

House File 2236 - Introduced

HOUSE FILE 2236

BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 582)

A BILL FOR

1 An Act relating to service of process made on the commissioner
2 of insurance as the agent or attorney for service of process
3 for regulated individuals and entities and resolving
4 inconsistencies.

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

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

3 **502.611 Service of process.**

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

17 2. *Conduct constituting appointment of agent for service of*
18 *process.* If a person, including a nonresident of this state,
19 engages in an act, practice, or course of business prohibited
20 or made actionable by this chapter or a rule adopted or order
21 issued under this chapter and the person has not filed a
22 consent to service of process under subsection 1, the act,
23 practice, or course of business constitutes the appointment of
24 the administrator as the person's agent for service of process
25 in a noncriminal action or proceeding against the person or the
26 person's successor or personal representative.

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

32 a. The plaintiff, which may be the administrator, shall
33 promptly ~~sends~~ send notice of the service of process and a
34 copy of the service of process, ~~return receipt requested, by~~
35 certified mail to the defendant or respondent at the address

1 set forth in the consent to service of process or, if a consent
2 to service of process has not been filed, at to the defendant's
3 or respondent's last known address, or takes other reasonable
4 steps to give notice principal place of business.

5 **b.** The plaintiff ~~files~~ shall file an affidavit of compliance
6 with this subsection in the action or proceeding on or before
7 the return day of the service of process, if any, or within
8 the time that the court, or the administrator in a proceeding
9 before the administrator, allows.

10 **4.** *Service of process in an administrative proceedings*
11 *proceeding or civil actions action by administrator.* Service of
12 process pursuant to subsection 3 may be used in a proceeding
13 before the administrator or by the administrator in a civil
14 action in which the administrator is the moving party.

15 **5.** *Opportunity to defend.* If process is served under
16 subsection 3, the court, or the administrator in a proceeding
17 before the administrator, shall order continuances as are
18 necessary or appropriate to afford the defendant or respondent
19 reasonable opportunity to defend.

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

22 **505.30 Service of process — ~~fee made on the commissioner as~~**
23 **agent or attorney for service of process — rules and fee.**

24 **1.** The commissioner ~~of insurance, pursuant to~~ may adopt
25 rules adopted pursuant to chapter 17A, setting forth procedures
26 related to service of process made on the commissioner as
27 agent or attorney for service of process for an individual or
28 entity within the jurisdiction of the commissioner. The rules
29 shall apply when the individual or entity is required by law
30 to appoint the commissioner to serve, is required by law to
31 consent to have the commissioner serve, is deemed by law to
32 have appointed or to have consented to have the commissioner
33 serve, or elects to appoint or consents to have the
34 commissioner serve as agent or attorney for service of process.

35 **2.** The commissioner may collect a reasonable fee each

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

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

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

22 **507A.5 Proscribed acts binding on insurer.**

23 1. ~~No~~ A person or insurer shall not directly or indirectly
 24 perform any ~~of the acts~~ act of doing an insurance business as
 25 defined in this chapter except as provided by and in accordance
 26 with the specific authorization by statute. However, should
 27 any an unauthorized person or insurer perform any an act of
 28 doing an insurance business as set forth in this chapter, it
 29 shall be equivalent to and shall constitute an irrevocable
 30 appointment by such person or insurer, binding upon the
 31 person, the person's executor or administrator, or successor
 32 in interest if a corporation, of the commissioner of insurance
 33 or the commissioner's successor in office, to be the true and
 34 lawful attorney upon whom may be served all lawful process in
 35 any action, suit or proceeding in any court arising out of

1 doing an insurance business in this state or instituted by
 2 or on behalf of an insured or beneficiary arising out of ~~any~~
 3 such ~~acts~~ an act of doing an insurance business, except in an
 4 action, suit, or proceeding by the commissioner of insurance
 5 or by the state. ~~Any~~ An act of doing an insurance business by
 6 ~~any~~ an unauthorized person or insurer shall be signification of
 7 its agreement that such service of process is of the same legal
 8 force and validity as personal service of process in this state
 9 upon such person or insurer.

