

## UNAUTHORIZED INSURERS PROCESS ACT

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### Introduction

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

#### Section 1. Purpose of Act

The purpose of this Act 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 legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to these residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under these policies. In furtherance of the state interest, the legislature herein provides a method of substituted service of process upon the 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 United States Code tit. 15 § 1011, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

#### Section 2. Service of Process Upon Unauthorized Insurer

- A. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer is equivalent to and shall constitute an appointment by the insurer of the Commissioner of Insurance and the commissioner's 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 a contract of insurance, and any act shall be signification of its agreement that the service of process is of the same legal force and validity as personal service of process in this state upon the insurer.
- (1) The issuance or delivery of insurance contracts to residents of this state or to corporations authorized to do business in the state;
  - (2) The solicitation of applications for insurance contracts;
  - (3) The collection of premiums, membership fees, assessments or other considerations for insurance contracts; or

- (4) Any other transaction of insurance business.

**Drafting Note:** Insert the title of the chief regulatory official wherever the term “commissioner” appears.

- B. Service of process shall be made by delivering to and leaving with the commissioner or some person in apparent charge of the office two (2) copies thereof and the payment of the fees prescribed by law. The commissioner shall forthwith mail by registered mail one of the copies of the process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon the commissioner. The service of process is sufficient, provided notice of such service and a copy of the process are sent within ten (10) days thereafter by registered mail by the 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 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 plaintiff or plaintiff’s attorney showing compliance are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within a further time the court may allow.
- C. Service of process in an action, suit or proceeding shall, in addition to the manner provided in Subsection B of this section, be valid if served upon a person within this state who, in this state on behalf of the insurer, is:
- (1) Soliciting insurance; or
  - (2) Making, issuing or delivering any contract of insurance; or
  - (3) Collecting or receiving any premium, membership fee, assessment or other consideration for insurance;

and a copy of the process is sent within ten (10) days thereafter by registered mail by the plaintiff or plaintiff’s attorney 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 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 the action is pending on or before the date the defendant is required to appear, or within a further time the court may allow.

- D. A plaintiff or complainant shall not be entitled to a [insert appropriate state procedure, either judgment by default, or a judgment with leave to prove damages, or a judgment *pro confesso*] under this section until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.
- E. 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.

**Section 3. Defense of Action By Unauthorized Insurer**

- A. 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, the unauthorized insurer shall deposit with the clerk of the court in which the action, suit or

proceeding is pending, cash or securities or file with the 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 the action; or procure a certificate of authority to transact the business of insurance in this state.

- B. The court in any action, suit or proceeding in which service is made in the manner provided in Section 2B or 2C may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of Subsection A of this section and to defend the action.
- C. Nothing in Subsection A of this section 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 Section 2B or 2C on the ground either that:
  - (1) The unauthorized insurer has not done any of the acts enumerated in Section 2A; or
  - (2) The person on whom service was made pursuant to Section 2C was not doing any of the acts therein enumerated.

#### **Section 4. Attorney Fees**

In an 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 thirty (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 the refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include the fee in any judgment that may be rendered in the action. The fee shall not exceed twelve and one-half percent (12-1/2%) of the amount that the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall the fee be less than \$25. Failure of an insurer to defend an action shall be deemed *prima facie* evidence that its failure to make payment was vexatious and without reasonable cause.

#### **Section 5. Constitutionality**

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

#### **Section 6. Short Title**

This Act may be cited as the Unauthorized Insurers Process Act.

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*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

*1949 Proc. 126-130, 132, 315-316 (adopted).*

*1951 Proc. 166-168, 182 (printed and reaffirmed).*

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**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state's activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC's interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

