

## CHAPTER 43.

INSURANCE AGENTS AND AGENCIES [AFTER JANUARY 30, 2003, THIS CHAPTER IS ENTITLED] "INSURANCE PRODUCERS AND AGENCIES"]

### ARTICLE 1.

#### GENERAL PROVISIONS

**SECTION 38-43-10.** Persons considered agents of insurers.

[Until January 30, 2003, this section reads as follows:]

A person who:

- (a) solicits insurance in behalf of an insurer,
- (b) takes or transmits other than for himself an application for insurance or a policy of insurance to or from an insurer,
- (c) advertises or otherwise gives notice that he will receive or transmit insurance applications or policies,
- (d) receives or delivers a policy of insurance of an insurer,
- (e) receives, collects, or transmits any premium of insurance, or
- (f) 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 a licensed agent of the insurer for which the act is done or the risk is taken unless provided otherwise in Section 38-43-20.

[From and after January 31, 2003, this section is entitled "Persons considered producers of insurers; excess and surplus lines brokers; using assumed name" and reads as follows:]

(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 38-45-20 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.

**SECTION 38-43-20.** License of agent required; exceptions.

[Until January 30, 2003, this section reads as follows:]

No person may act as agent for an insurer or for a fraternal benefit association unless an agent's license has been issued to him by the director or his designee, except for the following persons:

- (a) an officer, employee, or secretary of a fraternal benefit association, as defined in Chapter 37 of this title, or any of its subordinate lodges or branches, who devotes substantially all of his services to activities other than the collection of premiums for fraternal insurance contracts and who receives for the solicitation of these contracts no commission or other compensation directly dependent upon the number or amount of contracts solicited or procured;
- (b) a member representative of a fraternal benefit association which insures its members against death, dismemberment, and disability resulting from accident only and which pays no commission or other consideration for the collection of premiums for these contracts;
- (c) a school teacher or school official who, without compensation, acts as agent for or performs any service in connection with the delivery or collection of insurance policies or premiums for accident and health insurance for children in the school system of the state where he is employed;
- (d) a group insurance policyholder or employee of a group policyholder who acts as an agent or performs any service in connection with the collection of premiums or the delivery of insurance policies or certificates to the group insurance policyholder or his employees;
- (e) an employee of a licensed agent who is under the agent's direct supervision or an employee of a licensed insurer, who performs solely 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 agent's office, under the direction and supervision of the licensed agent and within the scope of the agent's license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties;
- (f) an agent qualified to transact a life, health, or group insurance business may present a proposal for life, health, or group insurance to a prospective policyholder on behalf of an insurer for which the agent is not specifically licensed, and may also transmit an application for insurance to that insurer, if the insurer has previously furnished the proposal and application materials to the agent. By furnishing the proposal and application materials to the agent, the insurer is considered to have authorized the agent to act on its behalf, and the insurer is responsible for all actions of the agent as if the agent had been duly licensed for the insurer. Not more than fourteen days after the agent submits an application for insurance to the insurer, the insurer shall forward to the director or his designee its request that the agent be licensed as the insurer's agent in accordance with the requirements of this chapter; or
- (g) a limited insurance licensee pursuant to Section 38-43-500.

[From and after January 31, 2003, this section is entitled "Producer's license required; exceptions" and reads as follows:]

- (A) A person shall 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.

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

[Until January 30, 2003, this section reads as follows:]

Every agency, whether corporation, partnership, association, or other aggregation of individuals, transacting or purporting to transact the business of an insurance agent under a corporate or trade name must be licensed by the director or his designee. The term “agent” as used in this title is considered to include an agency, unless the context requires otherwise.

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

[From and after January 31, 2003, this section reads as follows:]

(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.

**SECTION 38-43-40.** License confers right to appoint agents; Commissioner must be notified.

[Until January 30, 2003, this section reads as follows:]

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 agents to take risks or transact any business of insurance in the state. However, the director or his designee must be notified of the appointment before the agent takes any risk or transacts any business. The notification shall give the post office address and residence of the agent.

[From and after January 31, 2003, this section is entitled “Appointment of producers; notice of appointment; approval” and reads as follows:]

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. However, the director or his designee must approve the appointment before the producer takes any risk or transacts any business. The notification to the director or his designee shall give both the business address and residence addresses of the producer.

**SECTION 38-43-50.** Applicants must be vouched for by insurers; notification when agent’s contract canceled.

[Until January 30, 2003, this section reads as follows:]

All applicants for an insurance agent'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 an agent 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 agent and intends to hold himself out in good faith as an insurance agent. When a contract of an agent is canceled by the insurer represented, that insurer shall notify the Department of the cancellation within ten 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.

