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118th Session, 2009-2010

**H. 3562**

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**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
2/18/2009	House	Introduced and read first time HJ-8
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**VERSIONS OF THIS BILL**

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**A BILL**

11 TO AMEND SECTION 38-1-20, AS AMENDED, CODE OF  
12 LAWS OF SOUTH CAROLINA, 1976, RELATING TO  
13 DEFINITIONS USED IN TITLE 38 PERTAINING TO  
14 INSURANCE, SO AS TO ADD THE DEFINITIONS OF  
15 "GENERAL APPOINTMENT", "LOCAL APPOINTMENT",  
16 "SPECIAL APPOINTMENT", "CROP INSURANCE", AND  
17 "TRAVEL INSURANCE", CORRECT ARCHAIC LANGUAGE,  
18 AND MAKE CONFORMING AMENDMENTS; TO AMEND  
19 SECTION 38-39-20, RELATING TO PREMIUM SERVICE  
20 COMPANIES, SO AS TO PROVIDE THAT THE FEE FOR  
21 LICENSURE TO ENGAGE IN SERVICING INSURANCE  
22 PREMIUMS IN THIS STATE IS DUE ON A BIENNIAL BASIS  
23 RATHER THAN ON AN ANNUAL BASIS; TO AMEND  
24 SECTION 38-43-80, AS AMENDED, RELATING TO LICENSE  
25 FEES FOR INSURANCE PRODUCERS AND AGENCIES, SO  
26 AS TO PROVIDE FOR A BIENNIAL PRODUCER LICENSE  
27 RENEWAL FEE OF TWENTY-FIVE DOLLARS, INCREASE  
28 THE INITIAL PRODUCER LICENSE RENEWAL FEE FROM  
29 TWENTY DOLLARS TO TWENTY-FIVE DOLLARS, AND  
30 PROVIDE FOR THE REQUIREMENTS RELATING TO THE  
31 PAYMENT OF APPOINTMENT FEES; TO AMEND SECTION  
32 38-43-106, AS AMENDED, RELATING TO CONTINUING  
33 EDUCATION REQUIREMENTS FOR INSURANCE  
34 PRODUCERS, SO AS TO PROVIDE THAT THE BIENNIAL  
35 COMPLIANCE PERIOD IS BASED ON THE LICENSEE'S  
36 MONTH AND YEAR OF BIRTH; TO AMEND SECTION  
37 38-43-110, AS AMENDED, RELATING TO THE DURATION  
38 OF AN INSURANCE PRODUCER'S LICENSE, SO AS TO  
39 PROVIDE THAT INDIVIDUAL LICENSES MUST BE  
40 RENEWED BIENNIALLY BASED ON THE LICENSEE'S  
41 MONTH AND YEAR OF BIRTH AND PROVIDE FOR THE  
42 REQUIREMENTS RELATING TO RENEWAL; TO AMEND

1 SECTION 38-43-200, AS AMENDED, RELATING TO THE  
2 PROHIBITION ON SPLITTING COMMISSIONS WITH AN  
3 UNLICENSED PERSON BY AN INSURANCE PRODUCER,  
4 SO AS TO DELETE THE EXISTING PROVISIONS AND  
5 PROVIDE FOR THE REQUIREMENTS RELATING TO THE  
6 SPLITTING AND SHARING OF COMMISSIONS; TO AMEND  
7 SECTION 38-45-10, RELATING TO THE DEFINITIONS OF  
8 AN INSURANCE BROKER, SO AS TO PROVIDE FOR THE  
9 QUALIFYING DUTIES AND PROVIDE FOR EXCEPTIONS;  
10 AND TO AMEND SECTION 38-45-20, AS AMENDED,  
11 RELATING TO THE REQUIREMENTS FOR LICENSURE AS  
12 AN INSURANCE BROKER, SO AS TO DELETE THE  
13 REQUIREMENTS THAT A BROKER HOLD AT LEAST ONE  
14 APPOINTMENT.

15

16 Be it enacted by the General Assembly of the State of South  
17 Carolina:

18

19 SECTION 1. Section 38-1-20 of the 1976 Code, as last amended  
20 by Act 290 of 2004, is further amended to read:

21

22 “Section 38-1-20. ~~It~~ As used in this title, unless the context  
23 otherwise requires:

24 (1) ‘Accident and health insurance’ means insurance of human  
25 beings against death or personal injury by accident, and ~~every~~ each  
26 insurance of human beings against sickness, ailment, and any type  
27 of physical disability resulting from accident or disease, and  
28 prepaid dental service, but not including coverages required by the  
29 Workers’ Compensation Law of this State.

30 (2) ‘Accommodation bondsman’ means as defined in Section  
31 38-53-10.

32 (3) ‘Adjuster’ means an individual who determines the extent  
33 of insured losses and assists in settling or attempts to settle claims.

34 (4) ‘Admitted assets’ means assets of an insurer considered  
35 admitted under Section 38-11-100.

