

§ 58-16-35. Unauthorized Insurers Process Act.

(a) Purpose of Section. – The purpose of this section 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 General Assembly declares that it is a subject of concern that many residents of this State hold policies of insurance issued by insurers 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 herein provides 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 statute, what constitutes doing business in this State, 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, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(b) Service of Process upon Unauthorized Insurer. –

- (1) Any of the following acts in this State, effected by mail or otherwise, by an unauthorized foreign or alien insurer:
 - a. The issuance or delivery of contracts of insurance to residents of this State or to corporations authorized to do business therein,
 - b. The solicitation of applications for such contracts,
 - c. The collection of premiums, membership fees, assessments or other considerations for such contracts, or
 - d. Any other transaction of business,is equivalent to and shall constitute an appointment by such insurer of the Commissioner 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.
- (2) Such service of process shall be made by delivering to and leaving with the Commissioner or some person in apparent charge of his office two copies thereof and the payment to him of ten dollars (\$10.00). The Commissioner shall within four business days mail by certified or registered mail one 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 10 days thereafter by certified or 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 transmitting post office, 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.
- (3) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subdivision (2) of this subsection be valid if:

- a. It is served on a person within this State who is in the State on behalf of the insurer to solicit insurance, make, issue, or deliver a contract of insurance, or collect or receive a premium, membership fee, assessment, or other consideration for insurance;
 - b. A copy of the process is sent within 10 days after service by certified or registered mail by the plaintiff or plaintiff's attorney to the defendant at the defendant's last known principal place of business; and
 - c. The defendant's receipt, or the receipt issued by the transmitting post office, 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.
- (4) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.
- (5) 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.
- (c) Defense of Action by Unauthorized Insurer. –
 - (1) 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 either
 - a. 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
 - b. Procure a license to transact the business of insurance in this State.
 - (2) The court in any action, suit, or proceeding, in which service is made in the manner provided in subdivisions (2) or (3) of subsection (b) may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subdivision (1) of this subsection and to defend such action.
 - (3) Nothing in subdivision (1) of this subsection 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 subdivisions (2) or (3) of subsection (b) on the ground either
 - a. That such unauthorized insurer has not done any of the acts enumerated in subdivision (1) of subsection (b), or
 - b. That the person on whom service was made pursuant to subdivision (3) of subsection (b) was not doing any of the acts therein enumerated.
- (d) Attorney Fees. – 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 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; providing, however, that the fee or portion of fee included in the judgment shall be not less than twenty-five dollars (\$25.00) nor more than twelve and one-half percent (12 1/2%) of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer. 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.

(e) Short Title. – This section may be cited as the Unauthorized Insurers Process Act. (1955, c. 1040; 1985, c. 666, ss. 5, 8; 1987, c. 752, s. 11; 1989, c. 645, s. 3; 1991, c. 720, s. 4; 1999-132, s. 9.1.)