

CHAPTER 212

UNAUTHORIZED INSURERS PROCESS ACT

S. F. 360

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 such insurers; prescribing how a defense may be made by such insurers; and providing for the allowance of attorneys fees in actions against such insurers.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. This act may be cited as the Iowa Unauthorized In-
2 surers Process Act.

1 SEC. 2. The purpose of this act is to subject certain insurers to
2 the jurisdiction of courts of this state in suits by or on behalf of
3 insureds or beneficiaries under insurance contracts. The legislature
4 declares that it is a subject of concern that many residents of this
5 state hold policies of insurance issued or delivered in this state by
6 insurers while not authorized to do business in this state, thus pre-
7 senting to such residents the often insuperable obstacle of resorting
8 to distant forums for the purpose of asserting legal rights under such
9 policies. In furtherance of such state interest, the legislature herein
10 provides a method of substituted service of process upon such in-
11 surers and declares that in so doing it exercises its power to protect
12 its residents and to define, for the purpose of this statute, what con-
13 stitutes doing business in this state, and also exercises powers and
14 privileges available to the state by virtue of Public Law 15, 79th
15 Congress of the United States, Chapter 20, 1st Sess., S. 340, as
16 amended, which declares that the business of insurance and every
17 person engaged therein shall be subject to the laws of the several
18 states.

1 SEC. 3. (a) Any of the following acts in this state, effected by
2 mail or otherwise, by an unauthorized foreign or alien insurer:
3 (1) the issuance or delivery of contracts of insurance to residents
4 of this state or to corporations authorized to do business therein,
5 (2) the solicitation of applications for such contracts, (3) the col-
6 lection of premiums, membership fees, assessments or other consider-
7 ations for such contracts, or (4) any other transaction of insurance
8 business, is equivalent to and shall constitute an appointment by such
9 insurer of the commissioner of insurance and his successor or suc-
10 cessors in office, to be its true and lawful attorney, upon whom may
11 be served all lawful process in any action, suit, or proceeding insti-
12 tuted by or on behalf of an insured or beneficiary arising out of any
13 such contracts of insurance, and any such act shall be signification of
14 its agreement that such service of process is of the same legal force
15 and validity as personal service of process in this state upon such
16 insurer.

17 (b) Such service of process shall be made by delivering to and
18 leaving with the commissioner of insurance or some person in ap-
19 parent charge of his office two copies thereof and the payment to him
20 of such fees as may be prescribed by law. The commissioner of in-
21 surance shall forthwith mail by registered mail one of the copies of
22 such process to the defendant at its last known principal place of

23 business, and shall keep a record of all process so served upon him.
 24 Such service of process is sufficient, provided notice of such service
 25 and a copy of the process are sent within ten days thereafter by
 26 registered mail by plaintiff or plaintiff's attorney to the defendant
 27 at its last known principal place of business, and the defendant's
 28 receipt, or receipt issued by the postoffice with which the letter is
 29 registered, showing the name of the sender of the letter and the name
 30 and address of the person to whom the letter is addressed, and the
 31 affidavit of the plaintiff or plaintiff's attorney showing a compliance
 32 herewith are filed with the clerk of the court in which such action
 33 is pending on or before the date the defendant is required to appear,
 34 or within such further time as the court may allow.

35 (c) Service of process in any such action, suit or proceeding shall
 36 in addition to the manner provided in subsection (b) of this section
 37 be valid if served upon any person within this state who, in this
 38 state on behalf of such insurer, is

39 (1) soliciting insurance, or

40 (2) making, issuing or delivering any contract of insurance, or

41 (3) collecting or receiving any premium, membership fee, assess-
 42 ment or other consideration for insurance; and a copy of such process
 43 is sent within ten days thereafter by registered mail by the plaintiff
 44 or plaintiff's attorney to the defendant at the last known principal
 45 place of business of the defendant, and the defendant's receipt, or
 46 the receipt issued by the postoffice with which the letter is registered,
 47 showing the name of the sender of the letter and the name and address
 48 of the person to whom the letter is addressed, and the affidavit of the
 49 plaintiff or plaintiff's attorney showing a compliance herewith are filed
 50 with the clerk of the court in which such action is pending on or before
 51 the date the defendant is required to appear, or within such further
 52 time as the court may allow.