36 ~~(4.5)~~(5) ‘Admitted insurer’ means an insurer licensed to do  
37 business in this State.

38 ~~(5)~~(6) ‘Alien insurer’ means an insurer incorporated or  
39 organized under the laws of a country other than the United States  
40 of America, its states, commonwealths, territories, or insular  
41 possessions.

1 ~~(6)~~(7) 'Annuity' means ~~every~~ each contract or agreement to  
2 make periodic payments, whether in fixed or variable dollar  
3 amounts, or both, at specified intervals.

4 ~~(6.5)~~(8)(a) 'Appointment' means an individual designated by  
5 an official or authorized representative of an authorized insurer to  
6 act on its behalf as a producer.

7 (b) 'General appointment' means an appointment of a person  
8 who, as a representative of an insurer or insurers, is vested with  
9 authority to supervise producers and to exercise this management  
10 authority as is delegated to him by the principal. A producer  
11 appointed as a general also may perform the duties of a producer  
12 who holds a local or special appointment.

13 (c) 'Local appointment' means an appointment of a producer  
14 who has been authorized by an insurer to sell, solicit, or negotiate  
15 policies on an insurer's behalf.

16 (d) 'Special appointment' means an individual designated by  
17 an insurer to supervise and assist other producers in the proper  
18 discharge of their duties under an insurer's policy contract. A  
19 special appointment grants no authority to sell, solicit, or negotiate  
20 policies of insurance on behalf of an insurer.

21 ~~(7)~~(9) 'Bail bondsman' means as defined in Section  
22 38-53-10.

23 ~~(8)~~(10) 'By' means on or before.

24 ~~(9)~~(11) 'Casualty insurance' means ~~every~~ each insurance  
25 against legal liability of the insured for bodily injury to or death of  
26 ~~other persons~~ another person, including workers' compensation  
27 insurance, and for damages to or loss or destruction of the property  
28 of ~~others~~ another person; medical payments insurance when  
29 written in conjunction with ~~any~~ insurance covering liability for the  
30 deaths or bodily injuries of ~~others~~ another person; guaranteeing the  
31 fidelity of ~~persons~~ a person holding ~~positions~~ a position of public  
32 or private trust; loss of or damage to property caused by burglary,  
33 theft, larceny, robbery, fraud, or ~~any~~ unlawful taking or secretion  
34 of property owned by or entrusted to the insured; loss of or damage  
35 to property of the insured resulting from the explosion of or  
36 damage to ~~any~~ a fired or unfired boiler or other pressure vessel,  
37 engine, turbine, compressor, pump, wheel, ~~any~~ or an apparatus  
38 generating, transmitting, or using electric power, and ~~any~~  
39 machinery or equipment connected with any of ~~the foregoing~~  
40 them; loss resulting from nonpayment of debts owed to merchants  
41 or ~~other persons~~ another person extending credit.

42 ~~(10)~~(12) 'Certificate of insurance' means a memorandum copy,  
43 complete or abbreviated, of an insurance contract.

1     ~~(11)~~(13) 'Coinsurance' means a stipulation or requirement that  
2 the insured undertakes to be his own insurer to the extent that he  
3 fails to maintain insurance of a given percentage of the value of the  
4 property against loss or damage.

5     ~~(12)~~(14) 'Commission' means the part of the premium paid to  
6 the producer as compensation for his services.

7     ~~(13)~~(15) 'Company' includes ~~any~~ a corporation, fraternal  
8 organization, burial association, other association, partnership,  
9 society, order, individual, or aggregation of individuals engaging  
10 or proposing or attempting to engage as principals in any kind of  
11 insurance or surety business, including the exchanging of  
12 reciprocal or interinsurance contracts between individuals,  
13 partnerships, and corporations.

14     (16) 'Crop insurance' includes insurance providing protection  
15 against damage to crops from unfavorable weather conditions, fire,  
16 lightning, flood, hail, insect infestation, disease, or other  
17 yield-reducing conditions or perils provided by the private  
18 insurance market, or that is subsidized by the Federal Crop  
19 Insurance Corporation, including Multi-Peril Crop Insurance.

20     ~~(14)~~(17) 'Department' means the Department of Insurance of  
21 South Carolina.

22     ~~(15)~~(18) 'Designee or deputy director' means the person or  
23 persons appointed by the director, serving at the will and pleasure  
24 of the director as his designee, to supervise and carry out the  
25 functions and duties of the department as provided by law. ~~Any~~ A  
26 duty or function of the director to manage and supervise the  
27 ~~Insurance~~ department may be conferred by the director's authority  
28 upon his designee or deputy director.

29     ~~(16)~~(19) 'Director' means the person who is appointed by the  
30 Governor upon the advice and consent of the Senate and who is  
31 responsible for the operation and management of the department ~~of~~  
32 ~~Insurance~~. The director has the authority to appoint or designate  
33 the person or persons who shall serve at the pleasure of the director  
34 to carry out the objectives or duties of the department as provided  
35 by law. Furthermore, the director may bestow upon his designee  
36 or deputy director ~~any~~ a duty or function required of him by law to  
37 manage and supervise the ~~Insurance~~ department.