[From and after January 31, 2003, this section is entitled "Limited line and special producer licensure; appointment by insurer as producer or agent" and reads as follows:]

(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) Before an applicant can act as a producer for an authorized insurer he must be appointed by an official or authorized 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. 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 may also 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) An insurer shall remit a renewal appointment fee in the amount set forth in Section 38-43-80.

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

[Eff January 31, 2003]

(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) of this subsection, 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.

**SECTION 38-43-60.** Insurance business to be transacted by agents licensed in this state; exceptions.

[Until January 30, 2003, this section reads as follows:]

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 agents licensed in this State or through applications of the agents. 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 agent for which the licensed agent received a commission, unless he himself is a bona fide licensed agent. 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.

[From and after January 31, 2003, this section is entitled “Insurance business to be transacted by producers licensed in this state; exceptions” and reads as follows:]

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.

**SECTION 38-43-70.** Nonresidents may not be licensed except under reciprocal agreements or in communities partly out of State; licenses not required of certain nonresident officers and employees of licensed insurers.

[Until January 30, 2003, this section reads as follows:]

(A) A nonresident of the state must not be licensed as an agent to do business in this State, except the director or his designee may enter into reciprocal agreements with the insurance commissioners of other states in regard to licensing of nonresident agents if in his judgment the arrangements or agreements are in the best interest of the state and if the applicant for the license meets the minimum statutory requirements of this State for the issuance of the license. However, the director or his designee may not enter into or continue a reciprocal agreement unless the other state is just as liberal as this State in licensing nonresident agents.

(B) The director or his designee may issue nonresident licenses to agents residing in a community comprised of two or more incorporated municipalities located partly within and partly without the state, or residing within twelve miles of the municipal limits of the municipalities, and permit the agents to write insurance in the state on the same basis as a



resident licensed agent if the laws of the adjacent state are just as liberal in the licensing of residents of this State. All business so written is considered to have been transacted in accordance with the requirements of Section 38-43-60.

(C) A nonresident of this State who is a regular salaried officer or employee of a licensed insurer, except an insurer licensed to transact life or life and accident and health insurance, and who travels for his insurer in this State is not required to be licensed if all of the following apply:

- (1) He has duties other than soliciting insurance.
- (2) Policies of insurance written by him are countersigned by a licensed insurance agent who is a bona fide resident of this State.
- (3) He receives no commission or other compensation directly dependent upon the amount of business obtained.
- (4) His insurer-employer biennially registers with the department his name, business address, residence address, description of duties to be performed, and other information required by the director or his designee to be contained in the registration.

[From and after January 31, 2003, this section is entitled "Nonresident producer licensure" and reads as follows:]

(A) Unless denied licensure pursuant to Section 38-43-130, a nonresident person shall receive a nonresident producer license if:

- (1) The person is currently licensed as a resident and in good standing in his home state;
- (2) The person has submitted the proper request for licensure and the fees have been paid as set forth in Section 38-43-80;
- (3) The 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 in lieu of the same an original completed Uniform Application; and
- (4) The 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 38-45-20.

(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.

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

[Eff January 31, 2003]

(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 credit insurance;
- (8) limited line insurance;
- (9) 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.

#### **SECTION 38-43-80. Fees for licenses.**

[Until January 30, 2003, this section reads as follows:]

(A) The following biennial fees are applicable to an agent's license:

- (1) local agent: forty dollars;
- (2) state, special, or general agent: one hundred dollars;
- (3) agency: forty dollars. However, the fee applicable to an agent 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) License fees for local, state, or special agents must be paid by the insurer for whom the agent proposes to act or by which the proposed agent is vouched for in the application for license. The department shall promulgate regulations specifying the time and manner of payment of these fees.

[From and after January 31, 2003, this section reads as follows:]

(A) Unless otherwise changed by order of the director, the following fees are applicable to producer licenses, agency licenses, and insurer appointments:

- (1) local producer license fee: twenty dollars; biennial appointment fee: forty dollars;

- (2) special producer initial and biennial license and appointment fee: one hundred dollars; general producer initial and biennial appointment fee: one hundred dollars;
- (3) agency license--initial and biennial license fee: forty dollars; limited lines biennial license and appointment fee: forty dollars.

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) At the time of licensure, the license fee for each applicable line of insurance must be paid in advance by the producer. The department shall promulgate regulations specifying the time and manner of payment of these fees.

(C) Effective January 31, 2003, individuals licensed as local producers shall pay a one-time administrative fee of thirty-five dollars. Furthermore, each new applicant for a local producer license on or after January 31, 2003, shall pay a one-time twenty dollar license fee. The one-time local producer administrative fee and license fee are to be retained by the department as other funds for purposes of implementing and administering individual licensing requirements. If the administrative fee for a local producer is not paid at the time and in the manner prescribed by the department, the license may be canceled. All other license and appointment fees must be deposited into the general fund.

