

CHAPTER 51
Administrators of Insurance Benefit Plans

SECTION 38-51-10. Administrator defined.

As used in this chapter, "administrator" means any person who collects charges or premiums from, or who adjusts or settles claims on, residents of this State in connection with life or health insurance coverage or annuities other than:

- (1) an employer on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of an employer;
- (2) a union on behalf of its members;
- (3) an insurer which is either licensed in this State or acting as an insurer with respect to a policy lawfully issued and delivered by it pursuant to the laws of a state in which the insurer was authorized to do insurance business, or a health maintenance organization licensed in this State;
- (4) a life or health agent or broker licensed in this State whose activities are limited exclusively to the sale of insurance;
- (5) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
- (6) a trust, its trustees, agents, and employees acting thereunder, established in conformity with 29 U.S.C. 186;
- (7) a trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its trustees, and employees acting thereunder, or a custodian, its agents and employees acting pursuant to a custodian account which meets the requirements of Section 401(f) of the Internal Revenue Code;
- (8) a bank, credit union, or other financial institution which is subject to supervision or examination by federal or state banking authorities;
- (9) a credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so if the company does not adjust or settle claims;
- (10) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney at law and who does not collect charges or premiums in connection with life or health insurance coverage or annuities; or
- (11) the South Carolina Life and Accident and Health Insurance Guaranty Association and any person who adjusts or settles claims as its employee or agent.

HISTORY: Former 1976 Code Section 38-51-10 [1947 (45) 322; 1952 Code Section 37-233; 1962 Code Section 37-233] recodified as Section 38-43-10 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-67-10 [1985 Act No. 133, Section 1] recodified as Section 38-51-10 by 1987 Act No. 155, Section 1; 1988 Act No. 379, Sections 1, 2.

SECTION 38-51-20. License required of administrator.

No person may act as an administrator in this State without first being licensed by the director or his designee.

Any person who acts as an administrator without a license is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than two years, or both, and is subject to revocation of any insurance licenses issued by the director or his designee.

Application for a license must be upon forms prescribed by the director or his designee and must be accompanied by an initial license fee of one hundred dollars, annual financial statements or reports for the two preceding calendar years, and any other documents that the director or his designee may require to ensure that the administrator meets the requirements for licensure set forth in this section. Thereafter, the administrator shall pay to the department a license renewal fee of one hundred dollars by March first of each year.

Before granting any license, the director or his designee must be satisfied that the administrator is competent, trustworthy, financially responsible, has a good personal and business reputation, has not had

an insurance license revoked, suspended, or denied in any jurisdiction within the preceding five years, and has not been convicted of a crime involving fraud, dishonesty, or moral turpitude in any jurisdiction. For purposes of this section, "convicted" includes a plea of guilty or a plea of nolo contendere.

The director or his designee may revoke or suspend any license issued to an administrator when he finds that any condition exists which would have prohibited issuance of the original license, that the administrator has violated any provision of this chapter, or that the administrator has deceived or dealt unjustly with the citizens of this State. In lieu of revocation or suspension of license, the director or his designee may impose an administrative monetary penalty not to exceed one thousand dollars for each offense.

HISTORY: Former 1976 Code Section 38-51-20 [1947 (45) 322; 1952 Code Section 37-231; 1957 (50) 280; 1962 Code Section 37-231; 1972 (57) 2468] recodified as Section 38-43-20 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-67-120 [1985 Act No. 133, Section 12] recodified as Section 38-51-20 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 683; 2018 Act No. 219 (H.4657), Section 7, eff May 18, 2018.

Effect of Amendment

2018 Act No. 219, Section 7, made nonsubstantive changes in the second undesignated paragraph, and in the third undesignated paragraph, in the first sentence, inserted ", annual financial statements or reports for the two preceding calendar years, and any other documents that the director or his designee may require to ensure that the administrator meets the requirements for licensure set forth in this section" following "one hundred dollars".

SECTION 38-51-30. Surety bond.