38     ~~(17)~~(20) 'Domestic insurer' means an insurer incorporated or  
39 organized under the laws of this State.

40     ~~(17.5)~~(21) 'Eligible surplus lines insurer' means a nonadmitted  
41 insurer with which a ~~resident~~ licensed broker may place surplus  
42 lines insurance.

1 (22) 'Exempt commercial policies' means policies for  
2 commercial insureds as may be provided for in regulation issued  
3 by the director. Exempt commercial policies include all property  
4 and casualty coverages except for insurance related to credit  
5 transactions written through financial institutions.

6 ~~(18)~~(23) 'Foreign insurer' means an insurer incorporated or  
7 organized under the laws of the United States or of any jurisdiction  
8 within the United States other than this State.

9 ~~(18.5)~~(24) 'Home state' means the District of Columbia and  
10 ~~any~~ a state or territory of the United States in which an insurance  
11 producer maintains his ~~or her~~ principal place of residence or  
12 principal place of business and is licensed to act as an insurance  
13 producer.

14 ~~(19)~~(25) 'Insurance' means a contract ~~whereby~~ where one  
15 undertakes to indemnify another or pay a specified amount upon  
16 determinable contingencies. The term 'insurance' includes  
17 annuities.

18 ~~(19.5)~~(26) 'Insurance agency' means a corporation,  
19 association, partnership, limited liability company, limited liability  
20 partnership, or other legal entity in which more than one person  
21 has a financial interest.

22 ~~(20) 'Insurance producer' means a person who represents an~~  
23 ~~insurance company and is required to be licensed in accordance~~  
24 ~~with Section 38-43-10.~~

25 ~~(21)~~(27) 'Insurance broker' means an individual licensed by the  
26 department to represent citizens of this State in placing their  
27 insurance. An insurance broker may place that insurance either  
28 with an eligible surplus lines insurer or with a licensed insurance  
29 producer in an insurance carrier licensed in this State.

30 ~~(22)~~(28) 'Insurance company' means an 'insurer'.

31 ~~(23)~~(29) 'Insurance premium service company' means a person  
32 engaged in the business of entering into insurance premium service  
33 agreements.

34 (30) 'Insurance producer' or 'producer' means a person who  
35 represents an insurance company and is required to be licensed  
36 pursuant to Section 38-43-10.

37 ~~(24)~~(31) 'Insurance rate' means the price of insurance ~~per~~ for  
38 each unit of exposure.

39 (32) 'Insurance-support organization' means a person who  
40 regularly engages, in whole or in part, in the practice of assembling  
41 or collecting information about natural persons for the primary  
42 purpose of providing the information to an insurer or agent for  
43 insurance transactions, including: (i) the furnishing of consumer

1 reports or investigative consumer reports to an insurer or agent for  
2 use in connection with an insurance transaction; or (ii) the  
3 collection of personal information from insurers, agents, or other  
4 insurance-support organizations for the purpose of detecting or  
5 preventing fraud, material misrepresentation, or material  
6 nondisclosure in connection with insurance underwriting or  
7 insurance claim activity. However, the following are not  
8 considered insurance-support organizations for purposes of this  
9 chapter: agents, governmental institutions, insurers, modeling  
10 organizations, consumer reporting agencies, medical care  
11 institutions, and medical professionals.

12 ~~(25)~~(33) 'Insurer' includes ~~any~~ a corporation, fraternal  
13 organization, burial association, other association, partnership,  
14 society, order, individual, or aggregation of individuals engaging  
15 or proposing or attempting to engage as principals in any kind of  
16 insurance or surety business, including the exchanging of  
17 reciprocal or interinsurance contracts between individuals,  
18 partnerships, and corporations.

19 ~~(26)~~ Reserved.

20 ~~(26.5)~~(34) 'License' means a document issued by the state's  
21 director of Insurance or his designee authorizing a person to act as  
22 an insurance producer for the lines of authority specified in the  
23 document. The license itself does not create any authority, actual,  
24 apparent or inherent, in the holder to represent or commit an  
25 insurance carrier.

26 ~~(27)~~(35) 'Life insurance' means a contract of insurance upon  
27 the lives of human beings. The following contracts are ~~deemed~~  
28 considered to be contracts of life insurance within the meaning of  
29 this definition:

30 (a) a contract providing acceleration of life benefits,  
31 beginning on the contract's original effective date, in advance of  
32 the time they otherwise would be payable for long-term care as  
33 defined in Section 38-72-40;

34 (b) a contract providing acceleration of life benefits,  
35 beginning on the contract's original effective date, in advance of  
36 the time they otherwise would be payable for a life-threatening  
37 illness or a terminal illness as specified in the contract.