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

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

26 b. The defendant's receipt or a receipt issued by the post
 27 office showing the name of the sender of the ~~letter~~ certified
 28 mail and the name and address of the person to whom the ~~letter~~
 29 certified mail is addressed and an affidavit by the plaintiff
 30 or plaintiff's attorney ~~showing a~~ attesting to compliance
 31 ~~herewith~~ with this subsection are filed with the clerk of the
 32 court in which ~~such~~ the action is pending on or before the date
 33 the defendant is required to appear or within such further time
 34 as the court may allow.

35 3. Service of process in any such action, suit, or

1 proceeding shall in addition to the manner as provided in
 2 this chapter be valid if ~~served~~ made upon ~~any~~ a person within
 3 this state who, in this state on behalf of such insurer,
 4 is soliciting insurance, making, issuing, or delivering
 5 any contract of insurance, or collecting or receiving any
 6 premium, membership fee, assessment, or other consideration for
 7 insurance, and if all of the following apply:

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

13 b. The defendant's receipt, or ~~the~~ a receipt issued by
 14 the post office showing the name of the sender of the ~~letter~~
 15 certified mail and the name and address of the person to whom
 16 the ~~letter~~ certified mail is addressed, and an affidavit ~~of~~ by
 17 the plaintiff or plaintiff's attorney ~~showing a~~ attesting to
 18 compliance ~~herewith~~ with this subsection are filed with the
 19 clerk of the court in which such action is pending on or before
 20 the date the defendant is required to appear or within such
 21 further time as the court may allow.

22 4. ~~No~~ A plaintiff shall not be entitled to a judgment by
 23 default under this chapter until the expiration of thirty
 24 days from the date of the filing of on which the plaintiff or
 25 plaintiff's attorney files the affidavit of compliance.

26 5. Nothing in this section shall limit or abridge the right
 27 to serve any process, notice, or demand upon any insurer in any
 28 other manner now or hereafter permitted by law.

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

31 7. The commissioner shall not issue a license to a
 32 nonresident applicant unless a written designation of an
 33 agent for service of process is filed and maintained with the
 34 commissioner or the applicant has filed with the commissioner
 35 the applicant's written irrevocable consent that any action

1 against the applicant may be commenced against the applicant by
2 service of process on the commissioner. If an applicant files
3 such consent, service of process made on the commissioner as
4 the agent for service of process shall be made as provided in
5 section 505.30.

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

8 **511.28 Service of process.**

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

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

30 **512B.33 Service of process.**

31 1. A society authorized to do business in this state shall
32 file in the office of the commissioner a power of attorney
33 and an agreement in writing that service of process in any
34 action or proceeding against the society may be served on the
35 commissioner and shall be of the same legal force and validity

1 as if served upon the society, and that the authority shall
 2 continue in force so long as any liability remains outstanding
 3 in this state. ~~Copies~~ A copy of the power of attorney,
 4 certified by the commissioner, shall be deemed sufficient
 5 evidence of the appointment and shall be admitted in evidence
 6 with the same force and effect as the original.

7 2. Service of process ~~shall only be made upon the~~
 8 ~~commissioner, or if absent, upon the person in charge of~~
 9 ~~the commissioner's office made on the commissioner as the~~
 10 agent for service of process shall be made as provided in
 11 section 505.30. ~~Service shall be made in triplicate and shall~~
 12 ~~constitute sufficient service upon the society. When legal~~
 13 ~~process against a society is served upon the commissioner, the~~
 14 ~~commissioner shall promptly forward one of the duplicate copies~~
 15 ~~by registered mail, prepaid, directed to the secretary or~~
 16 ~~corresponding officer of the society. A society shall not be~~
 17 ~~required to file its answer, pleading, or defense in less than~~
 18 ~~thirty days from the date of mailing the copy of the service~~
 19 ~~to a society~~ the commissioner sends a copy of the service of
 20 process to the society by certified mail as provided in section
 21 505.30. Legal process shall not be ~~served~~ made upon a society
 22 except in the manner provided in [this section](#).

