

1 IN THE

House

By Request
BY Mr. Gilbert

2 BILL NO. 178

3 IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4 TWENTY SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to insurers not authorized to
7 transact business in this territory; providing
8 for actions in this territory against and for
9 the service of process upon such insurers; pre-
10 scribing how a defense may be made by such in-
11 surers; and providing for the allowance of
12 attorneys fees in actions against such insurers."

13 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

14 SECTION 1. PURPOSE OF ACT. The purpose of this Act is to
15 subject certain insurers to the jurisdiction of courts of this
16 territory in suits by or on behalf of insureds or beneficiaries
17 under insurance contracts. The legislature declares that it is a
18 subject of concern that many residents of this territory hold pol-
19 icies of insurance issued by insurers not authorized to do business
20 in this territory, thus presenting to such residents the often in-
21 superable obstacle of resorting to distant forums for the purpose
22 of ascertaining legal rights under such policies. In furtherance of
23 such territorial interest, the legislature herein provides a method
24 of substituted service of process upon such insurers and declares
25 that in so doing it exercises its power to protect its residents
26 and to define, for the purpose of this statute, what constitutes
27 doing business in this territory, and also exercises powers and
28 privileges available to the territory by virtue of ^{insert} Public Law 15,
29 72th Congress of the United States, Chapter 20, 1st Sess., S. 340,

BY *[Signature]*

IN THE SENATE

BILL NO. 177

IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

SENATE SECOND SESSION

A BILL

For an act entitled: "An act relating to attorneys not authorized to transact business in this territory; providing for actions in this territory against and for the service of process upon such attorneys; prescribing how a defense may be made by such attorneys; and providing for the allowance of attorneys fees in actions against such attorneys."

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA: SECTION 1. PURPOSE OF ACT. The purpose of this act is to subject certain attorneys to the jurisdiction of courts of this territory in suits by or on behalf of individuals or beneficiaries under insurance contracts. The legislature declares that it is a subject of concern that many residents of this territory hold policies of insurance issued by insurers not authorized to do business in this territory, and presenting to such residents the often irresponsible practice of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such territorial interest, the legislature herein provides a means of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect the residents

Page 1, Line 28: Strike "Public Law 15" through Page 2, Line 1, "as amended," and insert in lieu thereof "Sections 1011 through 1015, inclusive, Title 15, United States Code,"

~~THE UNITED STATES, CHIEF JUSTICE, SUPREME COURT, WASHINGTON, D. C.~~

1 as amended, which declares that the business of insurance and
2 every person engaged therein shall be subject to the laws of the
3 several states.

4 SECTION 2. SERVICE OF PROCESS UPON UNAUTHORIZED INSURER.

5 (a) Any of the following acts in this territory, ef-
6 fected by mail or otherwise, by an unauthorized foreign or alien
7 insurer: (1) the issuance or delivery of contracts of insurance
8 to residents of this territory or to corporations authorized to do
9 business therein, (2) the solicitation of applications for such
10 contracts, (3) the collection of premiums, membership fees, as-
11 sessments or other considerations for such contracts, or (4) any
12 other transaction of business, is equivalent to and shall con-
13 stitute an appointment by such insurer of the Commissioner of In-
14 surance and his successor or successors in office, to be its true
15 and lawful attorney, upon whom may be served all lawful process in
16 any action, suit, or proceeding instituted by or on behalf of an
17 insured or beneficiary arising out of any such contract of insur-
18 ance, and any such act shall be signification of its agreement that
19 such service of process is of the same legal force and validity as
20 personal service of process in this territory upon such insurer.

21 (b) Such service of process shall be made by delivering
22 to and leaving with the Commissioner of Insurance or some person
23 in apparent charge of his office two copies thereof and the payment
24 to him of such fees as may be prescribed by law. The Commissioner
25 of Insurance shall forthwith mail by registered mail one of the
26 copies of such process to the defendant at its last known principal
27 place of business, and shall keep a record of all process so
28 served upon him. Such service of process is sufficient, provided
29 notice of such service and a copy of the process are sent within

1 ten days thereafter by registered mail by plaintiff or plaintiff's
2 attorney to the defendant at its last known principal place of
3 business, and the defendant's receipt, or receipt issued by the
4 postoffice with which the letter is registered, showing the name
5 of the sender of the letter and the name and address of the person
6 to whom the letter is addressed, and the affidavit of the plain-
7 tiff or plaintiff's attorney showing a compliance herewith are
8 filed with the clerk of the court in which such action is pending
9 on or before the date the defendant is required to appear, or
10 within such further time as the court may allow.

