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CHAPTER 5.

 AUTHORITY AND REQUIREMENTS TO TRANSACT BUSINESS

**SECTION 38‑5‑10.** Insurers must be licensed and supervised; exceptions.

Every insurer doing business in this State must be licensed and supervised by the director or his designee, with the following exceptions:

(a) Without excluding other activities which may not constitute doing business in this State, a foreign or alien insurer is not considered to be doing business in this State, for purposes of this chapter, or Chapter 7, 13, 25, or 27, solely by reason of carrying on in this State any one or more of the following activities:

(1) Maintaining bank accounts.

(2) Creating or acquiring evidences of debt, mortgages, or liens on real or personal property, and enforcing rights in connection therewith in any action or proceeding, whether judicial, administrative, or otherwise.

(3) Owning and controlling a subsidiary corporation incorporated in or transacting business within this State.

(b) [Blank]

**SECTION 38‑5‑20.** Certain charitable, religious, and other corporations authorized to issue annuities or pay lump‑sum benefits without being subject to insurance laws.

A charitable, religious, benevolent, or educational corporation, not operating for profit and in active operation for at least five years, may receive transfers of property conditioned upon its agreement to pay an annuity or lump‑sum benefit to the transferor or his nominee without being subject to the insurance laws of this State. No corporation operating for profit, including nursing homes or any other type of business, is permitted to issue charitable or gift annuities without the director’s or his designee’s approval.

**SECTION 38‑5‑30.** Kinds of insurance for which an insurer may be licensed.

The director or his designee may license insurers, subject to other requirements of existing insurance laws, to transact the following kinds of insurance in this State:

(a) life insurance and annuities.

(b) accident and health insurance.

(c) property insurance.

(d) casualty insurance.

(e) surety insurance.

(f) marine insurance.

(g) title insurance.

(h) multiple lines insurance, meaning any two or more of the kinds of insurance listed in items (b), (c), (d), (e), and (f) of this section.

Each license issued is for an indefinite term unless revoked or suspended.

**SECTION 38‑5‑40.** Kinds of insurance for which life insurer may be licensed.

No life insurer may be licensed to write any other kinds of insurance listed in Section 38‑5‑30 except accident and health insurance. However, any life insurer licensed to transact other kinds of insurance immediately prior to March 18, 1964, shall continue to be so licensed if otherwise qualified.

**SECTION 38‑5‑50.** Certain insurers may not be licensed to write life insurance.

No insurer licensed to write any of the kinds of insurance listed in items (c), (d), (e), (f), (g), and (h) of Section 38‑5‑30 may be licensed to write life insurance. However, any life insurer licensed to transact other kinds of insurance immediately prior to March 18, 1964, shall continue to be so licensed if otherwise qualified.

**SECTION 38‑5‑60.** Qualifications to become an approved reinsurer.

For purposes of calculating deductions for reserves, insurers not licensed in this State may be approved as reinsurers by the director or his designee for an indefinite term only if:

(1) Upon initial application a fee of four hundred dollars is enclosed, and, every two years after that time, a fee of four hundred dollars is paid by March first.

(2) There is filed with the department a power of attorney approved as to form by the director or his designee and authorizing the director to accept service of process in behalf of the reinsurer.

(3) There is filed with the department the reinsurer’s annual statement and the reinsurer’s most recent report of examination, and after that time each annual statement and report of examination is filed.

(4) The reinsurer meets the capital and surplus requirements of South Carolina law with respect to the lines to be reinsured.

**SECTION 38‑5‑70.** Appointment of director as attorney for service of process.

Every insurer shall, before being licensed, appoint in writing the director and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that any lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the insurer and that the authority continues in force so long as any liability remains outstanding in the State. Copies of the appointment, certified by the director, are sufficient evidence of the appointment and must be admitted in evidence with the same force and effect as the original might be admitted.

**SECTION 38‑5‑80.** Additional requirements for issuance of certificate or license to domestic insurer; grounds for revocation or suspension of license.

Before granting the original certificate of authority or license to a domestic insurer to do business in this State, the director or his designee must be satisfied by proper evidence that:

(a) The insurer is duly qualified to transact business under the laws of this State.

(b) The insurer has filed with him an affidavit of its president or other chief officer that it has not violated this title in the past year and that it accepts the terms and obligations of this title as part of the consideration for license.

(c) The insurer pays all taxes and performs all duties required by law.

(d) The reserves of the insurer are adequate for the protection of policyholders of this State.

(e) The insurer’s directors and officers are competent, trustworthy, and have a good business reputation and that none of the directors and officers have been convicted of a crime in any jurisdiction involving fraud, dishonesty, or like moral turpitude or convicted of violating an insurance statute of any jurisdiction.