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

25 **514.2A Service of process.**

26 A nonprofit health service corporation authorized to
 27 do business in this state shall file in the office of the
 28 commissioner a power of attorney and an agreement in writing
 29 that service of process in any action or proceeding against
 30 the corporation may be ~~served~~ made on the commissioner and
 31 shall be of the same legal force and validity as if ~~served~~ made
 32 upon the corporation, and that the authority shall continue
 33 in force so long as any liability remains outstanding in this
 34 state. ~~Copies~~ A copy of the power of attorney, certified by
 35 the commissioner, shall be deemed sufficient evidence of the

1 appointment and shall be admitted in evidence with the same
2 force and effect as the original. Service of process made on
3 the commissioner as the attorney for service of process shall
4 be made as provided in section 505.30.

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

7 **515.77 Service of process.**

8 Any notice or service of process, ~~with three copies of the~~
9 ~~notice or process, may be mailed to the commissioner at Des~~
10 ~~Moines, Iowa, in a certified mail letter addressed to the~~
11 ~~commissioner by the commissioner's official title~~ made on the
12 commissioner as agent for service of process shall be made as
13 provided in section 505.30. ~~The commissioner shall acknowledge~~
14 ~~service on behalf of the defendant foreign insurance company by~~
15 ~~writing, giving the date of receipt of the notice or process,~~
16 ~~and shall return the notice or process in a certified mail~~
17 ~~letter to the clerk of the court in which the suit is pending,~~
18 ~~addressed to the clerk by the clerk's official title, and~~
19 ~~shall also mail a copy, with a copy of the commissioner's~~
20 ~~acknowledgment of service written thereon, in a certified~~
21 ~~mail letter addressed to the person or corporation named or~~
22 ~~designated by such company in the written instrument. Notice~~
23 ~~or process received prior to 10:00 a.m. shall be forwarded the~~
24 ~~same working day. Notice or process received after 10:00 a.m.~~
25 ~~shall be forwarded the next working day. A fee of fifteen~~
26 ~~dollars must accompany the request for notice or process.~~

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

29 **515E.3 Risk retention groups organized in this state.**

30 To be organized as a risk retention group in this state,
31 the group must be organized and licensed as a liability
32 insurance company authorized by the insurance laws of this
33 state. Except as provided elsewhere in **this chapter**, a risk
34 retention group organized in this state must comply with all
35 of the laws, rules, and requirements applicable to a liability

1 ~~insurers~~ insurer organized in this state. Additionally, a
2 risk retention group organized in this state must comply with
3 section 515E.4. These requirements do not exempt a risk
4 retention ~~groups~~ group from a duty imposed by any other law or
5 rule of the state. Before it may offer insurance in any state,
6 ~~each~~ a risk retention group shall also submit for approval to
7 the commissioner of insurance of this state a plan of operation
8 or a feasibility study, and revisions of the plan or study,
9 within ten days of any change. The name under which a risk
10 retention group may be chartered and licensed shall be a brief
11 description of its membership followed by the phrase "risk
12 retention group" and, unless its membership consists solely of
13 insurers, shall not include the terms "insurance", "mutual",
14 "reciprocal", or any similar term. ~~All~~ A risk retention ~~groups~~
15 group chartered in this state shall file with the division
16 and the national association of insurance commissioners an
17 annual statement blank prepared in accordance with instructions
18 prescribed by the commissioner. All financial information
19 reflected in the annual statement shall be kept and prepared in
20 accordance with accounting practices and procedures prescribed
21 by the commissioner. The commissioner may adopt by reference
22 the annual statement handbook and the accounting practices and
23 procedures manual of the national association of insurance
24 commissioners.

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

1 process made on the commissioner as the attorney for service of
2 process shall be made as provided in section 505.30.

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

5 **516E.12 Service of process.**

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

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

14 **520.6 ~~Manner of service~~ Service of process.**

15 ~~Three copies of such process shall be served and the~~
16 ~~commissioner of insurance shall file one copy, forward one copy~~
17 ~~to said attorney, and return one copy with the commissioner's~~
18 ~~admission of service.~~ Service of process made on the
19 commissioner as the agent for service of process shall be made
20 as provided in section 505.30.

