

## IC 27-4-5

### Chapter 5. Unauthorized Insurers Act

#### IC 27-4-5-1

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

Sec. 1. The purpose of this chapter is to subject certain insurers to the jurisdiction of the insurance commissioner and the courts of this state in suits by or on behalf of the state. The general assembly declares that it is concerned with the protection of residents of this state against acts by insurers not authorized to do an insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting authorized insurers which are subject to regulation from unfair competition by unauthorized insurers, and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interest, the general assembly provides methods in this chapter for substituted service of process upon such insurers in any proceeding, suit, or action in any court and substituted service of any notice, order, pleading, or process upon such insurers in any proceeding by the commissioner of insurance to enforce or effect full compliance with this title. In so doing, the state exercises its powers to protect residents of this state and to define what constitutes transacting an insurance business in this state, and also exercises powers and privileges available to this state by virtue of 15 U.S.C. 1011 through 1015, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

*(Formerly: Acts 1969, c.194, s.1.) As amended by P.L.252-1985, SEC.165.*

#### IC 27-4-5-2

##### **Prohibition of unauthorized insurance business; exceptions; business by mail; venue; validity of contract; right to defend; prerequisites to action**

Sec. 2. (a) It is a Class A infraction for an insurer to transact insurance business in this state, as set forth in subsection (b), without a certificate of authority from the commissioner. However, this section does not apply to the following:

- (1) The lawful transaction of surplus lines insurance.
- (2) The lawful transaction of reinsurance by insurers.
- (3) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.
- (4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.
- (5) Transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a

state in which the insurer was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.

(6) Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargos, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.

(7) Transactions in this state involving life insurance, health insurance, or annuities provided to religious or charitable institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions and individuals engaged in the service of such institutions.

(8) Transactions in this state involving contracts of insurance not readily obtainable in the ordinary insurance market and issued to one (1) or more industrial insureds. For purposes of this section, an "industrial insured" means an insured:

(A) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly retained and continuously qualified insurance consultant;

(B) whose aggregate annual premium for insurance on all risks totals at least twenty-five thousand dollars (\$25,000);

(C) who has at least twenty-five (25) full-time employees;

(D) who, on or before February 1 (for the preceding six (6) month period ending December 31) and August 1 (for the preceding six (6) month period ending June 30) of each year, remits to the department an amount equal to two and one-half percent (2.5%) of all gross premiums upon all policies and contracts procured by the insured under this section, plus:

(i) ten percent (10%) of the amount due for the first month after the date specified in this clause, during which the amount described in this clause is not remitted in compliance with this clause; and

(ii) an additional one percent (1%) of the amount due for each additional month during which the amount due under this clause is unpaid; and

(E) who files with the department, with the amount remitted under clause (D), an affidavit specifying all transactions undertaken and policies and contracts procured during the preceding calendar year, including the following:

(i) The description and location of the insured property or risk and the name of the insured.

(ii) The gross premiums charged for the policy or contract.

(iii) The name and home office address of the insurer that issues the policy or contract and the kind of insurance affected.

(iv) A statement that the insured, after diligent effort, was

unable to procure from any insurer authorized to transact the particular kind of insurance business in Indiana the full amount of insurance coverage required to protect the insured.

(9) Transactions in Indiana involving the rendering of any service by any ambulance service provider and all fees, costs, and membership payments charged for the service. To qualify under this subdivision, the ambulance service provider:

(A) must have its ambulance service program approved by an ordinance of the legislative body of the county or city in which it operates; and

(B) may not offer any membership program that includes benefits exceeding one (1) year in duration.

(b) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer constitutes the transaction of an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all persons engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

(1) The making of or proposing to make, as an insurer, an insurance contract.

(2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

(3) The taking or receiving of any application for insurance.

(4) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof.

(5) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

(6) Acting as an agent for or otherwise representing or aiding on behalf of another person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or representing or assisting a person or an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. This subdivision does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of the employer.

(c)(1) The failure of an insurer transacting insurance business in

this state to obtain a certificate of authority does not impair the validity of any act or contract of such insurer and does not prevent such insurer from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority may maintain an action in any court of this state to enforce any right, claim, or demand arising out of the transaction of such business until such insurer obtains a certificate of authority.

(2) In the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract is liable to the insured for the full amount of the claim or loss in the manner provided by the insurance contract.

*(Formerly: Acts 1969, c.194, s.2.) As amended by Acts 1978, P.L.2, SEC.2720; P.L.161-1988, SEC.1; P.L.130-1994, SEC.39; P.L.116-1994, SEC.51; P.L.252-1995, SEC.2; P.L.11-2011, SEC.25.*

### **IC 27-4-5-3**

#### **Injunction**

Sec. 3. Whenever the commissioner believes, from evidence satisfactory to the commissioner, that any insurer is violating or about to violate the provisions of section 2 of this chapter, the commissioner may cause a complaint to be filed in the circuit or superior court to enjoin and restrain such insurer from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper. *(Formerly: Acts 1969, c.194, s.3.) As amended by P.L.252-1985, SEC.166; P.L.255-1995, SEC.5.*

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

#### **Appointment of attorney for service of process; method of service**

Sec. 4. (a) Any act of transacting an insurance business as set forth in section 2 of this chapter by any unauthorized insurer is equivalent to and shall constitute an irrevocable appointment by such insurer, binding upon him, his executor or administrator, or successor in interest if a corporation, of the secretary of state or his successor in office, to be the true and lawful attorney of such insurer upon whom may be served all lawful process in any action, suit, or proceeding in any court by the commissioner of insurance or by the state and upon whom may be served any notice, order, pleading, or process in any proceeding before the commissioner of insurance and which arises out of transacting an insurance business in this state by such insurer. Any act of transacting an insurance business in this state by any unauthorized insurer shall be signification of its agreement that any such lawful process in such court action, suit, or proceeding and any such notice, order, pleading, or process in such administrative proceeding before the commissioner of insurance so served shall be

of the same legal force and validity as personal service of process in this state upon such insurer.

