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CHAPTER 3.

 THE DEPARTMENT OF INSURANCE

ARTICLE 1.

 GENERAL PROVISIONS

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

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

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

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

**SECTION 38‑3‑60.** Powers and duties of Commission and Chief Insurance Commissioner.

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

**SECTION 38‑3‑80.** Seal.

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

**SECTION 38‑3‑100.** Chief Insurance Commissioner; removal; status; term of employment, salary, and qualifications.

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

**SECTION 38‑3‑110.** Duties of Chief Insurance Commissioner.

The director or his designee has the following duties:

(1) supervise and regulate the rates and service of every insurer in this State and fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be observed and followed by every insurer doing business in this State. Nothing contained in this title authorizes or requires a review by the department or the director of any order of the director’s designee or the deputy director under the Administrative Procedures Act. This item does not grant any additional authority to the director or his designee with regard to insurance rates other than the ratemaking authority specifically granted to the director or his designee, or the Department of Insurance for certain kinds of insurance in other provisions of this title;

(2) see that all laws of this State governing insurers or relating to the business of insurance are faithfully executed and make regulations to carry out this title and all other insurance laws of this State, the enforcement or administration of which is not otherwise specifically provided for;

(3) report to the Attorney General or other appropriate law enforcement officials criminal violations of the laws relative to the business of insurance or the provisions of this title which he considers necessary to report;

(4) institute civil actions, either through his office or through the Attorney General, relative to the business of insurance or the provisions of this title which he considers necessary to institute.

(5) The director must hold a public hearing at least annually at a location within the seacoast area, as defined in Section 38‑75‑310(7), to provide the public with information and an opportunity to discuss and offer input concerning the rates, territory, and other pertinent issues regarding the South Carolina Wind and Hail Underwriting Association. The director must provide notice of the public hearing in newspapers of general circulation within the seacoast area at least thirty days before the date of the public hearing. The director must submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by no later than January thirty‑first of each year regarding the status of the South Carolina Wind and Hail Underwriting Association, including any recommended modifications to statutory or regulatory law regarding the operation of the South Carolina Wind and Hail Underwriting Association and its territory.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3.

 EMERGENCY POWERS

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) claims reporting requirements;

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

(3) temporary postponement of cancellations and nonrenewals; and

(4) any other rule the director considers necessary.

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

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

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