(f) The insurer has employed one or more persons residing in this State with adequate experience and training to manage properly its business and affairs.

(g) The insurer has not entered into any management contract, agency agreement, or other agreement which may materially affect its financial condition so as to render its proceedings hazardous to the public or to its policyholders.

(h) The insurer has made adequate reinsurance arrangements if required.

(i) The insurer’s proposed method of operation, when considered in light of its financial condition and the absence of any prior operating experience, will not likely render its proceedings hazardous to the public or to its policyholders.

(j) The reserve basis to be used by the insurer will be adequate for the protection of policyholders in this State.

(k) The insurer’s principal place of business and primary executive, administrative, and home offices and all original books and records of the insurer are located and maintained in this State. The provisions of this subsection apply to domestic health maintenance organizations. For purposes of this section, original books and records mean corporate bylaws, charters, articles of incorporation, and any other records deemed to constitute original records by the director or his designee. Insurers desiring to move business records or operations outside of the State shall apply to the director or his designee for approval. Approvals or denials of request to move records or operations fall within the discretion of the director or his designee. The director may also rescind approval of a request if in his discretion it is considered to be in the best interest of the consumers and citizens of the State. Insurers must comply with the records requirements of Section 38‑5‑190 and the requirements for domestic insurers set forth in this chapter. The director or his designee shall outline via bulletin or order the information required in such an application. Item (k) of this section does not apply to any domestic insurer whose primary executive, administrative, and home offices were located outside this State on July 1, 1987. If subsequently the director or his designee is of the opinion that a condition exists which would have prohibited him from issuing the original certificate of authority or license to the insurer, then that condition also constitutes a ground for license revocation under Section 38‑5‑120.

**SECTION 38‑5‑90.** Additional requirements for issuance of certificate or license to foreign or alien insurer; grounds for revocation or suspension of license.

Before granting the original certificate of authority or license to a foreign or alien insurer to do business in this State, the director or his designee must be satisfied by proper evidence that:

(a) The insurer is duly qualified to transact business under the laws of this State.

(b) The insurer has filed with him an affidavit of its president or other chief officer that it has not violated this title in the past year and that it accepts the terms and obligations of this title as part of the consideration for license.

(c) The insurer pays all taxes and performs all duties required by law.

(d) The reserves of the insurer are adequate for the protection of policyholders of this State.

(e) The insurer’s directors and officers are competent, trustworthy, and have a good business reputation.

(f) The insurer has employed one or more persons with adequate experience and training to manage properly its business and affairs relating to its policies in South Carolina.

(g) The insurer has not entered into any management contract, agency agreement, or other agreement which may materially affect its financial condition so as to render its proceedings hazardous to the public or to its policyholders.

(h) The insurer has made adequate reinsurance arrangements if required.

(i) The insurer’s proposed method of operation, when considered in light of its financial condition and the absence of any prior operating experience, will not likely render its proceedings hazardous to the public or to its policyholders.

(j) The insurer is safe and solvent.

(k) The insurer’s dealings are fair and equitable.

(l) The insurer conducts its business in a manner not contrary to the public interest.

If subsequently the director or his designee is of the opinion that a condition exists which would have prohibited him from issuing a certificate of authority or license to the insurer, then that condition also constitutes a ground for license revocation under Section 38‑5‑120.

**SECTION 38‑5‑100.** Foreign or alien insurers with names identical with or similar to others not qualified.

No foreign or alien insurer may be licensed to do business in this State when its name is identical with that of any active insurer previously licensed to do business in this State which has engaged in business therein for one year or more. No foreign or alien insurer may be licensed to do business in this State when its name is so nearly similar to that of any active insurer previously licensed to do business in this State which has engaged in business therein for one year or more so as to lead to confusion and uncertainty.

**SECTION 38‑5‑110.** Approval of charters or amendments of charter.

It is unlawful for the Secretary of State to issue any charter or grant any amendments of charter to any insurer or permit any foreign or alien insurer to do business within this State without the written approval of the director or his designee.

**SECTION 38‑5‑120.** Revocation or suspension of license; publication of notice.

(A) The director or his designee shall revoke or suspend certificates of authority granted to an insurer and its officers and agents if he is of the opinion upon examination or other evidence that one or more of the following exist:

(1) The insurer is in an unsound condition.

(2) The insurer has not complied with the law or with the provisions of its charter.

