

## IC 27-4-4

### Chapter 4. Unauthorized Insurers Process Act

#### IC 27-4-4-1

##### **Purpose; legislative declaration**

Sec. 1. (a) The purpose of this chapter is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of the insureds or beneficiaries under insurance contracts.

(b) The general assembly 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 such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the general assembly provides in this chapter a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this chapter, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of 15 U.S.C. 1011 et seq., which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

*(Formerly: Acts 1955, c.203, s.1.) As amended by P.L.252-1985, SEC.159.*

#### IC 27-4-4-2

##### **Definitions**

Sec. 2. As used in this chapter and unless a different meaning appears from the context:

(a) The term "insurer" means a company, firm, partnership, association, order, society, or system making any kind or kinds of insurance and shall include associations operating as Lloyds, reciprocal, or interinsurers, or individual underwriters.

(b) The term "unauthorized foreign insurer" means an insurer organized under the laws of, or whose place of domicile is in any state of the United States other than this state or organized under the laws of, or whose place of domicile is in any territory or insular possession of the United States or the District of Columbia, and which insurer is not admitted, authorized, and licensed in accordance with the laws of this state to do and transact the business of insurance in the state of Indiana.

(c) The term "unauthorized alien insurer" means an insurer organized under the laws of, or whose place of domicile is in any country other than the United States or territory or insular possession thereof, or the District of Columbia, and which insurer is not admitted, authorized, and licensed in accordance with the laws of this state to do and transact the business of insurance in the state of Indiana.

*(Formerly: Acts 1955, c.203, s.2.) As amended by P.L.252-1985, SEC.160.*

### **IC 27-4-4-3**

#### **Acts constituting appointment of commissioner as attorney for service of process; methods of service**

Sec. 3. (a) Any of the following acts in this state, effected by mail, or otherwise, by an unauthorized foreign or alien insurer; (1) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (2) the solicitation of applications for such contracts, (3) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (4) any other transaction of insurance business, is equivalent to and shall constitute an appointment by such insurer of the insurance commissioner of the state of Indiana and his 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 any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(b) Such service of process shall be made by delivering to and leaving with the insurance commissioner of the state of Indiana, or in his office, two (2) copies thereof and the payment to him at the time of such service a fee as required under IC 27-1-3-15. The insurance commissioner shall forthwith mail by registered mail one (1) of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such 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 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 a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(c) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection (b) of this section be valid if served upon any person within this state who, in this state on behalf of such 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 such 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 such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(d) No plaintiff or complainant shall be entitled to a judgment by default 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 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.

*(Formerly: Acts 1955, c.203, s.3.) As amended by P.L.130-1994, SEC.38; P.L.116-1994, SEC.50.*

#### **IC 27-4-4-4**

##### **Deposit or bond; motion to quash service**

Sec. 4. (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, such unauthorized insurer shall:

(1) deposit, with the clerk of the court in which such action, suit, or proceeding is pending, cash or securities, or file with such 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 such action; or

(2) 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 3 of this chapter 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) and to defend such action.

(c) Nothing in subsection (a) 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 made in the manner provided in section 3 of this chapter on the ground either:

(1) that such unauthorized insurer has not done any of the acts enumerated in section 3(a) of this chapter; or

(2) that the person on whom service was made pursuant to section 3(c) of this chapter was not doing any of the acts therein enumerated.

*(Formerly: Acts 1955, c.203, s.4.) As amended by P.L.252-1985, SEC.161.*

#### **IC 27-4-4-5**

##### **Vexatious refusal to pay without reasonable cause; attorney's fees**

Sec. 5. In any 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 such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half per cent (12 1/2%) of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars (\$25.00). Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

*(Formerly: Acts 1955, c.203, s.5.)*

#### **IC 27-4-4-6**

##### **Exclusions from act**

Sec. 6. The provisions of this chapter shall not apply to any action, suit, or proceeding against any unauthorized insurer arising out of any contract of:

- (1) reinsurance effectuated in accordance with the laws of Indiana;
- (2) aircraft insurance;
- (3) insurance on property or operations of railroads engaged in interstate commerce;
- (4) insurance against legal liability arising out of the ownership, operation or maintenance of any property having a permanent situs outside of this state; or
- (5) insurance against loss of or damage to any property having a permanent situs outside of this state;

where such contract contains a provision designating the department or the commissioner or a bona fide resident of the state of Indiana 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 any such contract.

*(Formerly: Acts 1955, c.203, s.6.) As amended by P.L.252-1985, SEC.162.*

#### **IC 27-4-4-7**

##### **Construction**

Sec. 7. This chapter is declared to be in addition and supplemental to other laws of the state of Indiana and shall be construed accordingly.

*(Formerly: Acts 1955, c.203, s.7.) As amended by P.L.252-1985, SEC.163.*

#### **IC 27-4-4-8**

##### **Short title**

Sec. 8. This chapter may be cited as the Unauthorized Insurers Process Act.

*(Formerly: Acts 1955, c.203, s.9.) As amended by P.L.252-1985, SEC.164.*