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**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Alabama	ALA. CODE §§ 27-10-50 to 27-10-56 (1951/1971).	
Alaska		ALASKA STAT. §§ 21.33.011 to 21.33.035 (1968/1992); BULLETIN 2006-19 (2006).
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. §§ 20-403 to 20-406 (1972/1989).	
Arkansas	ARK. CODE ANN. §§ 23-65-201 to 23-65-205 (1959).	
California	CAL. INS. CODE §§ 1610 to 1619 (1949/1982).	CAL. INS. CODE § 12931 (1970/1985).
Colorado	COLO. REV. STAT. §§ 10-3-1001 to 10-3-1005 (1955/1997).	
Connecticut	CONN. GEN. STAT. § 38a-27 (1970/1996).	
Delaware	DEL. CODE ANN. tit. 18, §§ 2101 to 2108 (1956/1995).	
District of Columbia	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Florida	FLA. STAT. §§ 626.904 to 626.912 (1982/1997).	
Georgia	GA. CODE ANN. §§ 33-5-50 to 33-5-59 (1960/2000).	
Guam		GUAM GOV'T. CODE §§ 43129 to 43131 (1959).
Hawaii	HAW. REV. STAT. §§ 431:8-206 to 431:8-211 (1988/2006).	
Idaho	IDAHO CODE ANN. §§ 41-1204 to 41-1210 (1961).	
Illinois	215 ILL. COMP. STAT. 5/123 (1949/1997).	
Indiana	IND. CODE §§ 27-4-4-1 to 27-4-4-8 (1955/1994).	
Iowa		IOWA CODE §§ 507A.5 to 507A.6 (1967/1974).
Kansas	KAN. STAT. ANN. §§ 40-2001 to 40-2006 (1949).	
Kentucky	KY. REV. STAT. ANN. § 304.11-040 (1982).	
Louisiana	LA. REV. STAT. ANN. §§ 22:1253 to 1256 (1958/1999).	
Maine	ME. REV. STAT. ANN. tit. 24-A, §§ 2102 to 2108 (1970/1991).	
Maryland		MD. CODE ANN., INS. § 4-206 (1957/1997).
Massachusetts	MASS. GEN. LAWS ch. 175B, §§ 1 to 6 (1950/1973).	
Michigan		MICH. COMP. LAWS § 500.456 (1956/2003).



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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Minnesota	MINN. STAT. § 60A.21 (1978/1994).	
Mississippi	MISS. CODE ANN. §§ 83-21-33 to 83-21-51 (1958/1991).	
Missouri	MO. REV. STAT. §§ 375.256 to 375.301 (1967/1998).	
Montana	MONT. CODE ANN. §§ 33-1-611 to 33-1-616 (1959/1987).	
Nebraska	NEB. REV. STAT. §§ 44-2009 to 44-2013 (1949/1992).	
Nevada	NEV. REV. STAT. §§ 685B.050 to 685B.080 (1971/1993).	
New Hampshire	N.H. REV. STAT. ANN. §§ 406-B:4 to 406-B:7 (1967/1983).	
New Jersey	N.J. STAT. ANN. §§ 17B:33-1 to 17B:33-9 (1971); §§ 17:51-1 to 17:51-5 (1952/1996).	
New Mexico	N.M. STAT. ANN. §§ 59A-15-6 to 59A-15-8 (1985).	
New York	N.Y. INS. LAW § 1213 (1984).	
North Carolina	N.C. GEN. STAT. § 58-16-35 (1955/1999).	
North Dakota	N.D. CENT. CODE §§ 26.1-02-10 to 26.1-02-12 (1983).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO REV. CODE ANN. § 3901.26 (1965).	
Oklahoma		OKLA STAT. tit. 36, §§ 1103 to 1105 (1957/1997).
Oregon	OR. REV. STAT. §§ 746.320 (1967/1991).	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Pennsylvania	40 PA. CONS. STAT. § 1-206 (1976/1994).	
Puerto Rico		P.R. LAWS ANN. tit. 26, §§ 1005 to 1006 (1977).
Rhode Island	R.I. GEN. LAWS §§ 27-16-3 to 27-16-14 (1956).	
South Carolina	S.C. CODE ANN. §§ 38-25-510 to 38-25-560 (1988/1993).	
South Dakota	S.D. CODIFIED LAWS §§ 58-8-6 to 58-8-19 (1966/1982).	
Tennessee	TENN. CODE ANN. §§ 56-2-601 to 56-2-609 (1955).	
Texas		TEX. INS. CODE ANN. §§ 804.106 to 804.201 (2003).
Utah		UTAH CODE ANN. §§ 31A-2-309 to 31A-2-311 (1985/2004).
Vermont	VT. STAT. ANN. tit. 8, §§ 3381 to 3390 (1968).	
Virgin Islands		V.I. CODE ANN. tit. 22, § 665 (1968).
Virginia		VA. CODE ANN. §§ 38.2-800 to 38.2-807 (1986).
Washington		WASH. REV. CODE. §§ 48.05.200 to 48.05.220 (1947/1985).
West Virginia	W. VA. CODE § 33-4-13 (1957/1997).	
Wisconsin		WIS. STAT. §§ 601.72 to 601.73 (1969/1996); BULLETIN 5-29-2012 (2012).
Wyoming		WYO. STAT. ANN. §§ 26-12-201 to 26-12-206 (1967/1983).