(3) The insurer’s condition renders its proceedings hazardous to the public or its policyholders. For the purpose of the application of this item, one or more of the following standards may be considered by the director or his designee in determining whether the continued operation of an insurer transacting insurance business in this State is hazardous to the public or its policyholders:

(a) adverse findings reported in financial condition and market conduct examination reports;

(b) the National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;

(c) the ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;

(d) whether the insurer’s asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company’s ability to meet its outstanding obligations as they mature;

(e) whether the ability of an assuming reinsurer to perform and the insurer’s reinsurance program provides sufficient protection for the company’s remaining surplus after taking into account the insurer’s cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(f) whether the insurer’s operating loss in the last twelve months or a shorter time including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than fifty percent of the insurer’s remaining surplus as regards policyholders in excess of the minimum required;

(g) whether an affiliate, a subsidiary, or a reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;

(h) contingent liabilities, pledges, or guaranties which individually or collectively involve a total amount which in the opinion of the director or his designee may affect the solvency of the insurer;

(i) whether a ‘controlling person’ of an insurer is delinquent in the transmitting to or payment of net premiums to the insurer;

(j) the age and collectibility of receivables;

(k) whether the management of an insurer, including officers, directors, or other persons who directly or indirectly control the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation necessary to serve the insurer in that position;

(l) whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(m) whether management of an insurer has filed a false or misleading sworn financial statement, released a false or misleading financial statement to lending institutions or to the general public, made a false or misleading entry, or omitted an entry of a material amount in the books of the insurer;

(n) whether the insurer has grown so rapidly and to an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(o) whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

(4) The true value of the insurer’s assets, if it is a life insurer, is less than its liabilities, exclusive of its capital.

(5) The officers or agents of an insurer refuse to submit to examination or to perform a legal obligation relative to an examination.

(6) The insurer has not complied with a lawful order of the director or his designee.

(B) Notice of revocation and suspension must be published in a newspaper of general circulation in this State. No new business may be done by the insurer or its agents in this State while the default or disability continues nor until its authority to transact business is restored by the director or his designee.

(C) Notwithstanding the provisions of subsection (A), if the director or his designee determines that an insurer is in an unsound condition or in a hazardous condition provided in subsection (A)(1) and (3), he may issue an order requiring the insurer to:

(1) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) reduce, suspend, or limit the volume of business being accepted or renewed;

(3) reduce general insurance and commission expenses by specified methods;

(4) increase the insurer’s capital and surplus;

(5) suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;

(6) file reports in a form acceptable to the director or his designee concerning the market value of an insurer’s assets;

(7) limit or withdraw from certain investments or discontinue certain investment practices to the extent the director or his designee considers necessary;

(8) document the adequacy of premium rates in relation to the risks insured;

(9) file, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on a format approved by the director or his designee;

(10) disregard credit or an amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(11) make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(12) refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;

(13) increase the insurer’s liability in an amount equal to a contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve months; or

(14) take other action he considers appropriate.

(D) The insurer may request a hearing on an order or a decision made by the director or his designee pursuant to the provisions of this title. The insurer or other parties must be served with notice of the hearing stating the time and place of the hearing and the grounds upon which the director based the order; the hearing must occur not less than ten days nor more than thirty days following the notice and must be conducted at the offices of the South Carolina Department of Insurance unless otherwise designated by the director. The director or his designee shall hold all hearings in private unless the insurer requests a public hearing. After a hearing by the director or his designee, an order or a decision made, issued, or executed by the director or his designee is subject to review in accordance with Section 38‑3‑210 under the appellate procedures of the South Carolina Administrative Law Court, as provided by law.

**SECTION 38‑5‑130.** Monetary penalty in lieu of license revocation or suspension.

The director or his designee may, in lieu of license revocation or suspension as provided by Section 38‑5‑120, impose a monetary penalty as provided in Section 38‑2‑10 for each violation or failure of compliance or refusal to submit or perform as prescribed therein. Series of acts by an insurer which merely implement a basic violation and are not separate and distinct violations of an independent nature are considered to be part of the basic violation and only one penalty may be imposed thereon.

**SECTION 38‑5‑140.** Opportunity for hearing.

Unless the grounds for revocation relate only to the financial condition or soundness of the insurer or to a deficiency in its assets, the director or his designee shall notify the insurer not less than thirty days before revoking its authority to do business in this State and he must specify in the notice the particulars of the alleged violation of the law or its charter or grounds for revocation and a proper opportunity must be offered the insurer to be heard.

**SECTION 38‑5‑150.** Funds may not be paid during suspension without approval.

While the certificate of authority is suspended, no domestic insurer or any of its officers may pay out any funds belonging to the insurer without first receiving the director’s or his designee’s approval.

