

House File 2236 - Enrolled

House File 2236

AN ACT

RELATING TO SERVICE OF PROCESS MADE ON THE COMMISSIONER OF INSURANCE AS THE AGENT OR ATTORNEY FOR SERVICE OF PROCESS FOR REGULATED INDIVIDUALS AND ENTITIES AND RESOLVING INCONSISTENCIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 502.611, Code 2018, is amended to read as follows:

502.611 Service of process.

1. *Signed consent to service of process.* A consent to service of process required by [this chapter](#) must be signed and filed in the form required by a rule or order under this chapter. A consent appointing the administrator ~~the~~ as a person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under [this chapter](#) or a rule adopted or order issued under [this chapter](#) after the consent is filed, has the same force and validity as if the service of process were made personally on the person filing the consent. A person that has filed a consent complying with [this subsection](#) in connection with a previous application for registration or notice filing need not file an additional consent.

2. *Conduct constituting appointment of agent for service of process.* If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by [this chapter](#) or a rule adopted or order

issued under [this chapter](#) and the person has not filed a consent to service of process under [subsection 1](#), the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

3. *Procedure for service of process.* ~~Service~~ If service of process is made on the administrator under [subsection 1 or 2](#) may it shall be made by providing a copy of the process to the office of the administrator as provided in section 505.30, but it is not effective unless all of the following apply:

a. The plaintiff, which may be the administrator, shall promptly sends send notice of the service of process and a copy of the service of process, return receipt requested, by certified mail to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at to the defendant's or respondent's last known address, or takes other reasonable steps to give notice principal place of business.

b. The plaintiff files shall file an affidavit of compliance with [this subsection](#) in the action or proceeding on or before the return day of the service of process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

4. *Service of process in an administrative proceedings proceeding or civil actions action by administrator.* Service of process pursuant to [subsection 3](#) may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

5. *Opportunity to defend.* If process is served under [subsection 3](#), the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

Sec. 2. Section 505.30, Code 2018, is amended to read as follows:

505.30 Service of process — fee made on the commissioner as agent or attorney for service of process — rules and fee.

1. The commissioner of insurance, pursuant to may adopt

rules adopted pursuant to chapter 17A, setting forth procedures related to service of process made on the commissioner as agent or attorney for service of process for an individual or entity within the jurisdiction of the commissioner. The rules shall apply when the individual or entity is required by law to appoint the commissioner to serve, is required by law to consent to have the commissioner serve, is deemed by law to have appointed or to have consented to have the commissioner serve, or elects to appoint or consents to have the commissioner serve as agent or attorney for service of process.

2. The commissioner may collect a reasonable fee each time service of process is served made on the commissioner as allowed by law set forth in subsection 1 or as otherwise allowed by law. Fees A fee collected by the commissioner under this section subsection shall be used and are is appropriated to the insurance division to offset the costs of receiving such service of process the commissioner acting as agent or attorney for service of process. The party to a proceeding causing requesting service of process is entitled to recover this the fee paid pursuant to this subsection and any rules adopted under this section as costs if the party prevails in the proceeding.

3. The commissioner shall maintain for ninety days a record of each service of process made on the commissioner pursuant to this section, including the date each service of process is made on the commissioner, the date each service of process is forwarded by mail by the commissioner to the defendant or respondent, and the date each certificate of service is submitted electronically to the court. The records may be maintained electronically.

Sec. 3. Section 507A.5, Code 2018, is amended to read as follows:

507A.5 Proscribed acts binding on insurer.

1. ~~No~~ A person or insurer shall not directly or indirectly perform any ~~of the acts~~ act of doing an insurance business as defined in this chapter except as provided by and in accordance with the specific authorization by statute. However, should any an unauthorized person or insurer perform any an act of doing an insurance business as set forth in this chapter, it

shall be equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon the person, the person's executor or administrator, or successor in interest if a corporation, of the commissioner of insurance or the commissioner's successor in office, to be the true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding in any court arising out of doing an insurance business in this state or instituted by or on behalf of an insured or beneficiary arising out of any such ~~acts~~ an act of doing an insurance business, except in an action, suit, or proceeding by the commissioner of insurance or by the state. ~~Any~~ An act of doing an insurance business by ~~any~~ an unauthorized person or insurer 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 person or insurer.