38 ~~(27.5)~~(36) 'Limited line credit insurance' includes credit life,  
39 credit disability, credit property, credit unemployment, involuntary  
40 unemployment, mortgage life, mortgage guaranty, guaranteed  
41 automobile protection insurance, and ~~any other~~ another form of  
42 insurance offered in connection with an extension of credit that is  
43 limited to partially or wholly extinguishing that credit obligation

1 that the director or his designee determines should be designated a  
2 form of limited line credit insurance.

3 ~~(27.5A)(37)~~ 'Limited line credit insurance producer' means a  
4 person who sells, solicits, or negotiates ~~credit life or credit accident~~  
5 ~~and health, credit property and any other form of insurance offered~~  
6 ~~in connection with an extension of credit that is limited to partially~~  
7 ~~or wholly extinguishing that credit obligation that the director or~~  
8 ~~his designee determines should be designated a form of limited~~  
9 ~~line credit insurance~~ one or more forms of limited line credit  
10 insurance coverage to individuals through a master, corporate,  
11 group, or individual policy.

12 ~~(27.5B)(38)~~ 'Limited line insurance' includes ~~crop hail,~~  
13 ~~automobile, physical damage, mortgage guaranty or mortgage~~  
14 ~~redemption or both, title, travel accident and baggage surety,~~  
15 Federal Crop Insurance Program, and any other form of insurance  
16 that the director of Insurance ~~deems~~ considers necessary in order to  
17 ensure compliance with the reciprocal provisions of this chapter.

18 ~~(27.5C)(39)~~ 'Limited line insurance producer' means a person  
19 authorized by the director of Insurance or his designee to sell,  
20 solicit, or negotiate, ~~crop hail, automobile physical damage,~~  
21 ~~mortgage guaranty or mortgage redemption or both, title, travel~~  
22 ~~accident and baggage, Federal Crop Insurance Program, and any~~  
23 ~~other form of insurance that the Director of Insurance deems~~  
24 ~~necessary in order to ensure compliance with the reciprocal~~  
25 ~~provisions of this chapter~~ limited line insurance.

26 ~~(28)(40)~~ 'Marine insurance' means ~~every~~ each insurance  
27 against loss or destruction of or damage to aircraft, vessels, or  
28 watercraft and their cargoes; insurance covering the risks or perils  
29 of navigation, transit, or transportation of all forms of property,  
30 including the liability of ~~any~~ a carrier for hire for the loss of  
31 property of shippers delivered for transporting; marine builder's  
32 risks; bridges, tunnels, piers, wharves, docks and slips, dry docks,  
33 marine railways, and other aids to navigation and transportation,  
34 precious stones, precious metals, and jewelry, whether in the  
35 course of transportation or otherwise; coverage of personal  
36 property by all risk forms known as the 'Personal Property  
37 Floater'; and coverage of mobile machinery and equipment.

38 ~~(41)~~ 'Modeling organization' means a corporation,  
39 unincorporated association, partnership, or individual, whether  
40 located within or outside this State, that prepares a catastrophe  
41 model that is used by an insurer in a rate filing. A catastrophe  
42 model is a computer program that estimates losses from a potential  
43 upcoming disaster. Catastrophe modeling combines data on

1 property exposures with information on hazards, such as storms or  
2 earthquakes, to generate estimates of potential losses.

3 ~~(28.3)~~(42) 'Negotiate' means the act of conferring directly with  
4 or offering advice directly to a purchaser or prospective purchaser  
5 of a particular contract of insurance concerning ~~any of the~~  
6 substantive benefits, terms, or conditions of the contract, provided  
7 that the person engaged in that act either sells insurance or obtains  
8 insurance from insurers for purchasers.

9 ~~(28.5)~~(43) 'Nonadmitted insurer' means an insurer not licensed  
10 to do an insurance business in this State.

11 ~~(29)~~(44) 'Person' means a corporation, ~~an~~ agency, partnership,  
12 association, voluntary organization, individual, or ~~any other~~  
13 another entity, organization, or aggregation of individuals.

14 ~~(30)~~(45) 'Policy' means a contract of insurance.

15 ~~(31)~~(46) 'Premium' means payment given in consideration of a  
16 contract of insurance.

17 ~~(32)~~(47) 'Premium service agreement' means an agreement by  
18 which an insured or prospective insured promises to pay to an  
19 insurance premium service company the amount advanced or to be  
20 advanced under the agreement to an insurer or to an insurance  
21 producer or insurance broker in payment of premiums on an  
22 insurance contract together with a service charge as authorized by  
23 Chapter 39 of this title.

24 ~~(32.5)~~(48) 'Probation' means allowing a licensed person the  
25 director has found to have violated South Carolina, any United  
26 States territory, or ~~any other~~ another state's laws to continue  
27 selling, soliciting, or negotiating insurance on behalf of an insurer.  
28 ~~No~~ A person convicted of a felony or those crimes listed in 18  
29 U.S.C. 1033 or 1034 ~~shall~~ does not qualify for probation.