Every administrator shall file and maintain with the department a surety bond in favor of the state executed by a surety company authorized to transact business in this State. In lieu of bond, the administrator may file with the department letters of credit, certificates of deposit 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 covered by insurance or any other financial instrument that the director or his designee deems appropriate. The director or his designee may also in his sole discretion accept in lieu of a bond or certificates of deposit or letter of credit a corporate guaranty by an insurer licensed to transact business in this State. The corporate guaranty must meet any requirements the director or his designee requires. The director or his designee may withdraw his acceptance of a corporate guaranty in lieu of bonds or certificates of deposit at any time. The amount of the bond, certificates of deposit, corporate guaranty letter of credit, or any other instrument the director or his designee deems appropriate, filed with the department must be in the amount of seventy-five thousand dollars for initial applicants. Upon renewal, the applicant shall submit a surety bond in an amount that represents ten percent of the total premiums handled or managed in South Carolina for the previous calendar year. The amount of the surety bond for renewal applications must not be less than seventy-five thousand dollars and may not exceed five hundred thousand dollars. All bonds must include a provision requiring a thirty-day advance notification of cancellation to the department. The bond must be on a form approved by the director or his designee. Any of the above-described financial instruments must be conditioned to pay any person who sustains a loss as a result of: (a) the administrator's violation of or failure to comply with any requirement of this chapter; (b) the administrator's failure to transmit properly any payment received by it for transmission to an insurer or other person; (c) the administrator's misapplication or misappropriation of funds received by it; or (d) any act of fraud or dishonesty committed by the administrator in the administration of an insurance benefit plan. Any aggrieved person may institute an action in the county of his residence against the administrator or his surety, or both, to recover on the bond or to recover from the certificates of deposit or corporate guaranty or letters of credit. Nothing in this section may be construed to prohibit agreements between administrators and insurers providing for additional bonds. The director or his designee may waive the bonding requirements of this section in whole or in part to the extent that funds handled by the administrator are handled on behalf of a

licensed insurance company, if the administrator has furnished a bond or other security to the insurance company which meets the purposes of this section. Under no circumstances may the director or his designee waive the bonding requirements of this section with respect to funds handled by the administrator on behalf of self-insured persons, groups, or entities.

HISTORY: Former 1976 Code Section 38-51-30 [1962 Code Section 37-231.1; 1964 (53) 2290] recodified as Section 38-43-30 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-67-110 [1985 Act No. 133, Section 11] recodified as Section 38-51-30 by 1987 Act No. 155, Section 1; 1988 Act No. 434; 1993 Act No. 181, Section 684; 2018 Act No. 219 (H.4657), Section 7, eff May 18, 2018.

Effect of Amendment

2018 Act No. 219, Section 7, in the sixth sentence, inserted "for initial applicants" at the end, and inserted the seventh, eighth, and ninth sentences, relating to the submission of a surety bond for the renewal of an administrator's license.

SECTION 38-51-40. Written agreement required.

No administrator may act as such without a written agreement between the administrator and the insurer, and the written agreement must be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and five years thereafter. The written agreement shall contain provisions which include the requirements of Sections 38-51-60 through 38-51-110, except insofar as those requirements do not apply to the functions performed by the administrator.

Where a policy is issued to a trustee, a copy of the trust agreement and any amendments thereto must be furnished to the insurer by the administrator and must be retained as part of the official records of both the insurer and the administrator for the duration of the policy and five years thereafter.

HISTORY: Former 1976 Code Section 38-51-40 [1948 (45) 1734; 1952 Code Section 37-232; 1962 Code Section 37-232] recodified as Section 38-43-40 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-67-20 [1985 Act No. 133, Section 2] recodified as Section 38-51-40 by 1987 Act No. 155, Section 1.

SECTION 38-51-50. Payment of premiums.

Whenever an insurer utilizes the services of an administrator under the terms of a written agreement as required in Section 38-51-40, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured is considered to have been received by the insurer, and the payment of return premiums or claims by the insurer to the administrator is not considered payment to the insured or claimant until the payments are received by the insured or claimant. Nothing herein limits any right of the insurer against the administrator resulting from his failure to make payments to the insurer, insureds, or claimants.

HISTORY: Former 1976 Code Section 38-51-50 [1947 (45) 322; 1952 Code Section 37-234; 1960 (51) 1646; 1962 Code Section 37-234] recodified as Section 38-43-50 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-67-30 [1985 Act No. 133, Section 3] recodified as Section 38-51-50 by 1987 Act No. 155, Section 1.

SECTION 38-51-60. Books and records required.

Every administrator shall maintain at its principal administrative office for the duration of the written agreement referred to in Section 38-51-40 and five years thereafter adequate books and records of all transactions among the administrator, insurers, and insured persons. The books and records must be maintained in accordance with prudent standards of insurance record keeping. The director or his designee shall have access to the books and records for the purpose of examination, audit, and inspection, and information from the records must be furnished to the director or his designee on demand. Any trade secrets contained therein, including, but not limited to, the identity and addresses of policyholders and certificate holders, are confidential, except that the director or his designee may use the information in any proceedings instituted against the administrator. The insurer shall retain the right to continuing access to the books and

records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and administrator on the proprietary rights of the parties in such books and records.