**SECTION 38‑5‑160.** Injunction, receivership.

If he considers it necessary, the director or his designee may apply to a judge of the circuit court to issue an injunction restraining a domestic insurer whose certificate of authority has been suspended, in whole or in part, from proceeding further with its business. The judge may immediately issue the injunction and, upon notice and after a full hearing of the matter, may (a) dissolve or modify the injunction or make it permanent, (b) make all orders and judgments necessary in the matter, and (c) appoint agents or a receiver to take possession of the property and effects of the insurer and to settle its affairs, subject to any rules and orders the court prescribes.

**SECTION 38‑5‑170.** Continuation of certificate of authority and other approvals pertaining to foreign insurer transferring its corporate domicil by merger or consolidation.

The certificate of authority, agents’ appointments and licenses, rates, and other items which the director or his designee may allow which are in existence at the time any insurer licensed to transact the business of insurance in this State transfers its corporate domicile to this or any other state by merger, consolidation, or any other lawful method shall continue in effect upon such transfer if the insurer remains duly qualified to transact the business of insurance in this State. All outstanding policies of any transferring insurer shall remain in effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the director or his designee. Every transferring insurer shall file new policy forms with the department on or before the effective date of the transfer but may use existing policy forms with appropriate endorsements if allowed by, and under conditions as approved by, the director or his designee. Every transferring insurer shall notify the director or his designee of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the department.

**SECTION 38‑5‑180.** Authority required for insurer to operate in State.

No insurer may operate from a location within South Carolina unless it is licensed as an insurer as provided in Section 38‑5‑10, or permitted to operate as an approved reinsurer as provided in Section 38‑5‑60, or qualified to operate as an eligible surplus lines insurer as provided in Section 38‑45‑90.

**SECTION 38‑5‑190.** Copy and reproduction of records; effect and admissibility into evidence of printed reproduction.

Any member of South Carolina Property and Casualty Insurance Guaranty Association or South Carolina Life and Accident and Health Guaranty Association, any eligible surplus lines insurer, any insurance premium service company, any authorized reinsurer, any title insurance company, any licensed adjuster, any licensed insurance agent, any licensed insurance broker, any insurance rating or statistical agent, South Carolina Reinsurance Facility, South Carolina Wind and Hail Underwriting Association, South Carolina Property and Casualty Insurance Guaranty Association, South Carolina Health Insurance Pool, South Carolina Commercial Auto Insurance Plan, South Carolina Medical Malpractice Joint Underwriting Association, South Carolina Workers Compensation Commission, Second Injury Fund, South Carolina Department of Insurance, or South Carolina Budget and Control Board Insurance Reserve Fund may cause records relating to policy applications, changes, refunds, terminations, claims, or premium payments kept by the insurer, premium service company, adjuster, agent, or broker to be copied or reproduced by:

(1) photostatic, photographic, or microfilming process; or

(2) electronic or graphic imaging through scanning, digitizing, or other means.

These processes or means must correctly copy, reproduce, or form a medium for copying or reproducing the original record so that an accurate facsimile of the original can be printed or otherwise reproduced on paper, film, or similar medium. The printed reproduction must be considered an original record for all purposes and must be treated as an original record in all courts or administrative agencies for the purpose of its admissibility into evidence, regardless of whether the institution retains or disposes of the original; provided, that:

(a) the original document otherwise qualifies as a business record pursuant to the South Carolina Uniform Business Records as Evidence Act or the appropriate state or federal rules of evidence; and

(b) a custodian or other qualified witness, as those terms are used in the appropriate state or federal rules of evidence, certifies that the printed reproduction is a true and correct copy of the original.

The Director of the Department of Insurance may, by order, apply the provisions of this section to any additional insurance or insurance‑related organizations or entities or insurance or insurance‑related records, as the director in his discretion considers necessary.

**SECTION 38‑5‑200.** Required use of particular insurance premium finance company or other installment plan prohibited; other prohibited acts.

(A) An insurer, its agent, or an insurance broker doing business in this State may not require a person to use a particular insurance premium finance company or other installment plan for which a finance charge or other fee in connection with an installment payment has been or will be imposed.

(B) An insurer, its agent, or an insurance broker doing business in this State may not refuse to issue a policy of insurance solely because the premiums for the policy have been advanced by a premium finance company licensed in this State.

(C) An insurer or its agent doing business in this State shall not reduce commission or intimidate or retaliate against a producer, agent, broker, or insured who uses premium financing by denying the producer, agent, broker, or insured the same rights accorded producers, agents, brokers, or insureds who pay premiums in a different manner.