his designee shall administer these continuing education requirements and shall approve courses of instruction which qualify for these purposes. However, the director may enter into reciprocal agreements with the insurance commissioners of other states regarding the approval of continuing education courses, sponsors, instructors, or proctors if, in his judgment, the arrangements or agreements are in the best interest of the State and if the proposed courses, sponsors, instructors, or proctors submitted meet the minimum statutory requirements of this State for approval. However, the director or his designee may not enter into or continue a reciprocal agreement unless the other state has requirements similar to this State in approving courses, sponsors, instructors, or proctors. In administering this program, the department, in its discretion, may promulgate regulations producers provide to a continuing education administrator established within the department proof of compliance with continuing education requirements as a condition of license renewal or, in the alternative, contract with an outside service provider to provide recordkeeping services as the continuing education administrator. The costs of the continuing education administrator must be paid from the continuing insurance education fees paid by producers in the manner provided by this section, except that course approval responsibilities may not be designated to the continuing education administrator. The continuing education administrator shall compile and maintain, in conjunction with insurers and producers, records reflecting the continuing insurance education status of all licensed or qualified producers subject to the requirements of this section. The continuing education administrator shall furnish to the insurer, as specified by regulation, a report of the continuing insurance education status of all of its producers. All licensed producers shall provide evidence of their continuing insurance education status to the continuing education administrator by the last day of the individual’s month of birth. An individual born in an odd‑numbered year shall comply every odd‑numbered year. An individual born in an even‑numbered year shall comply every even‑numbered year.

 (2) The department may promulgate regulations prescribing the overall parameters of continuing education requirements, and these regulations expressly must authorize the director or his designee to recognize product‑specific training offered by insurers. The director shall appoint an advisory committee to make recommendations with respect to courses offered for approval, but the director or his designee shall retain authority with respect to course approvals. When the advisory committee is approved, it shall meet regularly as needed, but no less than semiannually, to review new course applications. Also, the advisory committee shall review modifications of courses previously approved and review previously promulgated regulations to make recommendations regarding any need for modifications, deletions, or new regulations. In making these appointments, the director may accept nominations for qualified individuals from the Professional Insurance Agents of South Carolina; the Independent Insurance Agents of South Carolina; the South Carolina Association of Automobile Insurance Agents; the South Carolina Association of Insurance and Financial Advisers; the Association of South Carolina Life Insurance Companies; the Direct Writers Insurance Companies; insurers that are not members of any national insurance trade association; and another individual, group, or trade or professional association.

 (3) A vacancy on the advisory committee must be published in newspapers of general, statewide circulation. Each advisory committee member must be appointed for a term of two years and shall serve until his successor is appointed and qualified. A vacancy must be filled for the unexpired term only.

 (C) The appointment of a producer may not be renewed unless the producer has completed the mandated continuing insurance education requirements during the previous two‑year accreditation period. The license of a producer who fails to comply with the provisions of this section shall lapse in accordance with the provisions of Section 38‑43‑110. Each insurer is responsible, biennially before renewal, for furnishing to the department certification that its producers meet the continuing insurance education requirements. Each producer is responsible for payment to the continuing education administrator a reasonable annual fee for operation of the continuing insurance education program. These fees are not refundable nor proratable and must be used to administer the provisions of this section.

 (D) This section also applies to nonresident producers unless otherwise provided in this section. However, a nonresident producer who successfully satisfies continuing insurance education requirements of his home state is considered to have satisfied the requirements of this section regardless of the requirements of that other state.

 (E) An insurance producer licensed for limited lines insurance is exempt from the provisions of this section.

 (F) The department is authorized to promulgate regulations to implement the provisions of this section.

 (G) All information received by the advisory committee in the course and scope of its duties must be treated as confidential and proprietary and not used or disclosed outside the requirements of the duties imposed on it by law.

HISTORY: 1991 Act No. 141, Section 2; 1993 Act No. 181, Section 661; 1994 Act No. 374, Section 1; 1994 Act No. 399, Section 1; 2000 Act No. 273, Section 1; 2002 Act No. 199, Section 1, eff March 27, 2002; 2002 Act No. 323, Section 2, eff January 31, 2003; 2003 Act No. 73, Section 12, eff June 25, 2003; 2004 Act No. 291, Sections 4.A and 6.A, eff January 1, 2005, Section 5.A, eff July 1, 2004, Section 7.A, eff May 1, 2006; 2008 Act No. 326, Section 8, eff June 16, 2008; 2009 Act No. 69, Section 4, eff June 2, 2009.

Editor’s Note

2006 Act No. 332, Section 29, provides as follows:

“Section 7B of Act 291 of 2004 [which amended subsection (H) effective May 1, 2006] is amended to read:

“This section takes effect May 1, 2010.”

CROSS REFERENCES

Commissioner responsible for administering continuing insurance education requirements contained in this section, see S.C. Code of Regulations R. 69‑50.

Suitability in annuity transactions, see S.C. Code of Regulations R. 69‑29.

Library References

Insurance 1614.

Westlaw Topic No. 217.

C.J.S. Insurance Section 139.

**SECTION 38‑43‑107.** Business, email, mailing and residential street addresses on application for insurance producer’s license; notice of change of legal name or address; penalty.

 (A) If an individual applies for an insurance producer’s license, he shall supply the department his business, email, mailing, and residential street addresses. The producer also shall notify the department within thirty days of any change in legal name or in these addresses.

 (B) Failure to inform the director or his designee of a change in legal name or address within this period is a violation of this title and the producer is subject to the penalties provided in Section 38‑2‑10.

HISTORY: 1988 Act No. 327, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003; 2004 Act No. 291, Section 8.A, eff January 1, 2005; 2008 Act No. 326, Section 9, eff June 16, 2008; 2016 Act No. 194 (H.4817), Section 2, eff May 26, 2016.

Effect of Amendment

2016 Act No. 194, Section 2, in (A), inserted “email,” and substituted “residential street addresses” for “residence street address”.

Library References

Insurance 1611.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 138 to 139, 142.

**SECTION 38‑43‑110.** Renewal of license; conditions; lapse; request for military waiver.

 (A) A producer’s license continues on a biennial basis unless revoked or suspended subject to the following requirements:

 (1) an individual producer license must be renewed by the last day of the licensee’s month of birth based on the producer’s year of birth as provided for in regulation;

 (2) an individual producer license may not be renewed unless the continuing education requirements of Section 38‑43‑106 are met; and

 (3) an individual producer license may not be renewed unless the biennial license renewal fee is paid as provided in Section 38‑43‑80.

