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## CHAPTER 45.

### INSURANCE BROKERS AND SURPLUS LINES INSURANCE

#### **SECTION 38-45-10.** “Insurance broker” defined.

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

- (a) sells, solicits, or negotiates insurance on behalf of an insured;
- (b) takes or transmits other than for himself an application for insurance or a policy of insurance to or from an insured;
- (c) advertises or otherwise gives notice that he receives or transmits a surplus lines application or policies;
- (d) receives or delivers a policy of surplus lines insurance for an insured on behalf of a surplus lines insurer;
- (e) receives, collects, or transmits a premium of surplus lines insurance; or
- (f) performs another act in the making of a surplus lines insurance contract for or with an insured.

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

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

#### **SECTION 38-45-20.** Requirements for resident to be licensed as an insurance broker.

A resident property and casualty-licensed insurance producer may be licensed as an insurance broker by the director or his designee if the following requirements are met:

- (1) licensure of the resident as an insurance producer for the same lines of insurance for which he proposes to apply as a broker of this State;
- (2) successfully passed the South Carolina broker licensing examination;
- (3) payment of a biennial license fee of two hundred dollars which is earned fully when received, not refundable;
- (4) filing of a bond with the department in a form approved by the Attorney General in favor of South Carolina of ten thousand dollars executed by a corporate surety licensed to transact surety insurance in this State and personally countersigned by a licensed resident agent of the surety. The bond must be conditioned to pay a person insured or seeking insurance through the broker who sustains loss as a result of:
  - (a) the broker’s violation of or failure to comply with an insurance law or regulation of this State;
  - (b) the broker’s failure to transmit properly a payment received by him, cash or credit, for transmission to an insurer or an insured; or
  - (c) an act of fraud committed by the broker in connection with an insurance transaction. Instead of a bond, the broker may file with the department certificates of deposit of ten thousand dollars of building and loan associations or federal savings and loan associations located within the State in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed the amount of insurance, or of banks located within the State in which deposits are guaranteed by the Federal Deposit Insurance Corporation, not to exceed the amount of insurance. An aggrieved person may institute an action in the county of his residence against the broker or his surety, or both, to recover on the bond or against the broker to recover from the certificates of deposit, and a copy of the summons and complaint in the action must be served on the director, who is not required to be made a party to the action;
- (5) payment to the department, within thirty days after March thirty-first, June thirtieth, September thirtieth, and December thirty-first each year, of a broker’s premium tax of four percent upon premiums for policies of insurers not licensed in this State. In computing total premiums, return premiums on risks and

dividends paid or credited to policyholders are excluded. Such credit must be refunded to the policyholder.

**SECTION 38-45-30.** Requirements for nonresident to be licensed as an insurance broker.

A nonresident may be licensed as an insurance broker by the director or his designee if the following requirements are met:

- (1) filing an application on a form prescribed by the director or his designee;
- (2) filing an affidavit stating he will not during the period of the license place, directly or indirectly, insurance on a risk located in this State except through licensed agents of insurers licensed to do business in this State;
- (3) filing an affidavit stating he is a licensed broker in another state;
- (4) paying a biennial license fee of two hundred dollars fully earned when received, not refundable;
- (5) An aggrieved person may institute an action in the county of his residence against the broker to recover damages. A copy of the summons and complaint in the action must be served on the director, who is not required to be made a party to the action.
- (6) paying the department, within thirty days after March thirty-first, June thirtieth, September thirtieth, and December thirty-first each year, a broker's premium tax of four percent upon premiums for policies of insurers not licensed in this State. In computing total premiums, return premiums on risks and dividends paid or credited to policyholders are excluded. Such credit must be refunded to the policyholder.

**SECTION 38-45-35.** Applicant's business and residence address required; notice of change of address required.

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

**SECTION 38-45-40.** Reciprocal agreements as to licensing nonresidents.

The director or his designee may enter into reciprocal agreements with the insurance commissioners of other states in regard to licensing of nonresident brokers 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 a broker's license. However, the director or his designee may not enter into or continue any reciprocal agreement unless the other state is as liberal as this State in licensing nonresident brokers.