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

[Until January 30, 2003, this section reads as follows:]

No license fee may be charged by the State or any county, city, or town 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.

[From and after January 31, 2003, this section reads as follows:]

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.

**SECTION 38-43-100.** Application for and issuance of licenses; standards for agents; examinations required; exemptions; temporary licenses.

[Until January 30, 2003, this section reads as follows:]

Before being issued a license to do business as an agent in this State for an insurer, each applicant shall make written application for the license upon forms to be furnished by the department, and all information on the forms required by the director or his designee must be subscribed to by the applicant under oath. No business may be done by the applicant except following issuance of an agent'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 agent, 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 agents as to all lines of business and shall require the local agent applicant to stand a written examination. The director or his designee may waive the examination with respect to applicants who have achieved the designations of Chartered Property and Casualty Underwriter (CPCU) or Chartered Life Underwriter (CLU). The director or his designee may also, at his discretion, waive the

examination and issue temporary licenses for a period not to exceed ninety days, upon demonstrated need. An agent of a common carrier who sells only trip transportation ticket policies of accident and health insurance or baggage insurance on personal effects is not required to stand a written examination. No person who is a salaried employee and acts as an agent for a bank, savings and loan association, savings bank, finance company, trust company, credit union, automobile dealer, or other company handling credit transactions operating in this State, who writes credit life, credit accident and health insurance, credit property, or any combination of these in connection with a loan or other credit transaction, is required to stand a written examination. Any 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 agents 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 agent to answer customers' questions concerning credit life, credit accident and health insurance, or credit property, or any combination of these. The director or his designee, subject to item (d) of this section if he is assured of the honesty and trustworthiness of the applicant by the insurer which the applicant will represent, shall issue a nonrenewable temporary life insurance agent's license valid for ninety days without requiring the applicant to pass a written examination, as follows:

(a) A temporary life insurance agent's license to the executor or administrator of the estate of a deceased person who at the time of his death was a licensed life insurance agent.

(b) A temporary life insurance agent's license to a surviving next of kin of a deceased life insurance agent, if no administrator or executor has been appointed and qualified, but any license issued under this item must be revoked upon issuance of a license to an executor or administrator under item (a).

(c) A temporary life insurance agent's license to an applicant who has filed a written application for a license on forms furnished by the department where the applicant will actually collect the premiums on debit life and health insurance contracts during the period of the temporary license. The license shall, with respect to the applicant's solicitation and sales activities during the license period, authorize only the solicitation and sale of debit life and health insurance contracts. If the temporary license is not received from the director or his designee within fifteen days from the date the application was mailed to the department, by certified or registered mail, the insurer may assume that the temporary license will be issued in due course. For the purpose of this item

(c) a debit life and health insurance contract means a contract for which the premiums are payable at monthly or more frequent intervals directly by the owner, or by a person representing the owner, to a representative of the company.

(d) If more than twenty-five percent of the temporary licensees of an insurer fail to receive a permanent license, not counting those who fail the written examination twice, in any twelve-month period it is prima facie evidence that the insurer is abusing the privilege of obtaining temporary licenses. Upon a determination by the director or his designee of abuse being made, following a public hearing, no temporary license may be issued for twenty-four months following the month of the determination of abuse on behalf of the insurer.

[From and after January 31, 2003, this section is entitled "Individual and agency insurance producer licensing; written examinations; contents of license" and reads as follows:]

(A) No business may 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 or limited lines credit insurance are approved in South Carolina and which are exempt from examination. The director or his designee may waive the examination with respect to applicants who have achieved the designations of Chartered Property and Casualty Underwriter (CPCU) or Chartered Life Underwriter (CLU). The director or his designee may also, at his discretion, waive the examination and issue temporary licenses for a period not to exceed ninety days, upon demonstrated need. 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 a written examination unless exempt pursuant to subsection (A) of this section. The examination shall 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. Examinations required by this section must be developed and conducted under rules and 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 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 individual's knowledge and belief. Before approving the application, the director or his designee shall find that the individual:

(1) is at least eighteen years of age;

(2) has not committed any act that is a ground for denial, suspension, or revocation set forth in Section 38-43-130;

(3) has completed a prelicensing course of study for the lines of insurance for which the person has applied;

(4) has paid the fees set forth in Section 38-43-80; and

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

(G) 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.

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

(I) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the line or lines of authority, the expiration date and any other information the Director of Insurance or his designee deems necessary.

(J) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each individual whose duties include selling, soliciting, or negotiating limited line credit insurance a program of instruction that is approved by the director or his designee.

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

[Eff January 31, 2003]

(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 any prelicensing education or examination. This exemption is only available if the person is currently licensed in that 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. No prelicensing education or examination is required of that person to obtain any line of insurance previously held in the prior 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.