 (B) A producer who allows his license to lapse for failure to comply with Section 38‑43‑106, within six months from the compliance deadline, may reinstate the same license if continuing education requirements have been met and a penalty fee set forth by regulation is paid.

 (C) A licensed insurance producer who is unable to comply with license renewal procedures due to active military service or some other extenuating circumstance (e.g., a long‑term medical disability) may request a waiver of those procedures. The producer also may request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

HISTORY: Former 1976 Code Section 38‑43‑110 [1947 (45) 322; 1952 Code Section 37‑660; 1962 Code Section 37‑660] recodified as Section 38‑73‑90 by 1987 Act No. 155, Section 1; Former 1976 Code Sections 38‑1‑60 [1979 Act No. 63] and 38‑51‑130 [1947 (45) 322; 1952 Code Section 37‑240; 1962 Code Section 37‑240; 1976 Act No. 612 Section 4] recodified as Section 38‑43‑110 by 1987 Act No. 155, Section 1; 1992 Act No. 501, Part II Section 11I; 1993 Act No. 181, Section 662; 2002 Act No. 323, Section 2, eff January 31, 2003; 2008 Act No. 326, Section 10, eff June 16, 2008; 2009 Act No. 69, Section 5, eff June 2, 2009.

Library References

Insurance 1616.

Westlaw Topic No. 217.

**SECTION 38‑43‑130.** Probation, revocation, suspension of license, or denial of reissuance.

 (A) The director or his designee may place on probation, revoke, or suspend a producer’s license after ten days’ notice or refuse to issue or reissue a license when it appears that a producer has been convicted of a crime involving moral turpitude, has violated this title or any regulation promulgated by the department, or has wilfully deceived or dealt unjustly with the citizens of this State.

 (B) For purposes of this section, “convicted” includes a plea of guilty or a plea of nolo contendere, and the record of conviction, or a copy of it, certified by the clerk of court or by the judge in whose court the conviction occurred is conclusive evidence of the conviction.

 (C) The words “deceived or dealt unjustly with the citizens of this State” include, but are not limited to, action or inaction by the producer as follows:

 (1) providing incorrect, misleading, incomplete, or materially untrue information in the license application;

 (2) violating insurance laws, or violating any regulation, subpoena, or order of the director or of another state’s director or his designee;

 (3) obtaining or attempting to obtain a license through misrepresentation or fraud;

 (4) improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;

 (5) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

 (6) having been convicted of a felony;

 (7) having admitted or been found to have committed any insurance unfair trade practice or fraud;

 (8) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;

 (9) having an insurance producer license, or its equivalent, denied, suspended, or revoked in another state, province, district, or territory;

 (10) forging another’s name to an application for insurance or to any document related to an insurance transaction;

 (11) improperly using notes or any other reference material to complete an examination for an insurance license;

 (12) knowingly accepting insurance business from an individual who is not licensed;

 (13) failing to comply with an administrative or court order imposing a child support obligation; or

 (14) failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

 (D) If upon investigation the director or his designee finds that a producer has obtained a license by fraud or misrepresentation, he may suspend immediately the license. The director or his designee, in an order suspending a license, shall specify the period during which the suspension is to be in effect. The period may not exceed two years. A licensee whose license has been revoked or an applicant who has been refused a license by the director or his designee may not reapply for another license until a two‑year period of time has lapsed from the effective date of the revocation or refusal or, if judicial review before the Administrative Law Court of the revocation or refusal is sought, after two years from the date of a final court order or decree affirming the revocation or suspension.

 (E) If, after notice of a hearing before the Administrative Law Court or notice of an opportunity for hearing before the Administrative Law Court, the director or his designee finds that one or more grounds exist for the revocation or suspension of, or the refusal to issue or reissue a license, the director or his designee, in his discretion, instead of revocation, suspension, or refusal, may impose upon the producer or applicant an administrative penalty as provided in Section 38‑2‑10 for each offense or ground.

 (F) The director or his designee may allow the producer or applicant a reasonable period, not to exceed thirty days, within which to pay to the director or his designee the amount of the penalty imposed. If the producer or applicant fails to pay the penalty in its entirety to the director or his designee at his office in Columbia within the period allowed, the license or application stands revoked, suspended, or renewal refused, as the case may be, upon expiration of the period and without any further proceedings.

 (G) Whenever the director or his designee nonrenews or denies an application for a license, the director or his designee shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant’s or licensee’s license. The applicant or licensee may make written demand upon the Administrative Law Judge within thirty days for a hearing before the Administrative Law Judge to determine the reasonableness of the director or his designee’s action. The hearing must be held pursuant to the Administrative Procedures Act.

 (H) The license of an agency may be placed on probation, suspended, revoked or refused if the director or his designee finds, upon an investigation, that an individual licensee’s violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the agency and the violation was neither reported to the director or his designee nor corrective action taken.

 (I) In addition to or in lieu of any applicable denial, probation, suspension, or revocation of a license, a person violating this title may, after a hearing, be subject to an administrative penalty according to Section 38‑2‑10.

 (J) The director shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and title against any person who is under investigation for or charged with a violation of this title even if the person’s license or registration has been surrendered or has lapsed by operation of law.

HISTORY: Former 1976 Code Section 38‑43‑130 [1947 (45) 322; 1952 Code Section 37‑662; 1962 Code Section 37‑662] recodified as Section 38‑73‑110 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑150 [1947 (45) 322; 1952 Code Section 37‑241; 1962 Code Section 37‑241; 1976 Act No. 455; 1981 Act No. 132, Section 1] recodified as Section 38‑43‑130 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 16; 1993 Act No. 181, Section 663; 2002 Act No. 323, Section 2, eff January 31, 2003; 2008 Act No. 326, Section 11, eff June 16, 2008.

Library References

Insurance 1617.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 140, 144.

Attorney General’s Opinions

The Insurance Commission should order a Rule to Show Cause hearing to consider the revocation of an agent’s license as an insurance agent if substantial evidence shows the agent has violated State law. 1976‑77 Op.Atty.Gen., No 77‑150, p 126. [Under for Section 38‑51‑150.], 1977 WL 24492.

