

## UNAUTHORIZED INSURERS PROCESS ACT

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### Introduction

An Act relating to insurers not authorized to transact business in this state; providing for actions in this state against and for the service of process upon these insurers; prescribing how a defense may be made by these insurers; and providing for the allowance of attorneys' fees in actions against these insurers.

#### Section 1. Purpose of Act

The purpose of this Act is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of insureds or beneficiaries under insurance contracts.

The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to these residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under these policies. In furtherance of the state interest, the legislature herein provides a method of substituted service of process upon the insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this statute, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of United States Code tit. 15 § 1011, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

#### Section 2. Service of Process 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 the commissioner's successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of a contract of insurance, and any act shall be signification of its agreement that the service of process is of the same legal force and validity as personal service of process in this state upon the insurer.
- (1) The issuance or delivery of insurance contracts to residents of this state or to corporations authorized to do business in the state;
  - (2) The solicitation of applications for insurance contracts;
  - (3) The collection of premiums, membership fees, assessments or other considerations for insurance contracts; or
  - (4) Any other transaction of insurance business.

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

- B. Service of process shall be made by delivering to and leaving with the commissioner or some person in apparent charge of the office two (2) copies thereof and the payment of the fees prescribed by law. The commissioner shall forthwith mail by registered mail one of the copies of the process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon the commissioner. The service of process is sufficient, provided notice of such service and a copy of the process are sent within ten (10) days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, 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 plaintiff or plaintiff's attorney showing compliance are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within a further time the court may allow.
- C. Service of process in an action, suit or proceeding shall, in addition to the manner provided in Subsection B of this section, be valid if served upon a person within this state who, in this state on behalf of the insurer, is:
- (1) Soliciting insurance; or
  - (2) Making, issuing or delivering any contract of insurance; or
  - (3) Collecting or receiving any premium, membership fee, assessment or other consideration for insurance;
- and a copy of the process is sent within ten (10) days thereafter by registered mail by the plaintiff or plaintiff's attorney 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 and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within a further time the court may allow.
- D. A plaintiff or complainant shall not be entitled to a [insert appropriate state procedure, either judgment by default, or a judgment with leave to prove damages, or a judgment *pro confesso*] under this section until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.
- E. Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

**Section 3. Defense of Action By Unauthorized Insurer**

- A. Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, the unauthorized insurer shall deposit with the clerk of the court in which the action, suit or proceeding is pending, cash or securities or file with the clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in the action; or procure a certificate of authority to transact the business of insurance in this state.
- B. The court in any action, suit or proceeding in which service is made in the manner provided in Section 2B or 2C may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of Subsection A of this section and to defend the action.
- C. Nothing in Subsection A of this section is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in Section 2B or 2C on the ground either that:

- (1) The unauthorized insurer has not done any of the acts enumerated in Section 2A; or
- (2) The person on whom service was made pursuant to Section 2C was not doing any of the acts therein enumerated.

**Section 4. Attorney Fees**

In an action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty (30) days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that the refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include the fee in any judgment that may be rendered in the action. The fee shall not exceed twelve and one-half percent (12-1/2%) of the amount that the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall the fee be less than \$25. Failure of an insurer to defend an action shall be deemed *prima facie* evidence that its failure to make payment was vexatious and without reasonable cause.

**Section 5. Constitutionality**

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications 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 6. Short Title**

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

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

*1949 Proc. 126-130, 132, 315-316 (adopted).*

*1951 Proc. 166-168, 182 (printed and reaffirmed).*