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

[Eff January 31, 2003]

(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 a business entity 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.

**SECTION 38-43-105.** Education requirements for local and general agents; exceptions.

[Until January 30, 2003, this section reads as follows:]

(a) No applicant may be licensed as a local or general agent unless, within two years immediately preceding the date of his licensing, he has:

(1) Successfully completed classroom courses, or the equivalent thereof, in insurance approved by the director or his designee consisting of no less than forty classroom hours, or the equivalent thereof; or

(2) Had at least one year of insurance underwriting or marketing experience as an employee of an agent, insurer, or their managers or general agents in all lines of insurance for which he is making application to be licensed.

(b) Certification of qualification of the applicant must be made by an official of the school, college, insurance company, association, or other body conducting the course of study, or by the former employer for qualification under item (2) of subsection (a) of this section. The certification must be in a format approved by the director or his designee and submitted with the sponsoring company's appointment of the agent and the agent's application for an agent's license, except where a temporary license is requested pursuant to Section 38-43-100, in which event the temporary license may be issued without such certification, if the sponsoring company furnishes certification prior to the applicant's being granted permission to take the examination. The certification of qualification of the applicant must be made within thirty days from the date of receipt of the request to provide the certification.

(c) Any course or program of instruction or seminar developed or sponsored, or developed and sponsored, by any authorized insurer, recognized agents, association, or insurance trade association or any independent program of instruction shall, subject to the approval of the director or his designee, qualify for the equivalency of the number of classroom hours assigned thereto by the director or his designee.

(d) Any correspondence course approved by the director or his designee shall qualify for the equivalency of the number of classroom hours assigned thereto by the director or his designee.

(e) This section applies to residents applying for a license to engage in the sale of insurance except those persons who have previously been licensed for a period of five years or more and those persons applying for a license limited to the following types of insurance only or a combination thereof:

(1) credit life or credit accident and health;

- (2) credit property;
- (3) crop hail;
- (4) automobile physical damage;
- (5) mortgage guaranty or mortgage redemption, or both;
- (6) title;
- (7) travel accident and baggage
- (8) Federal Crop Insurance Program.

[From and after January 31, 2003, this section is entitled “Education requirements for local and general producers; exceptions” and reads as follows:]

(A) No applicant may be licensed as a local or general producer unless, within two years immediately preceding the date of his licensing, he has:

(1) successfully completed classroom or correspondence courses in insurance approved by the director or his designee consisting of no less than forty classroom hours, or forty self-study hours; or

(2) had at least one year of insurance underwriting or marketing experience as an employee of a producer, insurer, or their managers or general producers in all lines of insurance for which he is making application to be licensed.

(B) Certification of qualification of the applicant must be made by an official of the school, college, insurance company, association, or other body conducting the course of study, or by the former employer for qualification under item (2) of subsection (A) of this section. The certification must be in a format approved by the director or his designee and submitted by the producer with the producer’s application for a producer’s license, except where a temporary license is requested pursuant to Section 38-43-100, in which event the temporary license may be issued without such certification, if the sponsoring insurer or licensed producer who assumes responsibility for all acts of the temporary licensee furnishes certification prior to the applicant’s being granted permission to take the examination. The certification of qualification of the applicant must be made within thirty days from the date of receipt of the request to provide the certification. A person who falsely represents that he or another person has met the pre-licensing educational requirements of this section, after being afforded notice and an opportunity for a hearing by the Administrative Law Judge Division, is subject to the penalty provided in Section 38-2-10.

(C) Any course or program of instruction or seminar developed or sponsored, or developed and sponsored, by any authorized insurer, recognized producers, association, or insurance trade association or any independent program of instruction shall, subject to the recommendation of approval by the Continuing Education Advisory Committee, as provided for under Section 38-43-106(C) to the director or his designee, shall qualify for the equivalency of the number of classroom hours assigned to it by the director or his designee.

(D) Any correspondence course approved by the director or his designee shall qualify for the equivalency of the number of classroom hours assigned thereto by the director or his designee. Any applicant taking a prelicensing education course by correspondence in fulfillment of the forty-hour prelicensing education requirement must successfully pass a closed book examination that is monitored by a state approved proctor.

(E) This section applies to residents applying for a license to engage in the sale of insurance except those persons who have previously been licensed for a period of five years or more and those persons applying for a license in limited lines or limited lines credit insurance approved by the director or his designee in order to satisfy the reciprocity provisions outlined under this



chapter. Each course sponsor is required to submit a nonrefundable filing fee established by the department.