**SECTION 38‑43‑160.** Unlawfully representing unlicensed insurer.

 If any person unlawfully solicits, negotiates, sells, collects, or transmits a premium for a contract of insurance or acts in any way in the negotiation, solicitation, sale, or transaction of any insurance with an insurer not licensed to do business in this State, he is guilty of a misdemeanor.

HISTORY: Former 1976 Code Section 38‑43‑160 [1948 (45) 1961; 1952 Code Section 37‑665; 1962 Code Section 37‑665; 1978 Act No. 585 Section 1] recodified as Section 38‑75‑10 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑180 [1947 (45) 322; 1952 Code Section 37‑249; 1962 Code Section 37‑249] recodified as Section 38‑43‑160 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 17; 2002 Act No. 323, Section 2, eff January 31, 2003.

CROSS REFERENCES

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

Library References

Insurance 3646.

Westlaw Topic No. 217.

C.J.S. Insurance Section 147.

**SECTION 38‑43‑170.** Personal liability of producers on contracts of unauthorized insurers.

 An insurance producer is personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for an insurer not authorized to do business in this State. A person who writes or signs any open policy, certificate, blank, or coupon of, or furnished by, an unlicensed company, producer, or broker, the effect of which is to bind any insurance in an unlicensed insurer on property in this State, is the producer of the insurer and personally liable for all licenses and taxes due on account of the transaction.

HISTORY: Former 1976 Code Section 38‑51‑190 [1947 (45) 322; 1952 Code Section 37‑250; 1962 Code Section 37‑250] recodified as Section 38‑43‑170 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 1654.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 296 to 301.

**SECTION 38‑43‑180.** Personal liability of producers for selling policy of unlicensed insurer.

 Every insurance producer who sells an insurance policy written or issued by an insurer not licensed to do business in this State is personally liable for the limits of the coverage provided for in the policy if the producer fails to comply with the provisions of this title relating to policies issued by insurers not licensed to do business in this State.

HISTORY: Former 1976 Code Section 38‑51‑200 [1960 (51) 1630; 1962 Code Section 37‑250.1] recodified as Section 38‑43‑180 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 1654.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 296 to 301.

**SECTION 38‑43‑190.** Producer receipt of premium; penalty for fraud.

 An insurance producer who acts on behalf of another in negotiating a contract of insurance is the insurer’s producer for the purpose of receiving the premium. A producer who knowingly procures the payment of a premium of insurance or the obligation for the payment of a premium of insurance by fraudulent representation is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

HISTORY: Former 1976 Code Section 38‑51‑210 [1947 (45) 322; 1952 Code Section 37‑251; 1962 Code Section 37‑251] recodified as Section 38‑43‑190 by 1987 Act No. 155, Section 1; 1988 Act No. 374, Section 18; 1993 Act No. 184, Section 214; 2002 Act No. 323, Section 2, eff January 31, 2003.

CROSS REFERENCES

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

Library References

Insurance 3646.

Westlaw Topic No. 217.

C.J.S. Insurance Section 147.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

Mistrial 4

New trial 5

Sufficiency of evidence 3

1. In general

Under South Carolina law, insurance broker’s statement to insured that insurance company was “financially sound” did not violate statute prohibiting an agent from knowingly procuring the payment of a premium of insurance or the obligation for the payment of a premium of insurance by fraudulent misrepresentation, precluding motorist’s claim for negligence per se against insurance agent, arising from motor vehicle accident in which motorist was injured by gravel truck owned and operated by insured. Spires v. Acceleration Nat. Ins. Co., 2006, 417 F.Supp.2d 750. Insurance 1670

Applied in State v. Lagerquist (S.C. 1971) 256 S.C. 69, 180 S.E.2d 882, certiorari denied 92 S.Ct. 89, 404 U.S. 852, 30 L.Ed.2d 91. (Decided under former law.)

2. Admissibility of evidence

Prosecuting attorney’s asking of State’s witness if he had been promised anything in connection with his guilty plea to same charge involved in prosecution for criminal conspiracy to unlawfully obtain insurance dividend premiums was not prejudicial, where jury had previously been charged that any action in response to the conspiracy charge that the witness might have taken was not to be considered as affecting positions of other defendants, and the court further stated to the jury that anything pertaining to the witness’ own personal dispositions had no connection and no relation to the other defendants. State v. Lagerquist (S.C. 1971) 256 S.C. 69, 180 S.E.2d 882.

The statements and conduct of a local agent are admissible against the insurer on the issue of waiver (decided under former law). Whaley v. Guardian Fire Ins. Co. (S.C. 1923) 124 S.C. 173, 117 S.E. 209. Insurance 3130

3. Sufficiency of evidence

Evidence sustained conviction of criminal conspiracy to unlawfully obtain insurance dividend funds. State v. Lagerquist (S.C. 1971) 256 S.C. 69, 180 S.E.2d 882.

4. Mistrial

Denial of motions for mistrial based on newspaper publicity alleged to be prejudicial was not error, where true nature of criminal conspiracy charges in trial which lasted about nine days were abundantly clear, and if any member of jury read alleged prejudicial article he could not help but detect that the writer had described the charges erroneously, and judge charged jury not to read such articles. State v. Lagerquist (S.C. 1971) 256 S.C. 69, 180 S.E.2d 882.

5. New trial

Failure to grant new trial, in prosecution for criminal conspiracy to unlawfully obtain insurance dividend funds, on ground that state’s witness testified he had previously pled guilty to the same charge was not error, where jury was instructed that action of any one person had no effect upon positions of other defendants and that any action in response to the criminal charge that the witness might have taken was not to be considered as affecting positions of the others. Code 1962, Sections 37‑251, 37‑253. State v. Lagerquist (S.C. 1971) 256 S.C. 69, 180 S.E.2d 882.

**SECTION 38‑43‑200.** Prohibition or payment of certain commissions and fees.

 (A) An insurance company or insurance producer may not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed pursuant to the provisions of this chapter and is not licensed.

 (B) A person may not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed pursuant to the provisions of this chapter and is not licensed.

 (C) A renewal or other deferred commission may be paid to a person for selling, soliciting, or negotiating insurance in this State if the person was required to be licensed pursuant to the provisions of this chapter at the time of the sale, solicitation, or negotiation and was licensed at that time.

 (D) An insurer or insurance producer may pay or assign service fees or other valuable consideration to an insurance agency or to a person who does not sell, solicit, or negotiate insurance in this State, unless the payment violates another provision of Title 38. A payment made pursuant to the provisions of this subsection must not be based on completion of the sale of the insurance policy.