30 ~~(33)~~(49) 'Professional bondsman' means as defined in Section  
31 38-53-10.

32 ~~(34)~~(50) 'Property insurance' means ~~every~~ each insurance  
33 against direct or indirect loss of or damage to ~~any a~~ a property  
34 resulting from fire, smoke, weather disturbances, climatic  
35 conditions, earthquake, volcanic eruption, rising waters, insects,  
36 blight, animals, war damage, riot, civil commotion, destruction by  
37 order of civil authority to prevent spread of conflagration or for  
38 other reason, water damage, vandalism, glass breakage, explosion  
39 of ~~any a~~ a water ~~systems~~ system, collision, theft of automobiles, and  
40 personal effects ~~therein~~ in them (but no other forms of theft  
41 insurance), loss of or damage to domestic or wild animals, and any  
42 other perils to property which in the discretion of the director or  
43 his designee form proper subjects of property insurance, if not

1 specified in items (1), (7), ~~(9), (27), (28), (37)~~ (11), (35), (40), (54),  
2 or ~~(39)~~ (59) of this section.

3 ~~(35)~~(51) 'Runner' means as defined in Section 38-53-10.

4 ~~(35.3)~~(52) 'Sell' means to exchange a contract of insurance by  
5 any means, for money or its equivalent, on behalf of an insurance  
6 company.

7 ~~(35.5)~~(53) 'Solicit' means attempting to sell insurance or  
8 asking or urging a person to apply for a particular kind of  
9 insurance from a particular company.

10 ~~(36)~~ 'Surety bondsman' means as defined in Section 38-53-10.

11 ~~(37)~~(54) 'Surety' ~~insurance~~ means ~~becoming surety on, or~~  
12 ~~guaranteeing the performance of, any lawful contract except an~~  
13 ~~insurance contract; becoming surety on, or guaranteeing the~~  
14 ~~performance of, any bonds and undertaking required or permitted~~  
15 ~~in any judicial proceeding or required or permitted by any~~  
16 ~~government or any agency or instrumentality of any government~~  
17 includes insurance or a bond that covers obligations to pay the  
18 debts, or answer for the default, of another, including faithlessness  
19 in a position of public or private trust.

20 (55) 'Surety bondsman' means as defined in Section 38-53-10.

21 ~~(37.5)~~(56) 'Surplus lines insurance' means insurance in this  
22 State of risks located or to be performed in this State, permitted to  
23 be placed through a ~~resident~~ licensed broker with a nonadmitted  
24 insurer eligible to accept the insurance, other than reinsurance, wet  
25 marine and transportation insurance, insurance independently  
26 procured, and life and health insurance and annuities. Excess and  
27 stop-loss insurance coverage upon group life, accident, and health  
28 insurance or upon a self-insured's life, accident, and health  
29 benefits program may be approved as surplus lines insurance.

30 ~~(38)~~(57) 'Surplus to policyholders' is the excess of total  
31 admitted assets over the liabilities of an insurer which is the sum of  
32 all capital and surplus accounts minus any impairment ~~thereof~~ of  
33 them.

34 ~~(38.5)~~(58) 'Terminate' means the cancellation of the  
35 relationship between an insurance producer and the insurer or the  
36 termination of a producer's authority to transact insurance.

37 ~~(39)~~(59) 'Title insurance' means insurance of the owners of real  
38 property and other persons lawfully interested ~~therein~~ in the title  
39 insurance against loss by reason of defective titles and undisclosed  
40 liens and encumbrances affecting the property.

41 ~~(40)~~ 'Exempt commercial policies' means ~~policies for~~  
42 ~~commercial insureds as may be provided for in regulation issued~~  
43 ~~by the director. Exempt commercial policies include all property~~

1 ~~and casualty coverages except for insurance related to credit~~  
2 ~~transactions written through financial institutions.~~

3 (60) 'Travel insurance' includes insurance coverage for trip  
4 cancellation, trip interruption, baggage, life, sickness and accident,  
5 disability, and personal effects when limited to a specific trip and  
6 sold in connection with transportation provided by a common  
7 carrier.

8 ~~(41)(61) 'Uniform agency application' means the current~~  
9 ~~version of the National Association of Insurance Commissioners~~  
10 ~~Uniform Business Entity Application for resident and nonresident~~  
11 ~~business entities.~~

12 ~~(42)(62) 'Uniform application' means the current version of the~~  
13 ~~National Association of Insurance Commissioners Uniform~~  
14 ~~Application for resident and nonresident producer licensing.~~

