

UNAUTHORIZED INSURERS FALSE ADVERTISING PROCESS ACT

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Section 1. Purpose of Act

- A. The purpose of this act is to subject to the jurisdiction of the Insurance Commissioner of this state and to the jurisdiction of the courts of this state, insurers not authorized to transact business in this state that place in or send into this state any false advertising designed to induce residents of this state to purchase insurance from insurers not authorized to transact business in this state. The legislature declares it is in the interest of the citizens of this state who purchase insurance from insurers that solicit insurance business in this state in the manner set forth in the preceding sentence that these insurers be subject to the provisions of this Act. In furtherance of this state interest, the legislature herein provides a method of substituted service of process upon these insurers and declares that in so doing, it exercises its power to protect its residents and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Session, S. 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states. The authority provided herein to be in addition to any existing powers of this state.
- B. The provisions of this Act shall be liberally construed.

Section 2. Definitions

When used in this Act:

- A. “Commissioner” shall mean the Commissioner of Insurance of this state.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term commissioner appears.

- B. “Unfair Trade Practices Act” shall mean [insert applicable cite] Laws of 19 [insert year], approved [insert month], 19[insert year].
- C. “Resident” shall include a person, partnership or corporation, domestic, alien or foreign.

Section 3. Notice to Domiciliary Supervisory Official

No unauthorized foreign or alien insurer of the kind described in Section 1 shall make, issue, circulate or cause to be made, issued or circulated, to residents of this state any estimate, illustration, circular, pamphlet or letter, or cause to be made in any newspaper, magazine or other publication or over any radio or television station, any announcement or statement to this state’s residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the Unfair Trade Practices Act, and whenever the commissioner shall have reason to believe that an insurer is engaging in such unlawful advertising, it shall be the duty of the commissioner to give notice of that fact by registered mail to the insurer and to the insurance supervisory official of the domiciliary state of the insurer. For the purpose of this section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States.

Section 4. Action by Commissioner

If, after thirty (30) days following the giving of the notice mentioned in Section 3, the insurer has failed to cease making, issuing or circulating the false misrepresentations or causing the same to be made, issued or circulated in this state, and if the commissioner has reason to believe that a proceeding in respect to these matters would be to the interest of the public, and that the insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on contracts or doing any of the acts enumerated in Section 5, the commissioner shall take action against the insurer under the Unfair Trade Practices Act.

Section 5. Service Upon Unauthorized Insurer

- A. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer is equivalent to and shall constitute an appointment by the insurer of the commissioner of insurance and his or her successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in Section 3 under the provisions of the Unfair Trade Practices Act, or in any action, suit or proceeding for the recovery of any penalty provided in the Unfair Trade Practices Act, and any such act shall be signification of its agreement that the service of statement of charges, notices or process is of the same legal force and validity as personal service of the statement of charges, notices or process in this state, upon the insurer:
- (1) The issuance or delivery of contracts of insurance to residents of this state;
 - (2) The solicitation of applications for contracts;
 - (3) The collection of premiums, membership fees, assessments or other considerations for contracts;
or
 - (4) Any other transaction of insurance business,
- B. Service of a statement of charges and notices under the Unfair Trade Practices Act shall be made by a deputy or employee of the Department of Insurance delivering to and leaving with the commissioner or some person in apparent charge of the commissioner's office, two (2) copies thereof. Service of process issued by any court in any action, suit or proceeding to collect any penalty under the Unfair Trade Practices Act provided, shall be made by delivering and leaving with the commissioner, or some person in apparent charge of the commissioner's office, two copies thereof. The commissioner shall forthwith cause to be mailed by registered mail one of the copies of the statement of charges, notices or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices and process so served. The service of statement of charges, notices or process shall be sufficient, provided they have been so mailed and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the letter showing a compliance are filed with the commissioner in the case of a statement of charges or notices, or with the clerk of the court in which an action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.
- C. Service of statement of charges, notices and process in a proceeding, action or suit shall in addition to the manner provided in Subsection B of this section be valid if served upon any person within this state who on behalf of such insurer is soliciting insurance, making, issuing or delivering any contract or insurance, or collecting or receiving in this state any premium for insurance and a copy of the statement of charges, notices or process is sent within ten (10) days thereafter by registered mail by or on behalf of the commissioner to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the letter showing compliance, are filed with the commissioner in the case of a statement of charges or notices, or with the clerk of the court in which the action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

- D. No cease or desist order or judgment by [default or a judgment pro confesso] [select appropriate language] under this section shall be entered until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.
- E. Service of process and notice under the provisions of this Act shall be in addition to all other methods of service provided by law, and nothing in this Act shall limit or prohibit the right to serve a statement of charges, notices or process upon an insurer in any other manner now or hereafter permitted by law.

Section 6. Constitutionality

If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 7. Short Title

This Act may be cited as the Unauthorized Insurers False Advertising Process Act.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1960 Proc. II 507-509 (printed).

1961 Proc. I 307, 309, 316 (adopted).