 (E) Nothing in this section may be construed to prohibit a licensed insurance producer from rebating a portion of his commission collected on automobile insurance premiums to the insured upon that automobile insurance policy.

 (F) This section does not prohibit the payment of a fee to a trade or professional association exempt from income tax under Section 501(c) of the Internal Revenue Code.

HISTORY: Former 1976 Code Section 38‑51‑200 [1960 (51) 1630; 1962 Code Section 37‑250.1] recodified as Section 38‑43‑200 by 1987 Act No. 155, Section 1; 1990 Act No. 465, Section 1; 1997 Act No. 154, Section 25; 2002 Act No. 323, Section 2, eff January 31, 2003; 2004 Act No. 291, Section 9.A, eff January 1, 2005; 2009 Act No. 69, Section 6, eff June 2, 2009.

Library References

Insurance 1652.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 291 to 294.

NOTES OF DECISIONS

In general 1

1. In general

Former Code 1962 Section 37‑254 was a prohibition against splitting commissions and is not uncommon in statutes regulating insurance (decided under former law). Taggart v. Home Finance Group, Inc. (S.C. 1961) 239 S.C. 345, 123 S.E.2d 250.

No right of action for commissions split in violation of former Code 1962 Section 37‑254. The legislature did not intend under former Code 1962 Sections 37‑246, 37‑247 and 37‑254 of the Insurance Law to give an agent a right to maintain an action for commissions which, in violation of former Code 1962 Section 37‑254 he has agreed to split or permit to be paid to another, thereby rendering him in pari delicto with such other person (decided under former law). Taggart v. Home Finance Group, Inc. (S.C. 1961) 239 S.C. 345, 123 S.E.2d 250.

**SECTION 38‑43‑210.** Selling stock in insurer.

 It is unlawful for a licensed insurance producer to sell any stock in an insurer while engaged in selling insurance policies for the insurer or for thirty days from the time at which he last represented the insurer as an insurance producer.

HISTORY: Former 1976 Code Section 38‑51‑240 [1958 (50) 1685; 1962 Code Section 37‑255] recodified as Section 38‑43‑210 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 1611.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 138 to 139, 142.

**SECTION 38‑43‑220.** Stock salesmen may not sell insurance.

 It is unlawful for a licensed stock salesman to sell any policy for an insurer while engaged in selling stock for the insurer or for thirty days from the time at which he last represented the insurer in the sale of its stock.

HISTORY: Former 1976 Code Section 38‑51‑250 [1958 (50) 1685; 1962 Code Section 37‑256] recodified as Section 38‑43‑220 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

**SECTION 38‑43‑230.** Suspension or revocation of licenses for violating Section 38‑43‑210 or 38‑43‑220.

 A person violating Section 38‑43‑210 or 38‑43‑220 may, in the discretion of the director or his designee or the Securities Commissioner, as the case may be, be suspended as a licensed insurance producer or licensed stockbroker for the period of time he considers proper, or either the director, his designee, or the Securities Commissioner may revoke the license immediately if he considers the violation merits this action.

HISTORY: Former 1976 Code Section 38‑51‑260 [1958 (50) 1685; 1960 (51) 1563, 1646; 1962 Code Section 37‑257] recodified as Section 38‑43‑230 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 664; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 1617.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 140, 144.

**SECTION 38‑43‑240.** Other offenses by producers.

 (A) It is unlawful for a producer, collector, or other person to:

 (1) undertake or pretend to represent an insurer licensed to do business in this State, or to collect or do business for the insurer without the authority of the insurer;

 (2) secure cash advances by false statements; or

 (3) fail to turn over or satisfactorily account for all collections of the insurer when required.

 (B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than two years.

HISTORY: Former 1976 Code Section 38‑51‑270 [1947 (45) 322; 1952 Code Section 37‑253; 1962 Code Section 37‑253] recodified as Section 38‑43‑240 by 1987 Act No. 155, Section 1; 1993 Act No. 184, Section 215; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 3646.

Westlaw Topic No. 217.

C.J.S. Insurance Section 147.

**SECTION 38‑43‑245.** Fraudulent insurance application.

 A licensed insurance producer who, with the intent to injure, defraud, or deceive any insurance company or applicant for insurance:

 (1) presents or causes to be presented to any insurance company an application for insurance, knowing that the application contains any false or misleading information or omissions concerning any fact or thing material to the underwriting of the insurance for which the application is submitted, or

 (2) assists, abets, solicits, or conspires with another to prepare or make an application for insurance, knowing that the application contains any false or misleading information or omissions concerning any fact or thing material to the underwriting of the insurance for which the applicant is submitted, is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than five years or a fine not to exceed five thousand dollars, or both.

HISTORY: 1988 Act No. 641, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 3646.

Westlaw Topic No. 217.

C.J.S. Insurance Section 147.

**SECTION 38‑43‑247.** Reporting administrative actions and criminal prosecutions.

 (A) A producer shall report to the director or his designee any administrative action taken against the producer in another jurisdiction or by another governmental agency in this State within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

 (B) Within thirty days of the initial pretrial hearing date, a producer shall report to the insurance director any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

HISTORY: 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 1611, 1618.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 138 to 140, 142, 144.

**SECTION 38‑43‑250.** Producer records.

 All producers shall make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the person to whom issued of every policy or certificate of renewal. The information from these records must be furnished to the director or his designee on demand and the original books or records are open to the inspection of the director or his designee on demand. These records must be kept for a minimum of five years.

HISTORY: Former 1976 Code Section 38‑5‑1210 [1947 (45) 322; 1952 Code Section 37‑290; 1962 Code Section 37‑290] recodified as Section 38‑43‑250 by 1987 Act No. 155, Section 1; 1988 Act No. 357, Section 4; 1993 Act No. 181, Section 665; 2002 Act No. 323, Section 2, eff January 31, 2003.

CROSS REFERENCES

Records of managing general agents to be retained by director according to this section, see Section 38‑44‑40.

Library References

Insurance 1611.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 138 to 139, 142.

**SECTION 38‑43‑260.** Signing certain blank documents.

 Except as provided in this section, no producer may sign any blank application, contract, or policy of insurance. Trip, travel, or transportation ticket policies of insurance covering accidental personal or property injury, loss, or damage may be signed in blank, or facsimile impression or stamp, for issuance only through coin‑operated machines, subject to regulations prescribed by the department. A producer guilty of violating this section must, upon conviction, be fined for each offense not more than two hundred dollars.