15 ~~(43) 'Insurance support organization' means a person who~~  
16 ~~regularly engages, in whole or in part, in the practice of assembling~~  
17 ~~or collecting information about natural persons for the primary~~  
18 ~~purpose of providing the information to an insurer or agent for~~  
19 ~~insurance transactions, including: (i) the furnishing of consumer~~  
20 ~~reports or investigative consumer reports to an insurer or agent for~~  
21 ~~use in connection with an insurance transaction; or (ii) the~~  
22 ~~collection of personal information from insurers, agents, or other~~  
23 ~~insurance support organizations for the purpose of detecting or~~  
24 ~~preventing fraud, material misrepresentation, or material~~  
25 ~~nondisclosure in connection with insurance underwriting or~~  
26 ~~insurance claim activity. However, the following are not~~  
27 ~~considered insurance support organizations for purposes of this~~  
28 ~~chapter: agents, governmental institutions, insurers, modeling~~  
29 ~~organizations, consumer reporting agencies, medical care~~  
30 ~~institutions, and medical professionals.~~

31 ~~(44) 'Modeling organization' means a corporation, an~~  
32 ~~unincorporated association, a partnership, or an individual,~~  
33 ~~whether located within or outside this State, that prepares~~  
34 ~~catastrophe models that are used by insurers in rate filings.~~  
35 ~~Catastrophe models are computer programs that estimate losses~~  
36 ~~from potential upcoming disasters. Catastrophe modeling~~  
37 ~~combines data on property exposures with information on hazards,~~  
38 ~~such as storms or earthquakes, to generate estimates of potential~~  
39 ~~losses.'~~

40  
41 SECTION 2. Section 38-39-20(b) of the 1976 Code is amended to  
42 read:

43

1 “(b) The ~~annual~~ biennial license fee is ~~five hundred one~~  
2 thousand dollars payable to the department by March ~~first to the~~  
3 ~~department, to be deposited by the department in the state treasury~~  
4 1, 2010, and biennially after that time. These funds are to be  
5 deposited in the general fund of the State.”

6  
7 SECTION 3. Section 38-43-80 of the 1976 Code, as last amended  
8 by Act 326 of 2008, is further amended to read:

9  
10 “Section 38-43-80. (A) ~~As used in this section, ‘biennial~~  
11 ~~appointment fee’ means a fee paid by the insurer on a biennial~~  
12 ~~basis by September thirtieth of an even numbered year. If an~~  
13 ~~appointment fee is not paid by December thirtieth of an~~  
14 ~~even numbered year, the appointment must be canceled.~~

15 ~~(B)~~(1) Unless otherwise changed by order of the director, the  
16 following fees are applicable to producer licenses, agency licenses,  
17 and insurer appointments:

18 (a) ~~individual~~ initial producer license fee: ~~twenty~~  
19 twenty-five dollars; ~~biennial appointment~~ producer license  
20 renewal fee: forty twenty-five dollars;

21 (b) local appointment initial and biennial fee: forty  
22 dollars; special ~~producer~~ appointment initial and biennial license  
23 ~~and appointment~~ fee: one hundred dollars; ~~general producer~~  
24 appointment initial and biennial appointment fee: one hundred  
25 dollars;

26 (c) ~~agency license initial~~ initial and biennial license fee:  
27 forty dollars; ~~limited lines biennial license and appointment fee:~~  
28 forty dollars.

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

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

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

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

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

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

1 (C) ~~At the time of licensure, the license fee for each applicable~~  
2 ~~line of insurance Fees~~ must be paid in advance ~~by the producer.~~  
3 The department shall promulgate regulations specifying the time  
4 and manner of payment of ~~these~~ fees. If payment is rejected by the  
5 bank, the producer has thirty days from the rejection date to pay  
6 the license fee. If payment is not made to the department within  
7 this period, the license must be canceled. To reinstate the license,  
8 the producer is required to pay a license fee plus any charges  
9 resulting from rejection by the bank.

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

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

18

19 SECTION 4. Section 38-43-106(B)(1) of the 1976 Code, as last  
20 amended by Act 326 of 2008, is further amended to read:

21

22 “(1) The director or his designee shall administer these  
23 continuing education requirements and shall approve courses of  
24 instruction which qualify for these purposes. However, the  
25 director may enter into reciprocal agreements with the insurance  
26 commissioners of other states regarding the approval of continuing  
27 education courses, sponsors, instructors, or proctors if, in his  
28 judgment, the arrangements or agreements are in the best interest  
29 of the State and if the proposed courses, sponsors, instructors, or  
30 proctors submitted meet the minimum statutory requirements of  
31 this State for approval. However, the director or his designee may  
32 not enter into or continue a reciprocal agreement unless the other  
33 state has requirements similar to this State in approving courses,  
34 sponsors, instructors, or proctors. In administering this program,  
35 the department, in its discretion, may promulgate regulations  
36 ~~whereby~~ producers provide to a continuing education administrator  
37 established within the department ~~of Insurance~~ proof of  
38 compliance with continuing education requirements as a condition  
39 of license renewal or, in the alternative, contract with an outside  
40 service provider to provide recordkeeping services as the  
41 continuing education administrator. The costs of the continuing  
42 education administrator must be paid from the continuing  
43 insurance education fees paid by producers in the manner provided

1 by this section, except that course approval responsibilities may  
2 not be designated to the continuing education administrator. The  
3 continuing education administrator shall compile and maintain, in  
4 conjunction with insurers and producers, records reflecting the  
5 continuing insurance education status of all licensed or qualified  
6 producers subject to the requirements of this section. The  
7 continuing education administrator shall furnish to the insurer, as  
8 specified by regulation, a report of the continuing insurance  
9 education status of all of its producers. All licensed producers  
10 shall provide evidence of their continuing insurance education  
11 status to the continuing education administrator by ~~May first of the~~  
12 ~~biennially compliance year unless granted an extension~~ the last day  
13 of the individual's month of birth. An individual born in an  
14 odd-numbered year shall comply every odd-numbered year. An  
15 individual born in an even-numbered year shall comply every  
16 even-numbered year."