11 (c) Service of process in any such action, suit or pro-
12 ceeding shall in addition to the manner provided in subsection (b)
13 of this section be valid if served upon any person within this
14 territory who, in this territory on behalf of such insurer, is

15 (1) soliciting insurance, or

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

17 (3) collecting or receiving any premium, membership fee, assess-
18 ment or other consideration for insurance; and a copy of such pro-
19 cess is sent within ten days thereafter by registered mail by the
20 plaintiff or plaintiff's attorney to the defendant at the last
21 known principal place of business of the defendant, and the defen-
22 dant's receipt, or the receipt issued by the postoffice with which
23 the letter is registered, showing the name of the sender of the
24 letter and the name and address of the person to whom the letter
25 is addressed, and the affidavit of the plaintiff or plaintiff's
26 attorney showing a compliance herewith are filed with the clerk of
27 the court in which such action is pending on or before the date
28 the defendant is required to appear, or within such further time
29 as the court may allow.

1 (d) No plaintiff or complainant shall be entitled to a
2 judgment by default, or a judgment with leave to prove damages, or
3 a judgment pro confesso under this section until the expiration of
4 thirty days from date of the filing of the affidavit of compliance.

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

8 SECTION 5. DEFENSE OF ACTION BY UNAUTHORIZED INSURER.

9 (a) Before any unauthorized foreign or alien insurer
10 shall file or cause to be filed any pleading in any action, suit
11 or proceeding instituted against it, such unauthorized insurer
12 shall either (1) deposit with the clerk of the court in which such
13 action, suit or proceeding is pending cash or securities or file
14 with such clerk a bond with good and sufficient sureties, to be
15 approved by the court, in an amount to be fixed by the court suffi-
16 cient to secure the payment of any final judgment which may be
17 rendered in such action; or (2) procure a certificate of authority
18 to transact the business of insurance in this territory.

19 (b) The court in any action, suit, or proceeding, in
20 which service is made in the manner provided in subsections (b)
21 or (c) of Section 2 may, in its discretion, order such postpone-
22 ment as may be necessary to afford the defendant reasonable oppor-
23 tunity to comply with the provisions of subsection (a) of this
24 section and to defend such action.

25 (c) Nothing in subsection (a) of this section is to be
26 construed to prevent an unauthorized foreign or alien insurer from
27 filing a motion to quash a writ or to set aside service thereof
28 made in the manner provided in subsections (b) or (c) of Section 2
29 hereof on the ground either (1) that such unauthorized insurer has

1 not done any of the acts enumerated in subsection (a) of Section 2,
2 or (b) that the person on whom service was made pursuant to sub-
3 section (c) of Section 2 was not doing any of the acts therein
4 enumerated.

5 SECTION 4. ATTORNEY FEES. In any action against an unauthor-
6 ized foreign or alien insurer upon a contract of insurance issued
7 or delivered in this territory to a resident thereof or to a cor-
8 poration authorized to do business therein, if the insurer has
9 failed for thirty days after demand prior to the commencement of
10 the action to make payment in accordance with the terms of the
11 contract, and it appears to the court that such refusal was vexa-
12 tious and without reasonable cause, the court may allow to the
13 plaintiff a reasonable attorney fee and include such fee in any
14 judgment that may be rendered in such action. Such fee shall not
15 exceed such amount as is allowed in civil actions in the district
16 court under its rules. Failure of an insurer to defend any such
17 action shall be deemed prima facie evidence that its failure to
18 make payment was vexatious and without reasonable cause.

19 SECTION 5. CONSTITUTIONALITY. If any provision of this Act
20 or the application thereof to any person or circumstances is held
21 invalid, such invalidity shall not affect other provisions or ap-
22 plications of the Act which can be given effect without the invalid
23 provision or application, and to this end the provisions of this
24 Act are declared to be severable.

25 SECTION 6. SHORT TITLE. This Act may be cited as the Unau-
26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 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