HISTORY: Former 1976 Code Section 38‑51‑220 [1947 (45) 322; 1952 Code Section 37‑252; 1956 (49) 2147; 1962 Code Section 37‑252] recodified as Section 38‑43‑260 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 666; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 1611.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 138 to 139, 142.

ARTICLE 3

Advancing of Premiums by Producers

**SECTION 38‑43‑410.** Service charge; unpaid balance and service charge are lien on unearned premiums.

 When, pursuant to the written or oral request of an insured or applicant for insurance, an insurance producer or agency advances all or any part of the premium for an insurance policy to the insurer in behalf of the insured or applicant for insurance, the producer or agency is entitled to recover from the insured or applicant for insurance, in addition to the amount advanced, a service charge equal to the greater of one and one‑half percent or one dollar and fifty cents a month on any unpaid balance. The producer or agency has a lien equal to the amount of the unpaid balance and service charges upon any unearned premium on the policy held by the insurer and subject to refund by the insurer under the policy.

HISTORY: Former 1976 Code Section 38‑43‑410 [1947 (45) 322; 1952 Code Section 37‑681; 1962 Code Section 37‑681] recodified as Section 38‑73‑410 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑410 [1962 Code Section 37‑259.10 1969 (56) 780; 1978 Act No. 496] recodified as Section 38‑43‑410 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

CROSS REFERENCES

Inapplicability of Chapter 39 of this title, concerning insurance premium service companies, to the advancing of premiums by insurance agents and producers of record under this article, see Section 38‑39‑10.

Library References

Insurance 1652(6), 2014.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 291 to 294, 667 to 668, 869.

Attorney General’s Opinions

An insured’s or insurance applicant’s check returned from the bank to the agent “stop payment” or “insufficient funds” appears to be the same as a failure to pay pursuant to Section 38‑43‑440. 1989 Op.Atty.Gen., No. 89‑84, p 220, 1989 WL 406174.

**SECTION 38‑43‑420.** Advances must be confined to premiums; additional charges prohibited.

 Advances made by a producer, agency, or producer of record in behalf of an insured or applicant for insurance and any lien arising therefrom under this must be confined to premiums for policies desired by the insured or applicant for insurance and no charges other than those set forth in this article may be made by any producer, agency, or producer of record in connection with, or related to, the advance of premiums. The producer, agency, or producer of record may not require, as a condition to the advancing of the premiums, that the insured purchase any other policy, commodity, product, or service.

HISTORY: Former 1976 Code Section 38‑43‑420 [1947 (45) 322; 1952 Code Section 37‑682; 1962 Code Section 37‑682] recodified as Section 38‑73‑420 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑420 [1962 Code Section 37‑259.15; 1969 (56) 780] recodified as Section 38‑43‑420 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 1652(6), 2014.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 291 to 294, 667 to 668, 869.

Attorney General’s Opinions

An insured’s or insurance applicant’s check returned from the bank to the agent “stop payment” or “insufficient funds” appears to be the same as a failure to pay pursuant to Section 38‑43‑440. 1989 Op.Atty.Gen., No. 89‑84, p 220, 1989 WL 406174

**SECTION 38‑43‑430.** Extension of credit constitutes advancement of premiums.

 Extension to the insured or applicant for insurance of his credit with an insurer by a producer, agency, or producer of record constitutes the advancing of premiums within the meaning of this article and the premiums are considered to have been advanced as of the effective date of the policy or binder of insurance notwithstanding that the producer, agency, or producer of record remitted to the insurer at a different time or remitted to the insurer net of commission.

HISTORY: Former 1976 Code Section 38‑43‑430 [1947 (45) 322; 1952 Code Section 37‑683; 1962 Code Section 37‑683] recodified as Section 38‑73‑430 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑430 [1962 Code Section 37‑259.16; 1969 (56) 780] recodified as Section 38‑43‑430 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 1652(6), 2014.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 291 to 294, 667 to 668, 869.

**SECTION 38‑43‑440.** Cancellation of policy and refund of unearned premiums for failure to pay installment.

 (A) If the insured or applicant for insurance fails to pay one or more installments within five days after the due date under any memorandum of the transaction delivered to him by the producer, agency, or producer of record, the producer, agency, or producer of record may call upon the insurer to cancel the policy and refund any unearned premiums on a pro rata basis to the producer, agency, or producer of record in discharge of the lien provided under Section 38‑43‑410. The insurer, upon paying any refund of unearned premiums accompanied by a statement detailing the computation, a copy of which is mailed to the insured at the address shown in the policy, has no further liability to the insured with respect to the return of unearned premiums.

 (B) If there is any other refund of unearned premium resulting from termination of the policy, reduction in the premium, or otherwise, the refund of premium must be made to the producer, agency, or producer of record in recognition of his or its lien, and payment of the refund to the producer, agency, or producer of record by the insurer accompanied by a statement detailing the computation, a copy of which is mailed by the insurer to the insured at the address shown in the policy, except as to errors in the computation, discharges the insurer’s obligation to the insured with respect to the refund.

 (C) Failure of a producer, agency, or producer of record to declare a default or move to perfect his or its lien because of the insured’s failure to pay when due one or more installments of his obligation for premium advanced does not constitute a waiver on the part of the producer, agency, producer of record, or insurer nor is the producer, agency, or producer of record estopped or precluded from asserting and perfecting the lien with respect to any subsequent default nor is the insurer estopped or precluded from recognizing and discharging the lien with respect to the subsequent default.

HISTORY: Former 1976 Code Section 38‑43‑440 [1947 (45) 322; 1952 Code Section 37‑684; 1962 Code Section 37‑684] recodified as Section 38‑73‑520 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑440 [1962 Code Section 37‑259.11; 1969 (56) 780] recodified as Section 38‑43‑440 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 2042, 2046(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 787 to 789, 865 to 866, 882, 1044, 1068 to 1070, 1128, 1135.

Attorney General’s Opinions

An insured’s or insurance applicant’s check returned from the bank to the agent “stop payment” or “insufficient funds” appears to be the same as a failure to pay pursuant to Section 38‑43‑440. 1989 Op.Atty.Gen., No. 89‑84, p 220, 1989 WL 406174.

**SECTION 38‑43‑450.** Excess of return premium over unpaid balance and charges held in trust.

 Any excess of return premium paid by the insurer to a producer, agency, or producer of record in discharge of the lien provided by this article over the amount of unpaid balance and accrued service charges must be held by the producer, agency, or producer of record in his or its fiduciary capacity and the excess must be paid to the insured within a reasonable time and in no event later than thirty days after receipt by the producer, agency, or producer of record of the return premium refunded by the insurer.