HISTORY: Former 1976 Code Section 38-51-60 [1947 (45) 322; 1949 (46) 600; 1952 Code Section 37-247; 1957 (50) 534; 1959 (51) 303; 1962 Code Section 37-247; 1964 (53) 2290; 1966 (54) 2666; 1981 Act No. 163, Section 1; 1986 Act No. 416] recodified as Section 38-43-60 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-67-40 [1985 Act No. 133, Section 4] recodified as Section 38-51-60 by 1987 Act No. 155, Section 1; 1993 Act No. 181, Section 685.

SECTION 38-51-70. Advertising.

An administrator may use only the advertising pertaining to the business underwritten by an insurer as has been approved by the insurer in advance of its use.

HISTORY: Former 1976 Code Section 38-67-50 [1985 Act No. 133, Section 5] recodified as Section 38-51-70 by 1987 Act No. 155, Section 1.

SECTION 38-51-80. Underwriting.

The agreement shall make provision with respect to the underwriting or other standards pertaining to the business underwritten by the insurer.

HISTORY: Former 1976 Code Section 38-51-80 [1947 (45) 322; 1952 Code Section 37-246; 1957 (50) 534; 1962 Code Section 37-246; 1964 (53) 2290; 1966 (54) 2666; 1967 (55) 132] recodified as Section 38-43-70 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-67-60 [1985 Act No. 133, Section 6] recodified as Section 38-51-80 by 1987 Act No. 155, Section 1.

SECTION 38-51-90. Charges or premiums held in fiduciary capacity; withdrawal.

All insurance charges or premiums collected by an administrator on behalf of or for an insurer and return premiums received from the insurer must be held by the administrator in a fiduciary capacity. The funds must be immediately remitted to the person entitled thereto or deposited promptly in a fiduciary bank account established and maintained by the administrator. If charges or premiums so deposited are collected on behalf of or for more than one insurer, the administrator shall cause the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from the account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all records and, upon request of an insurer, furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for the insurer. The administrator may not pay any claim by withdrawals from the fiduciary account. Withdrawals from the account may be made, as provided in the written agreement between the administrator and the insurer, for (1) remittance to an insurer entitled thereto; (2) deposit in an account maintained in the name of the insurer; (3) transfer to and deposit in a claims-paying account with claims to be paid as provided in Section 38-51-100; (4) payment to a group policyholder for remittance to the insurer entitled thereto; (5) payment to the administrator of its commission, fees, or charges; or (6) remittance of return premiums to the person entitled thereto.

HISTORY: Former 1976 Code Section 38-51-90 [1947 (45) 322; 1952 Code Section 37-235; 1955 (49) 329; 1956 (49) 1841; 1962 Code Section 37-235; 1964 (53) 2290; 1986 Act No. 540, Part II, Section 31 M] recodified as Section 38-43-80 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-67-70 [1985 Act No. 133, Section 6] recodified as Section 38-51-90 by 1987 Act No. 155, Section 1.

SECTION 38-51-100. Claims.

All claims paid by the administrator from funds collected on behalf of the insurer must be paid only on drafts of and as authorized by the insurer.

HISTORY: Former 1976 Code Section 38-51-100 [1947 (45) 322; 1952 Code Section 37-243; 1962 Code Section 37-243] recodified as Section 38-43-90 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-67-80 [1985 Act No. 133, Section 8] recodified as Section 38-51-100 by 1987 Act No. 155, Section 1.

SECTION 38-51-110. Compensation to administrator.

With respect to any policies where an administrator adjusts or settles claims, the compensation to the administrator with regard to these policies may in no way be contingent on claim experience. This section does not prevent the compensation of an administrator from being based on premiums or charges collected or number of claims paid or processed.

HISTORY: Former 1976 Code Section 38-51-110 [1947 (45) 322; 1950 (46) 2268; 1952 Code Section 37-236; 1962 Code Section 37-236; 1964 (53) 2290; 1967 (55) 704; 1969 (56) 633; 1985 Act No. 139, Section 6] recodified as Section 38-43-100 by 1987 Act No. 155, Section 1; Former 1976 Code Section 38-67-90 [1985 Act No. 133, Section 9] recodified as Section 38-51-110 by 1987 Act No. 155, Section 1.

SECTION 38-51-120. Notice.

Where the services of an administrator are utilized, the administrator shall provide a written notice approved by the insurer to insured individuals, advising them of the identity of and relationship among the administrator, the policyholder, and the insurer.

HISTORY: Former 1976 Code Section 38-51-120 [1962 Code Section 37-236.1; 1972 (57) 2468] has no comparable provisions in 1987 Act No. 155; Former 1976 Code Section 38-67-100 [1985 Act No. 133, Section 10] recodified as Section 38-51-120 by 1987 Act No. 155, Section 1.