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

23 *7. Jurisdiction — consent to service of process.* The
24 district court is hereby vested with jurisdiction over every
25 a person that is not a resident, is not domiciled, or is
26 not authorized to do business in this state ~~who~~ that files
27 a statement with the commissioner under this section, and
28 over all actions involving ~~such~~ the person arising out of
29 violations of this section, and ~~each such~~ the person shall be
30 deemed to have performed acts equivalent to and constituting
31 an appointment by ~~such a~~ the person of the commissioner to be
32 the person's true and lawful attorney upon whom may be ~~served~~
33 made all lawful process, notice, or demand in any action, suit,
34 or proceeding arising out of ~~violations~~ a violation of this
35 section. ~~Copies~~ A copy of all such lawful process, notice, or

1 demand shall be ~~served~~ made on the commissioner as the attorney
2 for service of process as provided in section 505.30 and
3 ~~transmitted by registered or certified mail by the commissioner~~
4 ~~to such person at the person's last known address.~~

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

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

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

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

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

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

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

19 **523C.20 Consent to service of process.**

20 If a person engages in conduct subject to regulation under
21 this chapter, the conduct shall constitute the appointment
22 of the commissioner of insurance as the person's attorney
23 to receive service of ~~any lawful~~ process in a noncriminal
24 proceeding against the person, a successor, or personal
25 representative, which grows out of that conduct, with the same
26 force and validity as if ~~served~~ made personally. Service of
27 process made on the commissioner as the attorney for service of
28 process shall be made as provided in section 505.30.

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

31 **523C.21 Service of process.**

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

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

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

8 EXPLANATION

9 The inclusion of this explanation does not constitute agreement with
10 the explanation's substance by the members of the general assembly.

11 This bill relates to service of process made on the
12 commissioner of insurance as the agent or attorney for service
13 of process for regulated entities and individuals.

14 Code section 505.30 (insurance division) is amended and
15 provides that the commissioner may adopt rules for the process
16 by which service of process shall be made upon the commissioner
17 as the agent or attorney for service of process for a regulated
18 entity or individual. The commissioner shall also retain for
19 90 days a record of each service of process made, the time
20 served, the date the commissioner mails the service of process
21 to the defendant or respondent and the date each certificate
22 of service is filed with the court. No change is made to the
23 commissioner's ability to collect a reasonable fee for each
24 process made on the commissioner.

25 Code sections 508E.3(7) (viatical settlement contracts),
26 520.6 (reciprocal or interinsurance contracts), and 523C.20 and
27 523C.21 (residential service contracts) are amended to provide
28 that service of process on the commissioner as the agent or
29 attorney for service of process shall be made as provided in
30 Code section 505.30.

31 Code sections 502.611 (uniform securities Act), 507A.5
32 (unauthorized insurers), 512B.33 (fraternal benefit societies),
33 514.2A (nonprofit health service corporations), 515E.3 (risk
34 retention groups and purchasing groups), 516E.12 (motor vehicle
35 service contracts), and 521A.3(7) (insurance holding company

1 systems) are amended to provide that service of process on the
2 commissioner as the agent or attorney for service of process
3 shall be made as provided in Code section 505.30 and to make
4 technical changes for enhanced readability and consistency.

5 Code sections 511.28 (life insurance companies and
6 associations) and 515.77 (insurance other than life) are
7 amended to provide that service of process on the commissioner
8 as the agent for service of process shall be made as
9 provided in Code section 505.30. In addition, the \$15.00
10 fee required for service of process on the commissioner is
11 stricken, allowing for a reasonable fee to be collected by the
12 commissioner as provided in Code section 505.30.

13 New Code sections 521B.107 (credit for reinsurance), 521C.13
14 (reinsurance intermediaries), and 523A.802A (cemetery and
15 funeral merchandise and funeral services) require that service
16 of process on the commissioner as the agent for service of
17 process shall be made as provided in Code section 505.30.

18 Code section 523I.201(1) (Iowa cemetery Act) is amended to
19 remove the commissioner as an agent for service of process.