2. Service of process made upon the commissioner as the attorney for service of process shall be made ~~by delivering to and leaving with the commissioner of insurance or some person in apparent charge of the commissioner's office two copies thereof and the payment to the commissioner of such fees as may be prescribed by law as provided in section 505.30. The commissioner of insurance shall forthwith forward by certified mail one of the copies of such process to the defendant at the last known principal place of business and shall keep a record of all process so served.~~ Such service of process shall be sufficient to provide notice if all of the following apply:

a. A The plaintiff or plaintiff's attorney sends a copy of the service of process is sent by certified mail within ten days thereafter ~~by certified mail by plaintiff or plaintiff's attorney~~ to the defendant at the defendant's last known principal place of business.

b. The defendant's receipt or a receipt issued by the post office showing the name of the sender of the letter certified mail and the name and address of the person to whom the ~~letter certified mail~~ is addressed and an affidavit by the plaintiff or plaintiff's attorney ~~showing a~~ attesting to compliance herewith with this subsection are filed with the clerk of the court in which ~~such~~ the 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 as provided in this chapter be valid if ~~served~~ made upon any a person within this state who, in this state on behalf of such insurer, is soliciting insurance, making, issuing, or delivering any contract of insurance, or collecting or receiving any premium, membership fee, assessment, or other consideration for insurance, and if all of the following apply:

a. A The plaintiff or plaintiff's attorney sends a copy of such service of process is sent by certified mail within ten days thereafter by certified mail by the plaintiff or plaintiff's attorney to the defendant at the defendant's last known principal place of business of the defendant.

b. The defendant's receipt, or ~~the~~ a receipt issued by the post office showing the name of the sender of the ~~letter~~ certified mail and the name and address of the person to whom the ~~letter~~ certified mail is addressed, and an affidavit ~~of~~ by the plaintiff or plaintiff's attorney ~~showing a~~ attesting to compliance herewith with this subsection 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~~ A plaintiff shall not be entitled to a judgment by default under this chapter until the expiration of thirty days from the date of the filing of on which the plaintiff or plaintiff's attorney files the affidavit of compliance.

5. 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.

Sec. 4. Section 508E.3, subsection 7, Code 2018, is amended to read as follows:

7. The commissioner shall not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by

service of process on the commissioner. If an applicant files such consent, service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

Sec. 5. Section 511.28, Code 2018, is amended to read as follows:

511.28 Service of process.

~~Any notice or process, with three copies of the notice or process, may be mailed to the commissioner at Des Moines, Iowa, in a certified mail letter addressed to the commissioner by the commissioner's official title. The commissioner shall acknowledge service on behalf of the defendant foreign insurance company by writing, giving the date of receipt of the notice or process, and shall return the notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to the clerk by the clerk's official title, and shall also mail a copy, with a copy of the commissioner's acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation named or designated by such company in the written instrument. Notice or process received prior to 10 a.m. shall be forwarded the same working day. Notice or process received after 10 a.m. shall be forwarded the next working day. A fee of fifteen dollars must accompany the request for notice or process.~~
Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

Sec. 6. Section 512B.33, Code 2018, is amended to read as follows:

512B.33 Service of process.

1. A society authorized to do business in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the society may be served on the commissioner and shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. ~~Copies~~ A copy of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence

with the same force and effect as the original.

2. ~~Service of process shall only be made upon the commissioner, or if absent, upon the person in charge of the commissioner's office made on the commissioner as the agent for service of process shall be made as provided in section 505.30. Service shall be made in triplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall promptly forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer of the society. A society shall not be required to file its answer, pleading, or defense in less than thirty days from the date of mailing the copy of the service to a society the commissioner sends a copy of the service of process to the society by certified mail as provided in section 505.30. Legal process shall not be served made upon a society except in the manner provided in this section.~~

Sec. 7. Section 514.2A, Code 2018, is amended to read as follows:

514.2A Service of process.

A nonprofit health service corporation authorized to do business in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the corporation may be ~~served made~~ on the commissioner and shall be of the same legal force and validity as if ~~served made~~ upon the corporation, and that the authority shall continue in force so long as any liability remains outstanding in this state. ~~Copies~~ A copy of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original. Service of process made on the commissioner as the attorney for service of process shall be made as provided in section 505.30.

Sec. 8. Section 515.77, Code 2018, is amended to read as follows:

515.77 Service of process.

Any notice or service of process, ~~with three copies of the notice or process, may be mailed to the commissioner at Des~~

~~Moines, Iowa, in a certified mail letter addressed to the commissioner by the commissioner's official title made on the commissioner as agent for service of process shall be made as provided in section 505.30. The commissioner shall acknowledge service on behalf of the defendant foreign insurance company by writing, giving the date of receipt of the notice or process, and shall return the notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to the clerk by the clerk's official title, and shall also mail a copy, with a copy of the commissioner's acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation named or designated by such company in the written instrument. Notice or process received prior to 10:00 a.m. shall be forwarded the same working day. Notice or process received after 10:00 a.m. shall be forwarded the next working day. A fee of fifteen dollars must accompany the request for notice or process.~~

Sec. 9. Section 515E.3, Code 2018, is amended to read as follows:

515E.3 Risk retention groups organized in this state.