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

[Until January 30, 2003, this section reads as follows:]

(A) In addition to the requirements contained in Section 38-43-105, any applicant or agent licensed to sell property and casualty insurance or to sell life, accident and health insurance, or both, or qualified for this licensure, must complete biennially a minimum of twenty-four hours of continuing insurance education in order to be eligible for licensure for the following two years.

However, if an agent is licensed in both property and casualty and life, accident and health, the agent must 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 any other provision of law, a maximum of twelve credit hours earned in a twelve-month period 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.

(B) The forty-hour prelicensing educational requirement contained in Section 38-43-105 is sufficient to fulfill the requirements of this section for up to the first two years. Any waiver of this forty-hour requirement, as provided in Section 38-43-105(a)(2), is sufficient to meet the continuing insurance education requirements of this section.

(C) The director or his designee shall administer these continuing education requirements and shall approve courses of instruction which qualify for these purposes. In administering this program, the department, in its discretion, may promulgate regulations whereby agents provide to a continuing education administrator established within the Department of Insurance 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 agents 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 agents, records reflecting the continuing insurance education status of all licensed or qualified agents subject to the requirements of this section. The continuing education administrator shall furnish to the insurer, within ninety days of the agent's renewal date, as specified by regulation, a report of the continuing insurance education status of all of its agents. All licensed agents shall provide evidence of their continuing insurance education status to the continuing education administrator at least one hundred twenty days before the annual renewal date. Any continuing insurance education approved courses taken subsequent to one hundred twenty days before the renewal date must be applied to the following biennial continuing insurance education required period.

The department may promulgate regulations prescribing the overall parameters of continuing education requirements, and these regulations shall expressly authorize the director or his designee to recognize product-specific training offered by insurers, subject to those parameters and guidelines as are promulgated by the regulations. The director of the department 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, subject to those regulations as are promulgated. 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. The advisory committee must be comprised of sixteen representatives. 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 Advisors; 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 any other individual, group, or trade or professional association.

Vacancies on the advisory committee must be published in newspapers of general, statewide circulation. Advisory committee members must be appointed for a term of two years each and shall serve until their successors are appointed and have qualified. Any vacancy must be filled for the unexpired term only.

(D) The license of any agent may not be renewed for any license year unless the agent has completed the mandated continuing insurance education requirements during the previous two-year accreditation period. Each insurer is responsible, annually at renewal, for furnishing to the department certification that its agents meet the continuing insurance education requirements. Insurers appointing individuals who are qualified but not currently licensed for any insurer are also required, in connection with the appointment of such an agent, to certify to the department that the agent meets the continuing insurance education requirements. Each agent is responsible for payment to the continuing education administrator of a reasonable annual fee for operation of the continuing insurance education program. These fees must be used to administer the provisions of this section.

(E) This section also applies to nonresident agents unless otherwise provided herein. However, any nonresident agent who successfully satisfies continuing insurance education requirements of his resident state and certifies this information to the continuing education administrator as specified in subsection (C) is deemed to have satisfied the requirements of this section regardless of the requirements of that other state.

(F) Insurance agents licensed solely for credit life or credit accident and health insurance, credit property insurance, crop hail insurance, automobile physical damage insurance, mortgage guaranty, or mortgage, title, travel accident and baggage, or the federal crop insurance are exempt from the provisions of this section. Insurance agents licensed solely for domestic insurance companies which have less than one million dollars in written premiums in any calendar year are exempt from the provisions of this section. Licensed special agents, or any or all of them, that the department by regulation shall specify are exempt from the provisions of this section.

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

(H) A licensed agent reaching the age of fifty-five, with a minimum of twenty years of continuous licensure, is exempted from the requirements of this section as to the line or lines which are otherwise subject to the provisions of this section.

(I) 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.

[From and after January 31, 2003, this section reads as follows:]

(A)(1) In addition to the requirements contained in Section 38-43-105, any 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, must 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 educational requirements of this section, after being afforded notice and an opportunity for a hearing by the Administrative Law Judge Division, is subject to the penalty 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 must 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 any other 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.

(B) The forty-hour prelicensing educational requirement contained in Section 38-43-105 is sufficient to fulfill the requirements of this section for up to the first two years. Any waiver of this forty-hour requirement, as provided in Section 38-43-105(A)(2), is sufficient to meet the continuing insurance education requirements of this section. However, the producer must still pay the continuing education fee required by subsection (D).

(C)(1) The director or his designee shall administer these continuing education requirements and shall approve courses of instruction which qualify for these purposes. In administering this program, the department, in its discretion, may promulgate regulations whereby producers provide to a continuing education administrator established within the Department of Insurance 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 May first of the biennially compliance year unless granted an extension. Any continuing insurance education approved courses taken subsequent to this May first deadline must be applied to the following biennial continuing insurance education required period.