HISTORY: Former 1976 Code Section 38‑43‑450 [1947 (45) 322; 1952 Code Section 37‑685; 1962 Code Section 37‑685] recodified as Section 38‑73‑530 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑460 [1962 Code Section 37‑259.14; 1969 (56) 780] recodified as Section 38‑43‑450 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 2046(1).

Westlaw Topic No. 217.

C.J.S. Insurance Sections 787 to 789, 865 to 866, 882, 1044, 1068 to 1070, 1128, 1135.

**SECTION 38‑43‑460.** Conflict of interest prohibited.

 Insurance agencies owned, beneficially owned, or controlled, in whole or part, directly or indirectly, by an insurer, the management of an insurer, or related interests are not entitled to the provisions of this article. An insurer is not chargeable with knowledge that an insurance agency is owned, beneficially owned, or controlled by an insurer, the management of an insurer, or related interests unless it has actual knowledge of the fact.

HISTORY: Former 1976 Code Section 38‑43‑460 [1947 (45) 322; 1952 Code Section 37‑686; 1962 Code Section 37‑686] recodified as Section 38‑73‑540 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38‑51‑470 [1962 Code Section 37‑259.17; 1969 (56) 780] recodified as Section 38‑43‑460 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 2014.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 667 to 668, 869.

**SECTION 38‑43‑470.** Agreements not subject to Section 38‑55‑50; producer or agency presumed to be acting in own right.

 (A) Agreements or arrangements for the advancing of insurance premiums by an insurance producer, agency, or producer of record under this article are not subject to Section 38‑55‑50, relating to the incorporation of collateral agreements effecting the insurance into the policies or contracts of insurance so affected.

 (B) A producer or agency which, pursuant to this article, advances premiums in behalf of an insured or applicant for insurance to an insurer for which the producer or agency is licensed is conclusively presumed to be acting in his or its own right and for the protection of his or its own financial interests with respect to the lien provided in this article. No request by the producer or agency to the insurer to cancel a policy, nor the assertion or perfection of the lien by the producer or agency, is considered to create a conflict in interest nor is any act of a producer, agency, or producer of record in causing cancellation of a policy because of the default of the insured in his obligation or in asserting or perfecting the lien void or voidable because of a claimed conflict in interest.

HISTORY: Former 1976 Code Section 38‑51‑480 [1962 Code Section 37‑259.13; 1969 (56) 780] recodified as Section 38‑43‑470 by 1987 Act No. 155, Section 1; 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Insurance 2014.

Westlaw Topic No. 217.

C.J.S. Insurance Sections 667 to 668, 869.

**SECTION 38‑43‑480.** Promulgation of regulations; severability.

 (A) The director or his designee may promulgate reasonable regulations that are necessary or proper to carry out the purposes of this chapter.

 (B) If any provisions of this chapter, or the application of a provision to any person or circumstance, shall be held invalid, the remainder of the chapter, and the application of the provision to persons or circumstances other than those to which it is held invalid, is not affected.

HISTORY: 2002 Act No. 323, Section 2, eff January 31, 2003.

Library References

Statutes 1535(20).

Westlaw Topic No. 361.

C.J.S. Statutes Sections 117, 129, 131 to 132, 139 to 140.

ARTICLE 4

Limited Licensing of Motor Vehicle Rental Companies to Sell or Offer Insurance

**SECTION 38‑43‑500.** Definitions; motor vehicle rental companies; limited licensing to sell or offer insurance.

 (A) As used in this section:

 (1) “Limited license” means the authority of a person or entity authorized to sell certain coverage relating to the rental of motor vehicles pursuant to the provisions of this section;

 (2) “Rental agreement” means a written agreement setting forth the terms and conditions governing the use of a motor vehicle provided by a rental company for rental or lease;

 (3) “Rental company” means a person or entity in the business of providing primarily motor vehicles to the public under a rental agreement for a period of not more than ninety days;

 (4) “Renter” means a person obtaining the use of a motor vehicle from a rental company under the terms of a rental agreement for a period of not more than ninety days;

 (5) “Vehicle” or “rental vehicle” means a motor vehicle of the private passenger type including passenger vans, minivans, sport utility vehicles, and vehicles of the cargo type, including cargo vans, pickup trucks with a gross vehicle weight of less than 26,000 pounds which do not require the operator to possess a commercial driver’s license;

 (6) “Rental period” means the term of the rental agreement.

 (B) The Director of the Department of Insurance may issue to a rental company that has complied with the requirements of this section, a limited license authorizing the limited licensee to offer or sell insurance through a licensed insurer in connection with the rental of vehicles.

 (C) Before issuing a limited license under this section, an application for a limited license must be filed with the director, signed by an officer of the applicant, on a form prescribed by the director. Each application must be accompanied by a forty‑dollar limited license fee. In order to renew the limited license, payment of the fee must be made biennially.

 (D) A rental company licensed pursuant to subsection (B) may offer or sell insurance through a licensed insurer only in connection with and incidental to the rental of vehicles, at the rental office or by pre‑selection of coverage in a master, corporate, group rental, or individual agreement in any of the following categories:

 (1) personal accident insurance covering the risks of travel including, but not limited to, accident and health insurance that provides coverage, as applicable, to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period;

 (2) liability insurance which, at the exclusive option of the rental company, may include uninsured and underinsured motorist coverage offered separately or in combination with other liability insurance, that provides protection, as applicable, to renters and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle;

 (3) personal effects insurance that provides coverage, as applicable, to renters and other vehicle occupants for the loss of, or damage to, personal effects that occur during the rental period;

 (4) roadside assistance and emergency sickness protection programs; and

 (5) any other travel or vehicle related coverage that a rental company offers in connection with and incidental to the rental of vehicles.

 (E) Insurance may not be offered or sold by a limited licensee pursuant to this section unless:

 (1) the rental agreement does not exceed ninety consecutive days;

 (2) the endorsee informs the renter that the renter may have insurance policies in place that already provide the coverage being offered by the rental vehicle company pursuant to this title;

 (3) at every location where rental agreements are executed, brochures or other written materials are readily available to a prospective renter that:

 (a) summarize clearly and correctly the material terms of coverage offered to renters, including the identity of the insurer;

 (b) disclose that the coverage offered by the rental company may provide a duplication of coverage already provided by a renter’s personal automobile insurance policy or other source of coverage;

 (c) state that the purchase by the renter of the kinds of coverage specified in this section is not required in order to rent a vehicle; and

 (d) describe the process for filing a claim if the renter elects to purchase coverage and in the event of a claim.