53 (d) No plaintiff or complainant shall be entitled to a judgment
 54 by default under this section until the expiration of thirty days from
 55 date of the filing of the affidavit of compliance.

56 (e) Nothing in this section contained shall limit or abridge the
 57 right to serve any process, notice or demand upon any insurer in any
 58 other manner now or hereafter permitted by law.

1 SEC. 4. (a) Before any unauthorized foreign or alien insurer
 2 shall file or cause to be filed any pleading in any action, suit or pro-
 3 ceeding instituted against it, such unauthorized insurer shall either
 4 (1) deposit with the clerk of the court in which such action, suit or
 5 proceeding is pending cash or securities or file with such clerk a bond
 6 with good and sufficient sureties, to be approved by the court, in an
 7 amount to be fixed by the court sufficient to secure the payment of any
 8 final judgment which may be rendered in such action; or (2) procure
 9 a certificate of authority to transact the business of insurance in this
 10 state.

11 (b) The court in any action, suit, or proceeding, in which service
 12 is made in the manner provided in subsections (b) or (c) of section 2
 13 may, in its discretion, order such postponement as may be necessary
 14 to afford the defendant reasonable opportunity to comply with the
 15 provisions of subsection (a) of this section and to defend such action.

16 (c) Nothing in subsection (a) of this section is to be construed to

17 prevent an unauthorized foreign or alien insurer from filing a motion
 18 to quash a writ or to set aside service thereof made in the manner
 19 provided in subsections (b) or (c) of section 2 hereof on the ground
 20 either (1) that such unauthorized insurer has not done any of the
 21 acts enumerated in subsection (a) of section 2, or (2) that the person
 22 on whom service was made pursuant to subsection (c) of section 2
 23 was not doing any of the acts therein enumerated.

1 SEC. 5. In any action against an unauthorized foreign or alien
 2 insurer upon a contract of insurance issued or delivered in this state
 3 to a resident thereof or to a corporation authorized to do business
 4 therein, if the insurer has failed for thirty days after demand prior
 5 to the commencement of the action to make payment in accordance
 6 with the terms of the contract, and it appears to the court that such
 7 refusal was vexatious and without reasonable cause, the court may
 8 allow to the plaintiff a reasonable attorney fee and include such fee in
 9 any judgment that may be rendered in such action. Such fee shall
 10 not exceed twelve and one-half per cent of the amount which the court
 11 or jury finds the plaintiff is entitled to recover against the insurer,
 12 but in no event shall such fee be less than twenty-five dollars. Failure
 13 of an insurer to defend any such action shall be deemed prima facie
 14 evidence that its failure to make payment was vexatious and without
 15 reasonable cause.

1 SEC. 6. If any provision of this act or the application thereof to
 2 any person or circumstances is held invalid, such invalidity shall not
 3 affect other provisions or applications of the act which can be given
 4 effect without the invalid provision or application, and to this end the
 5 provisions of this act are declared to be severable.

Approved May 18, 1949.

CHAPTER 213

EXAMINATION OF INSURANCE COMPANIES

S. F. 151

AN ACT relating to the examination of insurance companies and to repeal sections five hundred seven point two (507.2), five hundred seven point eighteen (507.18), five hundred fifteen point one hundred thirty (515.130), and five hundred eighteen point thirty-six (518.36), Code 1946, and to enact in lieu thereof a new section.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Sections five hundred seven point two (507.2), five
 2 hundred seven point eighteen (507.18), five hundred fifteen point one
 3 hundred thirty (515.130) and five hundred eighteen point thirty-
 4 six (518.36), Code 1946, are hereby repealed and the following enacted
 5 in lieu thereof: "The insurance commissioner may at any time ex-
 6 amine or inquire into the affairs of any insurance company authorized
 7 or seeking to be authorized to transact business in the state of Iowa.
 8 Domestic companies shall be examined at least once for each three
 9 year period."

Approved May 10, 1949.