(2) The department may promulgate regulations prescribing the overall parameters of continuing education requirements, and these regulations shall expressly 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. The advisory committee must be comprised of sixteen representatives. 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 any other individual, group, or trade or professional association.

(3) Vacancies on the advisory committee must be published in newspapers of general, statewide circulation. Advisory committee members must be appointed for a term of two years each and shall serve until their successors are appointed and have qualified. Any vacancy must be filled for the unexpired term only.

(D) The appointment of any 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 of 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.

(E) This section also applies to nonresident producers unless otherwise provided herein. However, any nonresident producer who successfully satisfies continuing insurance education requirements of his resident state and certifies this information to the continuing education administrator as specified in subsection (C) is deemed to have satisfied the requirements of this section regardless of the requirements of that other state.

(F) Insurance producers licensed in accordance with the provisions under Section 38-43-105(E) for limited lines insurance or limited lines credit insurance are exempt from the provisions of this section. Insurance producers licensed solely for domestic insurance companies which have less than one million dollars in written premiums in any calendar year are exempt from the provisions of this section. Licensed special producers, or any or all of them, that the department by regulation shall specify are exempt from the provisions of this section.

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

(H) A licensed producer reaching the age of fifty-five, for any lines of authority for which he has a minimum of twenty years of continuous licensure, is exempted from the requirements of this section as to the line or lines which are otherwise subject to the provisions of this section. A licensed producer reaching the age of sixty for any lines of authority for which he has a minimum of twenty years of active licensure, is exempted from the requirements of this section as to the line or lines which are otherwise subject to the provisions of this section.

(I) 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.

**SECTION 38-43-107.** Applicant's business and residence address required; notice of change of address required.

[Until January 30, 2003, this section reads as follows:]

When an individual applies for an insurance agent's license he shall supply the Department his business and residence address. The agent shall notify the Department within thirty days of any change in these addresses.

[From and after January 31, 2003, this section reads as follows:]

(A) When an individual applies for an insurance producer's license he shall supply the department his business mailing and residence street address. The producer shall notify the department within thirty days of any change in legal name or in these addresses.

(B) Failure to inform the insurance director or his designee of a change in legal name or address within this period shall result in a penalty pursuant to Section 38-2-10.

**SECTION 38-43-110.** Duration of license; nonpayment of fee; requirements for reinstatement.

[Until January 30, 2003, this section reads as follows:]

An agent's license is for an indefinite term unless revoked, suspended, or terminated. If the biennial license fee for an agent is not paid at the time and in the manner the department provides by regulation, the license must be canceled. If the license is to be reinstated, an original application must be filed and a reinstatement fee equal to the biennial license fee unpaid must be paid in addition to the regular biennial license fee.

[From and after January 31, 2003, this section reads as follows:]

(A) A producer's license is for an indefinite term unless revoked or suspended as long as the requirements of Section 38-43-106 are met. If the biennial appointment fee for a producer is not paid at the time and in the manner the department provides by regulation, the appointment must be canceled.

(B) A producer who allows his license to lapse for failure to comply with Section 38-43-106 may, within six months from the compliance deadline, reinstate the same license without the necessity of complying with Section 38-43-105, provided a total of thirty hours of continuing education has been completed by November first of the compliance year, 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 may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

**SECTION 38-43-120.** Licenses are not renewable if used primarily for personal coverage.

[Until January 31, 2003, this section reads as follows:]

A license may not be renewed to an agent whose premium writings represented by the premiums or contracts of insurance signed, countersigned, issued, or sold by him for the general public during the preceding year do not exceed those on insurance signed, countersigned, issued, or sold

by him covering his own personal coverage and the coverage of members of his immediate family, his employer, and his employees.

[After January 30, 2003, this section ceases to be of any force or effect and listed as “Reserved”.]

**SECTION 38-43-130.** Revocation or suspension of, or refusal to reissue, license.

[Until January 30, 2003, this section reads as follows:]

The director or his designee may revoke or suspend an agent’s license after ten days’ notice or refuse to reissue a license when it appears that an agent 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.

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.

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

- (1) misstating the facts in an application for insurance or aiding in the misstatement of the facts;
- (2) failing to inform promptly the customer or insured of the correct premium or informing him of an incorrect premium based on the information furnished the agent by the customer or insured;
- (3) failing to transmit promptly or pay all or a portion of the amount of an insurance premium when the agent or one of his employees has received payment from a customer or insured or someone on his behalf or when it has been financed by the agent;
- (4) issuing his check covering all or a portion of an insurance premium which is not accepted by the bank on which it is written when it is initially submitted to the bank;
- (5) failing to deliver promptly a policy, endorsement, or rider to any insured;
- (6) failing to notify promptly the customer or insured if the agent has been unable to obtain the requested insurance for him;
- (7) failing to maintain adequate records regarding insurance sought or obtained from or through the agent which can be examined by the director or his designee or one of his representatives for and on behalf of a citizen of this State.