 (4) evidence of coverage in the rental agreement is disclosed to every renter who elects to purchase this coverage.

 (F) A limited license issued under this section also shall authorize an employee of the limited licensee to act individually on behalf, and under the supervision of, the limited licensee with respect to the kinds of coverage specified in this section.

 (G) Each rental company licensed pursuant to this section shall conduct a training program in which employees being trained shall receive basic instruction about the kinds of coverage specified in this section and offered for purchase by prospective renters of rental vehicles.

 (H) Notwithstanding any other provision of this section, or any rule adopted by the director, a limited licensee pursuant to this section is not to treat monies collected from renters purchasing this insurance as funds received in a fiduciary capacity or to hold the funds in separate trust accounts.

 (I) A limited licensee under this section shall not advertise, represent, or otherwise hold itself or any of its employees out as licensed insurers, insurance agents, or insurance brokers.

 (J) If a limited licensee violates a provision contained in this section, the director may:

 (1) after notice and a hearing, revoke or suspend a limited license issued under this section in accordance with the provisions of Section 38‑5‑120; or

 (2) after notice and hearing, impose other penalties, including suspending the transaction of insurance at specific rental locations where violations of this section have occurred, as the director determines to be necessary or convenient to carry out the purposes of this section.

HISTORY: 2002 Act No. 196, Section 2, eff March 27, 2002.

Library References

Automobiles 387.

Insurance 1613.

Westlaw Topic Nos. 48A, 217.

C.J.S. Insurance Section 139.

C.J.S. Motor Vehicles Sections 1884 to 1889, 1891.

ARTICLE 5

Limited Licensing of Self‑Service Storage Facilities to Sell or Offer Insurance

**SECTION 38‑43‑610.** Definitions.

 For the purposes of this article:

 (1) “Licensee” means a person who holds a limited license.

 (2) “Limited license” means the authority of a person authorized to sell certain insurance pursuant to the provisions of this article.

 (3) “Rental agreement” means a written agreement setting forth the terms and conditions governing the use of a storage space provided by a self‑service storage facility for rental or lease.

 (4) “Owner” means the owner of a self‑service storage facility or his agent.

 (5) “Occupant” means a person or his lessee, successor, or assignee entitled to the use of the storage space at a self‑storage facility under a rental agreement to the exclusion of others.

 (6) “Self‑service storage facility” means real property designed and used for the sole purpose of renting or leasing individual storage space to occupants given access to this storage space for the sole purpose of storing and removing personal property.

 (7) “Rental period” means the term of a rental agreement.

HISTORY: 2014 Act No. 226 (S.1065), Section 1, eff June 2, 2014.

**SECTION 38‑43‑620.** Issuance of limited license.

 The director or his designee may issue a limited license to an owner who has complied with the requirements of this article.

HISTORY: 2014 Act No. 226 (S.1065), Section 1, eff June 2, 2014.

**SECTION 38‑43‑630.** Application for limited license; fee; renewal; advertising.

 (A) Before issuing a limited license, an application for a limited license must be filed with the director, signed by an officer of the applicant, on a form prescribed by the department. An applicant for a limited license must be approved and vouched for by an official or licensed representative of the insurer for which the applicant proposes to act pursuant to Section 38‑43‑40 and Section 38‑43‑50. An application must be accompanied by a forty dollar fee. A limited license must be renewed biennially before May first of odd numbered years on a renewal application form provided by the department, and this form must be accompanied by a forty dollar renewal fee. The department shall cancel a license that is not renewed as required by this section. The licensee may reinstate a license within six months after the renewal deadline by paying the forty dollar renewal fee and a forty dollar reinstatement fee. A limited license fee is not refundable.

 (B) A limited license holder must not advertise, represent, or otherwise hold itself or its employee out as a licensed insurer, insurance agent, or insurance broker.

HISTORY: 2014 Act No. 226 (S.1065), Section 1, eff June 2, 2014.

**SECTION 38‑43‑640.** Licensee must be owner or employee of facility; insurance that may be sold or offered for sale.

 (A) A licensee must be the owner of a self‑service rental facility or his employee or agent.

 (B) A licensee only may sell or offer to sell insurance in connection with, and incidental to, the rental of a self‑storage space in the owner’s facility. This insurance only may provide coverage for:

 (1) casualty loss of the property contained in the self‑storage space;

 (2) liability insurance for personal injuries, excluding injuries compensable by workers’ compensation, arising on the premises of the individual self‑storage space; or

 (3) both.

HISTORY: 2014 Act No. 226 (S.1065), Section 1, eff June 2, 2014.

**SECTION 38‑43‑650.** Licensee to provide written document.

 (A) Prior to issuing a policy under the provisions of this chapter, a licensee shall provide a written document that:

 (1) summarizes clearly and correctly the material terms of coverage offered to an occupant, including the identity of the insurer;

 (2) discloses that the coverage offered by the self‑service storage facility may provide a duplication of coverage already provided by a homeowners’ insurance policy or other source of coverage in effect for the occupant;

 (3) describes the process for filing a claim if the occupant elects to purchase coverage and in the event of a claim; and

 (4) states that the charges for coverage are itemized and ancillary to the rental agreement.

 (B) If the rental agreement requires the occupant to provide insurance of the type described in Section 38‑43‑640(B), this requirement may be satisfied if the occupant:

 (1) purchases this coverage from a licensee; or

 (2) provides evidence of this coverage from another source.

HISTORY: 2014 Act No. 226 (S.1065), Section 1, eff June 2, 2014.

**SECTION 38‑43‑660.** Employees or agents of owner authorized to act.

 (A) The employee or agent of an owner who is a licensee may act individually on behalf, and under the supervision of, the owner‑licensee with respect to providing coverage for which the licensee is authorized to provide, but only if the owner instructs the employee or agent about the kinds of insurance sold pursuant to the owner’s license.

 (B) The provisions of this chapter do not prohibit:

 (1) the payment or receipt of a commission for the sale of insurance that the licensee is authorized to sell; and

 (2) the payment of a bonus, incentive payment, or compensation by a licensee to his employee or agent; provided, however, that these payments may not be made based on the completion of a sale of insurance coverage.