(b) Service of process in such action shall be made by delivering to and leaving with the secretary of state, or some person in apparent charge of his office, two (2) copies thereof and by payment to the secretary of state of the fee prescribed by law. Service upon the secretary of state as such attorney shall be service upon the principal.

(c) The secretary of state shall forthwith forward by certified mail one (1) of the copies of such process or such notice, order, pleading, or process in proceedings before the commissioner to the defendant in such court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. Such service is sufficient, provided:

(1) notice of such service and a copy of the court process or the notice, order, pleading, or process in such administrative proceeding are sent within ten (10) days thereafter by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner of insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at the last known place of business of the defendant in the court or administrative proceeding; and

(2) the defendant's receipt or receipts 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 or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in court proceeding or of the commissioner of insurance in administrative proceeding, showing compliance therewith are filed with the clerk of the court in which such action, suit, or proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or commissioner of insurance may allow.

(d) No plaintiff shall be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading, or process in proceedings before the commissioner of insurance is served under this section until the expiration of forty-five (45) days from the date of filing of the affidavit of compliance.

(e) Nothing in this section shall limit or affect the right to serve any process, notice, order, or demand upon any person or insurer in any other manner permitted by law.

*(Formerly: Acts 1969, c.194, s.4; Acts 1971, P.L.1, SEC.10.) As amended by P.L.252-1985, SEC.167.*

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

##### **Prerequisites to pleading; deposit to secure payment of judgment; procuring certificate of authority; motion to quash**

Sec. 5. (a) Before any unauthorized insurer files or causes to be filed in any pleading in any court action, suit, or proceeding or in any notice, order, pleading, or process in such administrative proceeding before the commissioner instituted against such person or insurer, by services made as provided in section 4 of this chapter, such insurer shall either:

(1) deposit with the clerk in which such action, suit, or proceeding is pending, or with the commissioner of insurance in administrative proceedings before the commissioner, cash or securities, or file with such clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding; or

(2) procure a certificate of authority to transact the business of insurance in this state.

In considering the application of an insurer for a certificate of authority, for the purposes of this section the commissioner need not assert the provisions of IC 27-1-20-12 against such insurer with respect to its application if he determines that such company would otherwise comply with the requirements for such certificate of authority.

(b) The commissioner of insurance, in any administrative proceeding in which service is made as provided in section 4 of this chapter, may in his 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) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in section 4 of this chapter on the ground that such unauthorized insurer has not done any of the acts enumerated in section 2 of this chapter.

*(Formerly: Acts 1969, c.194, s.5.) As amended by P.L.252-1985, SEC.168.*

#### **IC 27-4-5-6**

##### **Enforcement of orders in domestic or foreign courts; definitions; list of reciprocal states; enforcement of foreign decrees; stay; fees**

Sec. 6. (a) The attorney general upon request of the commissioner may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of insurance.

(b) The following definitions apply throughout this section:

(1) "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees

or orders in equity issued by courts located in other states or territories of the United States, against any insurer incorporated or authorized to do business in said state or territory.

(2) "Foreign decree" means any decree or order in equity of a court located in a "reciprocal state," including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

(3) "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(c) The insurance commissioner of this state shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

(d) A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any circuit or superior court of this state. The clerk, upon verifying with the insurance commissioner that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of a circuit or superior court of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of a circuit or superior court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a circuit or superior court of this state and may be enforced or satisfied in like manner.

(e) At the time of the filing of the foreign decree, the attorney general shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.

(f) Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the insurance commissioner of this state and shall make a note of the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the insurance commissioner of this state and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the attorney general has been filed.

(g) No execution or other process for enforcement of a foreign decree filed under this section shall issue until 30 days after the date the decree is filed.

(h) If the defendant shows the circuit or superior court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(i) If the defendant shows the circuit or superior court any ground upon which enforcement of a decree of any circuit or superior court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same

security for satisfaction of the decree which is required in this state.

(j) Any person filing a foreign decree shall pay to the clerk of court six dollars (\$6). Fees for docketing, transcription, or other enforcement proceedings shall be as provided for decrees of the circuit or superior court.

*(Formerly: Acts 1969, c.194, s.6.) As amended by P.L.1-1993, SEC.201.*

**IC 27-4-5-7**

**Repealed**

*(Repealed by Acts 1978, P.L.2, SEC.2728.)*

**IC 27-4-5-8**

**Short title**

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

*(Formerly: Acts 1969, c.194, s.8.) As amended by P.L.252-1985, SEC.169.*