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### Proceedings Citations

Cited to the Proceedings of the NAIC

The model bill developed in 1949 was patterned after the Uniform Unauthorized Insurers Act drafted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association in 1939. It was drafted in light of recent Supreme Court cases dealing with what constituted the doing of business in the state for revenue purposes. **1949 Proc. 130.**

In 1950 the committee reported that the decision in *Virginia v. Travelers Health Association* had resolved most of the questions raised as to its constitutionality. The committee urged that the model legislation be enacted in those states that had not yet done so. **1951 Proc. 165.**

#### Section 1. Purpose of Act

The committee appointed for the development of this model considered a suggestion to deal with the subject of a company writing insurance in a state in which it had not been licensed; and in particular, the action of obtaining a power of attorney to authorize the insurance commissioner to accept service of process. **1944 Proc. 67.**

The Committee on Unauthorized Insurance recommended that the NAIC membership not endorse a policy of executing powers of attorney for service of process lest it be considered as approval of companies doing business in a particular state without obtaining a proper license. **1944 Proc. 67.**

At the next year's meeting the chair of the committee opined that there was not much unauthorized insurance that the NAIC might be interested in. A state commissioner disagreed, noting that his department had 544 inquiries the prior year on unauthorized insurers doing business in the state. **1945 Proc. 210.**

When considered a charge to address concerns about unauthorized insurance, several draft bills were submitted, each of which proposed some form of federal legislation. The committee felt, however, that it should first make every effort to find a solution to the problem on the state level. **1949 Proc. 35.**

#### Section 2. Service of Process on Unauthorized Insurer

In 1948 a committee was appointed to consider a way to address the problem of mail order business and unauthorized insurance. **1949 Proc. 33.**

The committee noted that the number of companies that insure persons or property through the mails in states where they are not licensed are comparatively few. Most companies maintain an excellent record of integrity, fidelity and public service. Problems related to the few insurers appear to be: (1) deceptive or misleading policy provisions; (2) false or misleading advertising; and (3) failure to pay valid claims. The bad claims practices of offending insurers have been aggravated in many instances by the inability of insurers or beneficiaries to sue the insurers except in the insurer's state of domicile. This resulted in hardship to insureds and beneficiaries. **1949 Proc. 34.**

The drafters summarized Section 2 as follows: it provides for substituted service of process on an unauthorized foreign or alien insurer that issues or delivers contracts of insurance to residents of the state, solicits applications, collects premiums, or otherwise transacts business in the state. The

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### Proceedings Citations Cited to the Proceedings of the NAIC

#### Section 2 (cont.)

section subjects these unauthorized insurers to the jurisdiction of the courts where the residents reside and eliminates the need for residents to travel to distant forums for the purpose of asserting their legal rights. **1949 Proc. 130-131.**

A. In considering the matter, the committee concluded that courts had recently adopted much more liberal views as to what constituted the business of insurance by foreign corporations for the purpose of service of process and what constituted a sufficient state interest justifying subjecting nonauthorized corporations to the jurisdiction of its courts. In light of this more liberal approach by the courts, the committee felt it was probable that the courts would uphold as constitutional the statute of a state providing for substituted service of process on an unauthorized insurer using the mails to insure state residents. **1949 Proc. 36.**

The committee said the model provisions were keyed to the more realistic concept of “doing business” as established by the more recent decisions of the U.S. Supreme Court. **1949 Proc. 127.**

#### Section 3. Defense of Action by Unauthorized Insurers

A. This section requires the defendant to deposit cash or securities or file a surety bond in an amount to be fixed by the court sufficient to secure the payment of any judgment that may be rendered in an action. **1949 Proc. 131.**

C. This subsection allows an unauthorized insurer to question the jurisdiction of the court without the necessity of depositing cash or securities or filing a bond. **1949 Proc. 131.**

#### Section 4. Attorney Fees

In an action against an unauthorized insurer that vexatiously and without reasonable cause has failed to pay a claim, the plaintiff may recover a reasonable attorney’s fee not to exceed 12½ percent of the amount to which he is entitled to recover, but in no event less than \$25. This provision was designed to encourage the prompt payment of valid claims, to balance the inconvenience to the claimant of the improper delay to which he has been subjected, and to induce unauthorized insurers to defend actions in the courts of the plaintiff’s residence and thus avoid the necessity for suits on judgments in the domiciliary state of unauthorized insurers. **1949 Proc. 131.**

#### Section 5. Constitutionality

The separability clause is similar to that in the Uniform Unauthorized Insurers Act. **1949 Proc. 131.**

#### Section 6. Short Title

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**Proceedings Citations**  
Cited to the Proceedings of the NAIC

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**Chronological Summary of Actions**

*December 1948: Model adopted.*  
*December 1950: Model reaffirmed.*

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