HISTORY: 2014 Act No. 226 (S.1065), Section 1, eff June 2, 2014.

**SECTION 38‑43‑670.** Prohibited requirements of licensee, employee, or agent.

 Notwithstanding another provision of this chapter, a regulation promulgated by the department, or an order issued by the director, a licensee, his employee, and agent must not be required to:

 (1) act as a fiduciary of money received from the sale of insurance authorized to be sold under the provisions of this chapter; or

 (2) hold this money in a separate trust account if the insurer represented by the license holder provides written consent, signed by an officer of the insurer, that a premium is not required to be segregated from money received by the license holder because of the consumer transaction associated with the coverage.

HISTORY: 2014 Act No. 226 (S.1065), Section 1, eff June 2, 2014.

**SECTION 38‑43‑680.** Revocation or suspension of license; penalties.

 The director may, after notice and opportunity for a hearing, respond to a violation of a provision of this chapter under the provisions of Section 38‑2‑10 by:

 (1) revoking or suspending a limited license; or

 (2) imposing other penalties, including suspending the transaction of insurance at a specific rental location where a violation of this chapter occurred, as the director considers necessary or convenient to carry out the provisions of this chapter.

HISTORY: 2014 Act No. 226 (S.1065), Section 1, eff June 2, 2014.

ARTICLE 6

Limited Lines Travel Insurance Act

**SECTION 38‑43‑710.** Short title.

 This article must be known and may be cited as the “Limited Lines Travel Insurance Act”.

HISTORY: 2016 Act No. 159 (H.4141), Section 1, eff July 20, 2016.

**SECTION 38‑43‑720.** Definitions.

 For the purposes of this article:

 (1) “Limited lines travel insurance producer” means one of the following when designated by an insurer as the travel insurance supervising entity:

 (a) a licensed managing general underwriter;

 (b) a licensed managing general agent or third party administrator; or

 (c) a licensed insurance producer.

 (2) “Offer and disseminate” means providing general information, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other nonlicensable activities permitted by the State.

 (3) “Travel insurance” means insurance coverage for personal risks incident to planned travel including, but not limited to:

 (a) interruption or cancellation of trip or event;

 (b) loss of baggage or personal effects;

 (c) damages to accommodations or rental vehicles; and

 (d) sickness, accident, disability, or death occurring during travel. However, travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, such as those working overseas as an expatriate or military personnel being deployed.

 (4) “Travel retailer” means a business entity that makes, arranges, or offers travel services and may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

HISTORY: 2016 Act No. 159 (H.4141), Section 1, eff July 20, 2016.

**SECTION 38‑43‑730.** Offer and dissemination of travel insurance under limited lines travel insurance producer business entity license; brochures; prohibited acts.

 (A) A travel retailer only may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license if:

 (1) the limited lines travel insurance producer or travel retailer provides purchasers of travel insurance the following information on a form prescribed by the director:

 (a) a description of the material terms or the actual material terms of the insurance coverage;

 (b) a description of the process for filing a claim;

 (c) a description of the review or cancellation process for the travel insurance policy; and

 (d) the identity and contact information of the insurer and limited lines travel insurance producer;

 (2) the limited lines travel insurance producer, at the time of licensure, establishes and subsequently maintains and updates a register of each travel retailer that offers insurance on its behalf, including the name, address, and contact information of the travel retailer and an officer or person who directs or controls the operations of the travel retailer, and the federal employment identification number of the travel retailer;

 (3) the limited lines travel insurance producer submits the register to the department upon reasonable request;

 (4) the limited lines travel insurance producer certifies that the travel retailers registered comply with 18 U.S.C. Section 1033;

 (5) the limited lines travel insurance producer designates one of its employees, who is a licensed individual producer, as the “Designated Responsible Producer” or “DRP” who is responsible for compliance of the limited lines travel insurance producer with the travel insurance laws, rules, and regulations of the State;

 (6) the DRP, president, secretary, treasurer, and another officer or person who directs or controls the insurance operations of the limited lines travel insurance producer each comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer;

 (7) the limited lines travel insurance producer has paid all applicable insurance producer licensing fees; and

 (8) the limited lines travel insurance producer requires each employee of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, subject to review by the director, and which shall contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers, among other things.

 (B) A travel retailer who offers or disseminates travel insurance shall make brochures or other written materials available to prospective purchasers, and these brochures or other written materials must:

 (1) provide the identity and contact information of the insurer and the limited lines travel insurance producer;

 (2) explain that the purchase of travel insurance is not required in order to purchase another product or service from the travel retailer; and

 (3) explain that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer’s existing insurance coverage.

 (C) A travel retailer who is not licensed as an insurance producer may not:

 (1) evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

 (2) evaluate or provide advice concerning a prospective purchaser’s existing insurance coverage; or

 (3) hold himself or itself out as a licensed insurer, licensed producer, or insurance expert.

HISTORY: 2016 Act No. 159 (H.4141), Section 1, eff July 20, 2016.

CROSS REFERENCES

Compensation, see Section 38‑43‑740.

**SECTION 38‑43‑740.** Compensation.

 A travel retailer, whose insurance‑related activities are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer, may receive compensation for these activities upon registration by the limited lines travel insurance producer as provided in Section 38‑43‑730(A)(2).

HISTORY: 2016 Act No. 159 (H.4141), Section 1, eff July 20, 2016.

**SECTION 38‑43‑750.** Policy.

 Travel insurance may be provided under an individual policy or under a group or master policy.

HISTORY: 2016 Act No. 159 (H.4141), Section 1, eff July 20, 2016.

**SECTION 38‑43‑760.** Responsibility.

 As the insurer designee, the limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with this article.

HISTORY: 2016 Act No. 159 (H.4141), Section 1, eff July 20, 2016.

**SECTION 38‑43‑770.** Violations of article.

 The director may, after notice and opportunity for a hearing, respond to a violation of a provision of this article by a limited lines travel insurance producer or by the travel retailer offering and disseminating travel insurance under the provisions of Section 38‑2‑10 by:

 (1) revoking or suspending the license of the limited lines travel insurance producer; or

 (2) imposing other penalties, including directing the suspension or termination of authority of the involved travel retailer to offer and disseminate travel insurance, as the director considers necessary or convenient to carry out the purposes of this article.

HISTORY: 2016 Act No. 159 (H.4141), Section 1, eff July 20, 2016.