When upon investigation the director or his designee finds that an agent 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. No licensee whose license has been revoked or an applicant who has been refused a license by the director or his designee has the right to apply for another license within two years from the effective date of the revocation or refusal or, if judicial review before the Administrative Law Judge Division of the revocation or refusal is sought, within two years from the date of a final court order or decree affirming the revocation or suspension.

If, after notice of a hearing before the Administrative Law Judge Division or notice of an opportunity for hearing before the Administrative Law Judge Division, 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, in lieu of revocation, suspension, or refusal, may impose upon the agent or applicant an administrative penalty as provided in Section 38-2-10 for each offense or ground.

The director or his designee may allow the agent 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 agent 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.

[From and after January 31, 2003, this section is entitled "Probation, revocation, suspension of license, or denial of reissuance" and reads as follows:]

(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 any 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 any other 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;
- (14) failing to pay state income tax or comply with any administrative or court order directing payment of state income tax;
- (15) failing to inform promptly the customer or insured of the correct premium or informing him of an incorrect premium based on the information furnished the producer by the customer or insured;

- (16) failing to deliver promptly a policy, endorsement, or rider to any insured;
- (17) failing to notify promptly the customer or insured whether or not the producer has been able to obtain the requested insurance for him; or
- (18) failing to maintain adequate records regarding insurance sought or obtained from or through the producer which can be examined by the director or his designee or one of his representatives for and on behalf of a citizen of this State.
- (D) When 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. No licensee whose license has been revoked or an applicant who has been refused a license by the director or his designee may 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 Judge Division 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 Judge Division or notice of an opportunity for hearing before the Administrative Law Judge Division, 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, in lieu 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.



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

[Until January 30, 2003, this section reads as follows:]

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

[From and after January 31, 2003, this section reads as follows:]

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.

**SECTION 38-43-170.** Agents are personally liable on contracts of unauthorized insurers.

[Until January 30, 2003, this section reads as follows:]

An insurance agent 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, agent, or broker, the effect of which is to bind any insurance in an unlicensed insurer on property in this State, is the agent of the insurer and personally liable for all licenses and taxes due on account of the transaction.

[From and after January 31, 2003, this section is entitled "Personal liability of producers on contracts of unauthorized insurers" and reads as follows:]

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.

**SECTION 38-43-180.** Agents are personally liable for selling policy of unlicensed insurer.

[Until January 30, 2003, this section reads as follows:]

Every insurance agent 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 agent fails to comply with the provisions of this title relating to policies issued by insurers not licensed to do business in this State.

[From and after January 31, 2003, this section is entitled "Personal liability of producers for selling policy of unlicensed insurer" and reads as follows:]

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.

**SECTION 38-43-190.** Validity of payment of premium to apparent agent; penalty for fraud.

[Until January 30, 2003, this section reads as follows:]

An insurance agent who acts on behalf of another in negotiating a contract of insurance is the insurer's agent for the purpose of receiving the premium. An agent 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.

[From and after January 31, 2003, this section is entitled "Producer receipt of premium; penalty for fraud" and reads as follows:]

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.

**SECTION 38-43-200.** Splitting commissions with unlicensed persons.

[Until January 30, 2003, this section reads as follows:]

(a) A licensed agent representing an insurer may not pay, directly or indirectly, any commission, brokerage, or other valuable consideration on account of any policy of insurance on any risk in this State to any nonresident or resident not duly licensed to act as agent or broker for the type of insurance involved.

(b) Notwithstanding the provisions of subsection (a), agents licensed under this title may write insurance at the request of other licensed agents or licensed brokers or licensed nonresident brokers and allow the licensed agents or licensed brokers or licensed nonresident brokers not exceeding one-half of the commissions which they receive on the business written.

(c) The limitations contained in subsection (b) with respect to the amount of commission which may be allowed other licensed agents or licensed brokers or licensed nonresident brokers do not apply where the insurance written is life insurance or accident and health insurance.

(d) 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.

(e) Nothing in this section should be construed to prohibit any licensed insurance agent from rebating any portion of his commission collected on automobile insurance premiums to the insured upon that automobile insurance policy.

[From and after January 31, 2003, this section reads as follows:]

(A) A licensed producer representing an insurer may not pay, directly or indirectly, any commission, brokerage, or other valuable consideration on account of any policy of insurance on any risk in this State to any nonresident or resident not duly licensed to act as producer or broker for the type of insurance involved.

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

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

(D) 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.

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

(F) 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 in accordance with Section 38-43-20 and is not licensed pursuant to that section.

(G) 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 under this chapter and is not licensed pursuant to it.