17

18 SECTION 5. Section 38-43-110 of the 1976 Code, as last  
19 amended by Act 326 of 2008, is further amended to read:

20

21 “Section 38-43-110. (A) A producer's license ~~is for an~~  
22 ~~indefinite term and~~ continues on a biennial basis ~~on the last day of~~  
23 ~~the licensee's month of birth~~ unless revoked or suspended as long  
24 ~~as the requirements of Section 38-43-106 are met~~ subject to the  
25 following requirements:

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

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

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

35 (B) ~~If the biennial appointment fee for a producer is not paid as~~  
36 ~~provided in Section 38-43-80, the appointment must be canceled.~~

37 (C) A producer who allows his license to lapse for failure to  
38 comply with Section 38-43-106 ~~may~~, within six months from the  
39 compliance deadline, may reinstate the same license if continuing  
40 education requirements have been met ~~by November first of the~~  
41 ~~compliance period~~ and a penalty fee set forth by regulation is paid.

42 (D)(C) A licensed insurance producer who is unable to comply  
43 with license renewal procedures due to active military service or

1 some other extenuating circumstance (e.g., a long-term medical  
2 disability) may request a waiver of those procedures. The  
3 producer also may request a waiver of any examination  
4 requirement or any other fine or sanction imposed for failure to  
5 comply with renewal procedures.”

6  
7 SECTION 6. Section 38-43-200 of the 1976 Code, as last  
8 amended by Act 291 of 2004, is further amended to read:

9  
10 ~~“Section 38-43-200. (A) A licensed producer representing an~~  
11 ~~insurer may not pay, directly or indirectly, any commission,~~  
12 ~~brokerage, or other valuable consideration on account of any~~  
13 ~~policy of insurance on any risk in this State to any nonresident or~~  
14 ~~resident not duly licensed to act as producer or broker for the type~~  
15 ~~of insurance involved.~~

16 ~~(B) Notwithstanding the provisions of subsection (A), producers~~  
17 ~~licensed under this title may write insurance at the request of other~~  
18 ~~licensed producers or licensed brokers or licensed nonresident~~  
19 ~~brokers and allow the licensed producers or licensed brokers or~~  
20 ~~licensed nonresident brokers not exceeding one half of the~~  
21 ~~commissions which they receive on the business written.~~

22 ~~(C) The limitations contained in subsection (B) with respect to the~~  
23 ~~amount of commission which may be allowed other licensed~~  
24 ~~producers or licensed brokers or licensed nonresident brokers do~~  
25 ~~not apply where the insurance written is life insurance or accident~~  
26 ~~and health insurance.~~

27 ~~(D) This section does not prohibit the payment of a fee to a trade~~  
28 ~~or professional association exempt from income tax under Section~~  
29 ~~501(c) of the Internal Revenue Code.~~

30 ~~(E) Nothing in this section should be construed to prohibit any~~  
31 ~~licensed insurance producer from rebating any portion of his~~  
32 ~~commission collected on automobile insurance premiums to the~~  
33 ~~insured upon that automobile insurance policy.~~

34 ~~(F) An insurance company or insurance producer may not pay a~~  
35 ~~commission, service fee, brokerage, or other valuable~~  
36 ~~consideration to a person for selling, soliciting, or negotiating~~  
37 ~~insurance in this State if that person is required to be licensed in~~  
38 ~~accordance with Section 38-43-20 and is not licensed pursuant to~~  
39 ~~that section.~~

40 ~~(G) A person may not accept a commission, service fee, brokerage~~  
41 ~~or other valuable consideration for selling, soliciting, or~~  
42 ~~negotiating insurance in this State if that person is required to be~~  
43 ~~licensed under this chapter and is not licensed pursuant to it.~~

1 ~~(H) Renewal or other deferred commissions may be paid to a~~  
2 ~~person for selling, soliciting, or negotiating insurance in this State~~  
3 ~~if the person was required to be licensed under this chapter at the~~  
4 ~~time of the sale, solicitation, or negotiation and was licensed~~  
5 ~~pursuant to it at that time. An insurance company or insurance~~  
6 ~~producer may not pay a commission, service fee, brokerage or~~  
7 ~~other valuable consideration to a person for selling, soliciting, or~~  
8 ~~negotiating insurance in this State if that person is required to be~~  
9 ~~licensed pursuant to the provisions of this chapter and is not~~  
10 ~~licensed.~~