**SECTION 38-45-50.** Duration of broker's license; nonpayment of license fee.

Each license issued is for an indefinite term unless revoked or suspended. If the biennial license fee of a broker 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.

**SECTION 38-45-60.** Disposition of broker's premium tax.

As soon after December thirty-first of each year as may be convenient, the director or his designee shall render an accounting to the state Treasurer of the broker's premium tax collected showing the counties in which the risk covered by the insurance is located and shall furnish a duplicate of the accounting to the Comptroller General. The Comptroller General shall draw his warrant on the State Treasurer for one-fourth of the broker's premium tax collected on property insurance, payable to the county treasurer of

the county in which the property is located. The county treasurer shall distribute the broker's premium tax collected on property insurance in accordance with the requirements of Sections 23-9-360 and 23-9-470 and Sections 38-7-70 and 38-7-80.

**SECTION 38-45-70.** Effect of broker's license; municipal license fees.

A broker's license entitles the holder to solicit insurance in any county of this State. However, municipalities may impose license fees in accordance with their ordinances.

**SECTION 38-45-80.** Brokers to keep records of business done, furnish to director for inspection.

All brokers doing any kind of insurance business in this State 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 38-45-90.** Duties of brokers placing business with nonadmitted insurers; statements and reports.

At the request of a licensed resident broker, the director or his designee may approve certain nonadmitted insurers as eligible surplus lines insurers to write business on risks located in this State that one or more insurers licensed in this State to write that line of business in this State have declined to write. The director or his designee may require the broker to submit, on behalf of the insurer, documents necessary to satisfy him that the insurer is licensed in his home state, that it is solvent, and that its operation is not hazardous to the policyholders. The director or his designee may require the broker or the insurer to file additional documents at any time to maintain the insurer's status as an eligible surplus lines insurer. The director or his designee may withdraw his approval at any time the insurer fails to meet any of the requirements. While the insurer maintains his status as an eligible surplus lines insurer, a duly licensed broker, under the terms of this chapter, may place business with the insurer. An insurance broker shall exercise due care in the placing of insurance. Each broker transacting business in the State during a calendar year shall file annually with the department within thirty days after December thirty-first a detailed report of this business. The report must be in the form the director or his designee prescribes. The broker's books, papers, and accounts must be open at all times to the inspection of the director or his designee.

**SECTION 38-45-100.** Brokers may divide commissions.

A licensed insurance broker may divide commissions with agents or brokers in other states or with an agent licensed in this State for an insurer doing the particular class of insurance desired to be placed through the broker.

**SECTION 38-45-110.** Warning on stamped on policies of eligible surplus lines insurer.

The broker shall write or stamp upon the face of each policy and application of an eligible surplus lines insurer the words, "This company has been approved by the director or his designee of the South Carolina Department of Insurance to write business in this State as an eligible surplus lines insurer, but it is not afforded guaranty fund protection".

**SECTION 38-45-120.** Personal liability of broker on policy of unlicensed insurer.

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

**SECTION 38-45-130.** Adjustment of losses; inspections and endorsements.

All losses occurring under policies placed through an insurance broker may be adjusted by a licensed agent or adjuster in this State. All inspections of property and endorsements on policies may be made by a licensed broker or any other licensed insurance agent in this State authorized to do so.

**SECTION 38-45-140.** Revocation of license of broker.

When the director or his designee determines after investigation that a broker has violated this title, he may, upon ten days' notice, impose the penalties provided in Section 38-2-10.

**SECTION 38-45-150.** Penalties.

Any person violating this chapter is guilty of a misdemeanor. Each risk written in violation of this chapter is considered a separate offense.

**SECTION 38-45-160.** Brokers policy fees.

No policy fee may be charged by a broker unless it is a reasonable fee, it is made part of the contract, and the four percent broker's premium tax is paid upon the policy fee. If for any reason the director or his designee disapproves the placement or the insurer ultimately refuses to write the risk, the broker shall immediately refund the full policy fee to the policyholder.

**SECTION 38-45-170.** Appointment of director as attorney for service of legal process, for eligible surplus lines insurers.

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