To be organized as a risk retention group in this state, the group must be organized and licensed as a liability insurance company authorized by the insurance laws of this state. Except as provided elsewhere in [this chapter](#), a risk retention group organized in this state must comply with all of the laws, rules, and requirements applicable to a liability insurers insurer organized in this state. Additionally, a risk retention group organized in this state must comply with section 515E.4. These requirements do not exempt a risk retention groups group from a duty imposed by any other law or rule of the state. Before it may offer insurance in any state, ~~each~~ a risk retention group shall also submit for approval to the commissioner of insurance of this state a plan of operation or a feasibility study, and revisions of the plan or study, within ten days of any change. The name under which a risk retention group may be chartered and licensed shall be a brief description of its membership followed by the phrase "risk retention group" and, unless its membership consists solely of insurers, shall not include the terms "insurance", "mutual",

"reciprocal", or any similar term. All A risk retention groups group chartered in this state shall file with the division and the national association of insurance commissioners an annual statement blank prepared in accordance with instructions prescribed by the commissioner. All financial information reflected in the annual statement shall be kept and prepared in accordance with accounting practices and procedures prescribed by the commissioner. The commissioner may adopt by reference the annual statement handbook and the accounting practices and procedures manual of the national association of insurance commissioners.

A risk retention group organized in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the society may be ~~served~~ made on the commissioner and shall be of the same legal force and validity as if ~~served~~ made upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original. Service of process made on the commissioner as the attorney for service of process shall be made as provided in section 505.30.

Sec. 10. Section 516E.12, Code 2018, is amended to read as follows:

516E.12 Service of process.

The commissioner shall be the ~~agent~~ attorney for service of process upon a provider, a service company, ~~or a~~ third-party administrator ~~and~~, or an issuer of a reimbursement insurance policy. Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

Sec. 11. Section 520.6, Code 2018, is amended to read as follows:

520.6 ~~Manner of service~~ Service of process.

~~Three copies of such process shall be served and the commissioner of insurance shall file one copy, forward one copy to said attorney, and return one copy with the commissioner's~~

~~admission of service.~~ Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

Sec. 12. Section 521A.3, subsection 7, Code 2018, is amended to read as follows:

7. *Jurisdiction — consent to service of process.* The district court is hereby vested with jurisdiction over every a person that is not a resident, is not domiciled, or is not authorized to do business in this state ~~who~~ that files a statement with the commissioner under **this section**, and over all actions involving ~~such~~ the person arising out of violations of **this section**, and ~~each such~~ the person shall be deemed to have performed acts equivalent to and constituting an appointment by ~~such a~~ the person of the commissioner to be the person's true and lawful attorney upon whom may be ~~served~~ made all lawful process, notice, or demand in any action, suit, or proceeding arising out of ~~violations~~ a violation of this section. ~~Copies~~ A copy of all such lawful process, notice, or demand shall be ~~served~~ made on the commissioner as the attorney for service of process as provided in section 505.30 and transmitted by registered or certified mail by the commissioner to such person at the person's last known address.

Sec. 13. NEW SECTION. 521B.107 Service of process made on the commissioner as the agent for service of process.

Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

Sec. 14. NEW SECTION. 521C.13 Service of process made on the commissioner as the agent for service of process.

Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

Sec. 15. NEW SECTION. 523A.802A Service of process made on the commissioner as the agent for service of process.

Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

Sec. 16. Section 523C.20, Code 2018, is amended to read as follows:

523C.20 Consent to service of process.

If a person engages in conduct subject to regulation under this chapter, the conduct shall constitute the appointment

of the commissioner of insurance as the person's attorney to receive service of ~~any lawful~~ process in a noncriminal proceeding against the person, a successor, or personal representative, which grows out of that conduct, with the same force and validity as if ~~served~~ made personally. Service of process made on the commissioner as the attorney for service of process shall be made as provided in section 505.30.

Sec. 17. Section 523C.21, Code 2018, is amended to read as follows:

523C.21 Service of process.

The commissioner shall be the agent for service of process upon a service company. Service of process made on the commissioner as the agent for service of process shall be made as provided in section 505.30.

Sec. 18. Section 523I.102, subsection 1, Code 2018, is amended to read as follows:

1. *"Authorized to do business within this state"* means a person licensed, registered, or subject to regulation by an agency of the state of Iowa ~~or who has filed a consent to service of process with the commissioner for purposes of this chapter.~~

LINDA UPMEYER
Speaker of the House

CHARLES SCHNEIDER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2236, Eighty-seventh General Assembly.

CARMINE BOAL
Chief Clerk of the House

Approved _____, 2018

KIM REYNOLDS
Governor