

IC 27-4-6

Chapter 6. Unauthorized Insurers False Advertising Process Act

IC 27-4-6-1

Purpose; liberal construction

Sec. 1. (a) The purpose of this chapter 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, which 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 which solicit insurance business in this state in the manner set forth in the preceding sentence that such insurers be subject to the provisions of this chapter. In furtherance of such state interest, the legislature 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 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; the authority provided in this chapter to be in addition to any other powers of this state.

(b) The provisions of this chapter shall be liberally construed. *(Formerly: Acts 1963, c.163, s.1.) As amended by P.L.252-1985, SEC.170.*

IC 27-4-6-2

Definitions

Sec. 2. When used in this chapter:

"Commissioner" shall mean the commissioner of insurance of this state.

"Residents" shall mean and include person, partnership, limited liability company, or corporation, domestic, alien, or foreign.

(Formerly: Acts 1963, c.163, s.2.) As amended by P.L.252-1985, SEC.171; P.L.8-1993, SEC.419.

IC 27-4-6-3

Advertising in violation of Unfair Trade Practice Act by unauthorized foreign or alien insurer; notice to insurer and supervisory official of domiciliary state

Sec. 3. No unauthorized foreign or alien insurer of the kind described in section 1 of this chapter 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 such 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 IC 27-4-1, and whenever the commissioner shall have reason to believe that any such insurer is engaging in such unlawful advertising, he shall give notice of such fact by registered mail to such insurer and to the insurance supervisory official of the domiciliary state of such 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.

(Formerly: Acts 1963, c.163, s.3.) As amended by P.L.252-1985, SEC.172.

IC 27-4-6-4

Failure of unauthorized foreign or alien insurer to cease unlawful advertising after notice; action under Unfair Trade Practice Act

Sec. 4. If after thirty (30) days following the giving of the notice mentioned in section 3 of this chapter such insurer has failed to cease making, issuing, or circulating such 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 by him in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or doing any of the acts enumerated in section 5 of this chapter, he shall take action against such insurer under IC 27-4-1.

(Formerly: Acts 1963, c.163, s.4.) As amended by P.L.252-1985, SEC.173.

IC 27-4-6-5

Acts of unauthorized foreign or alien insurer appointing commissioner as attorney for service of process; method of service

Sec. 5. (a) Any of the following acts in this state, effected by mail or otherwise, by any such unauthorized foreign or alien insurer:

- (1) the issuance or delivery of contracts of insurance to residents of this state;
- (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 commissioner of insurance, and his 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 of this chapter under the provisions of IC 27-4-1 or in any

action, suit, or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices, or process is of the same legal force and validity as personal service of such statement of charges, notices, or process in this state, upon such insurer.

(b) Service of a statement of charges and notices under IC 27-4-1 shall be made by any deputy or employee of the department of insurance delivering to and leaving with the commissioner or some person in apparent charge of his office, two (2) copies thereof. Service of process issued by any court in any action, suit, or proceeding to collect any penalty under IC 27-4-1 shall be made by delivering and leaving with the commissioner, or some person in apparent charge of his office, two (2) copies thereof. The commissioner shall forthwith cause to be mailed by registered mail one (1) of the copies of such 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. Such service of statement of charges, notices, or process shall be sufficient provided they shall 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 such letter showing a compliance with this section are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such 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 any such proceeding, action, or suit shall, in addition to the manner provided in subsection (b), be valid if served upon any person within this state who on behalf of such insurer is:

- (1) soliciting insurance;
- (2) making, issuing, or delivering any contract of insurance; or
- (3) collecting or receiving in this state any premium for insurance;

and a copy of such 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 same showing a compliance with this section are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such 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 by confession 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 chapter shall be in addition to all other methods of service provided by law, and nothing in this chapter shall limit or prohibit the right to serve any statement of charges, notices, or process upon any insurer in any other manner permitted by law.

(Formerly: Acts 1963, c.163, s.5.) As amended by P.L.252-1985, SEC.174.

IC 27-4-6-6

Short title

Sec. 6. This chapter may be cited as the Unauthorized Insurers False Advertising Process Act.

(Formerly: Acts 1963, c.163, s.7.) As amended by P.L.252-1985, SEC.175.