(H) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this State if the person was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was licensed pursuant to it at that time.

(I) An insurer or insurance producer may pay or assign commissions, service fees, brokerages, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate insurance in this State, unless the payment would violate the procedures as outlined under Chapter 57 of Title 38.

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

[Until January 30, 2003, this section reads as follows:]

It is unlawful for a licensed insurance agent 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 agent.

[From and after January 31, 2003, this section reads as follows:]

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.

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

[Until January 30, 2003, this section reads as follows:]

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.

[From and after January 31, 2003, this section reads as follows:]

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.

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

[Until January 30, 2003, this section reads as follows:]

Any 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 agent 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.

[From and after January 31, 2003, this section reads as follows:]

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.

**SECTION 38-43-240.** Other offenses by agents.

[Until January 30, 2003, this section reads as follows:]

(A) It is unlawful for an agent, 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.

[From and after January 31, 2003, this section is entitled "Other offenses by producers" and reads as follows:]

(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.

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

[Until January 30, 2003, this section reads as follows:]

Any licensed insurance agent 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.

[From and after January 31, 2003, this section reads as follows:]

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.

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

[Eff January 31, 2003]

(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.

**SECTION 38-43-250.** Agents to keep records of business done, furnish to director for inspection.

[Until January 30, 2003, this section reads as follows:]

All agents 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.

[From and after January 31, 2003, this section is entitled "Producer records" and reads as follows:]

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.

**SECTION 38-43-260.** Signing certain blank policies.

[Until January 30, 2003, this section reads as follows:]

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

[From and after January 31, 2003, this section is entitled "Signing of certain blank documents" and reads as follows:]

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.

### ARTICLE 3.

ADVANCING OF PREMIUMS BY AGENTS [AFTER JANUARY 30, 2003, THIS ARTICLE IS ENTITLED "ADVANCING OF PREMIUMS BY PRODUCERS"]]

#### **SECTION 38-43-410.**

Service charge; unpaid balance and service charge are lien on unearned premiums.

[Until January 30, 2003, this section reads as follows:]

When, pursuant to the written or oral request of an insured or applicant for insurance, an insurance agent 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 agent 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 agent 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.

[From and after January 31, 2003, this section reads as follows:]

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.

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

[Until January 30, 2003, this section reads as follows:]

Advances made by an agent, agency, or producer of record in behalf of an insured or applicant for insurance and any lien arising therefrom under this article 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 agent, agency, or producer of record in connection with, or related to, the advance of premiums. The agent, agency, or producer may not require, as a condition to the advancing of the premiums, that the insured purchase any other policy, commodity, product, or service.

[From and after January 31, 2003, this section reads as follows:]

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.

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

[Until January 30, 2003, this section reads as follows:]

Extension to the insured or applicant for insurance of his credit with an insurer by an agent, 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 agent, agency, or producer remitted to the insurer at a different time or remitted to the insurer net of commission.

[From and after January 31, 2003, this section reads as follows:]

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.

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

[Until January 30, 2003, this section reads as follows:]

In the event that 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 agent, agency, or producer, the agent, agency, or producer may call upon the insurer to cancel the policy and refund any unearned premiums on a pro rata basis to the agent, agency, or producer 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.

In the event of 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 agent,

agency, or producer in recognition of his, or its, lien, and payment of the refund to the agent, agency, or producer 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.

Failure of an agent, agency, or producer 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 agent, agency, producer, or insurer nor is the agent, agency, or producer 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.

[From and after January 31, 2003, this section reads as follows:]

(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.

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

[Until January 30, 2003, this section reads as follows:]

Any excess of return premium paid by the insurer to an agent, agency, or producer in discharge of the lien provided by this article over the amount of unpaid balance and accrued service charges must be held by the agent, 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 agent, agency, or producer of the return premium refunded by the insurer.

[From and after January 31, 2003, this section reads as follows:]



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.

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

[Until January 30, 2003, this section reads as follows:]

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.

[From and after January 31, 2003, this section reads as follows:]

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.

**SECTION 38-43-470.** Agreements not subject to Section 38-55-50; agent presumed to be acting in own right.

[Until January 30, 2003, this section reads as follows:]

Agreements or arrangements for the advancing of insurance premiums by an insurance agent, 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.

An agent or agency which, pursuant to this article, advances premiums in behalf of an insured or applicant for insurance to an insurer for which the agent 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 agent or agency to the insurer to cancel a policy, nor the assertion or perfection of the lien by the agent or agency, is considered to create a conflict in interest nor is any act of an agent, 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.

[From and after January 31, 2003, this section is entitled “Agreements not subject to Section 38-55-50; producer or agency presumed to acting in own right” and reads as follows:]

(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.

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

[Eff January 31, 2003]

(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.

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, pick-up 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.