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

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

21 (D) An insurer or insurance producer may pay or assign  
22 commissions, service fees, brokerages, or other valuable  
23 consideration to an insurance agency or to a person who does not  
24 sale, solicit, or negotiate insurance in this State, unless the payment  
25 violates another provision of Title 38. A payment made by an  
26 insurer or insurance producer pursuant to the provisions of this  
27 subsection must not exceed twenty-five dollars for each transaction  
28 or an aggregate of two hundred fifty dollars in a calendar year. A  
29 payment made pursuant to the provisions of this subsection must  
30 not be based on completion of the sale of the insurance policy.

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

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

38  
39 SECTION 7. Section 38-45-10 of the 1976 Code is amended to  
40 read:  
41

1 “Section 38-45-10. ~~‘Insurance broker’ as used in this chapter~~  
2 ~~means an individual licensed by the director or his designee to~~  
3 ~~represent citizens of this State in placing their insurance.~~

4 (A)(1) An ‘insurance broker’, as used in this chapter, means a  
5 property and casualty insurance producer licensed by the director  
6 or his designee who:

7 (a) sells, solicits, or negotiates insurance on behalf of an  
8 insured;

9 (b) takes or transmits other than for himself an application  
10 for insurance or a policy of insurance to or from an insured;

11 (c) advertises or otherwise gives notice that he receives or  
12 transmits a surplus lines application or policies;

13 (d) receives or delivers a policy of surplus lines insurance  
14 for an insured on behalf of a surplus lines insurer;

15 (e) receives, collects, or transmits a premium of surplus  
16 lines insurance; or

17 (f) performs another act in the making of a surplus lines  
18 insurance contract for or with an insured.

19 (2) However, an insurance broker’s license is not required of  
20 a broker’s office employee acting within the confines of the  
21 broker’s office, under the direction and supervision of the licensed  
22 broker and within the scope of the broker’s license, in the  
23 acceptance of request for insurance and payment of premiums and  
24 the performance of clerical, stenographic, and similar office duties.

25 (B) An insurance broker may place that insurance either with  
26 an eligible surplus lines insurer or with a licensed insurance agent  
27 in producer appointed by an insurance carrier licensed in this  
28 State.”

29  
30 SECTION 8. Section 38-45-20 of the 1976 Code, as last amended  
31 by Act 326 of 2008, is further amended to read:

32  
33 “Section 38-45-20. A resident property and casualty-licensed  
34 insurance producer may be licensed as an insurance broker by the  
35 director or his designee if the following requirements are met:

36 (1) licensure of the resident as an insurance producer ~~and~~  
37 ~~having at least one appointment~~ for the same lines of insurance for  
38 which he proposes to apply as a broker of this State;

39 (2) successfully passed the South Carolina broker licensing  
40 examination;

41 (3) payment of a biennial license fee of two hundred dollars  
42 which is earned fully when received, not refundable;

1 (4) filing of a bond with the department in a form approved by  
2 the Attorney General in favor of South Carolina of ten thousand  
3 dollars executed by a corporate surety licensed to transact surety  
4 insurance in this State and personally countersigned by a licensed  
5 resident agent of the surety. The bond must be conditioned to pay  
6 a person insured or seeking insurance through the broker who  
7 sustains loss as a result of:

8 (a) the broker's violation of or failure to comply with an  
9 insurance law or regulation of this State;

10 (b) the broker's failure to transmit properly a payment  
11 received by him, cash or credit, for transmission to an insurer or an  
12 insured; or

13 (c) an act of fraud committed by the broker in connection  
14 with an insurance transaction. Instead of a bond, the broker may  
15 file with the department certificates of deposit of ten thousand  
16 dollars of building and loan associations or federal savings and  
17 loan associations located within the State in which deposits are  
18 guaranteed by the Federal Savings and Loan Insurance  
19 Corporation, not to exceed the amount of insurance, or of banks  
20 located within the State in which deposits are guaranteed by the  
21 Federal Deposit Insurance Corporation, not to exceed the amount  
22 of insurance. An aggrieved person may institute an action in the  
23 county of his residence against the broker or his surety, or both, to  
24 recover on the bond or against the broker to recover from the  
25 certificates of deposit, and a copy of the summons and complaint  
26 in the action must be served on the director, who is not required to  
27 be made a party to the action;

28 (5) payment to the department, within thirty days after March  
29 thirty-first, June thirtieth, September thirtieth, and December  
30 thirty-first each year, of a broker's premium tax of four percent  
31 upon premiums for policies of insurers not licensed in this State.  
32 In computing total premiums, return premiums on risks and  
33 dividends paid or credited to policyholders are excluded. Such  
34 credit must be refunded to the policyholder."

35

36 SECTION 9. This act takes effect upon approval by the Governor.

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