

1 IN THE SENATE

BY SENATORS GILBERT,
BRADSHAW AND MCNABB

2 SENATE BILL NO. 68

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

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

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

15 Section 1. SHORT TITLE. This Act may be cited as the
16 "Unauthorized Insurers Process Act".

17 Sec. 2. PURPOSE OF ACT. The purpose of this Act is to sub-
18 ject certain insurers to the jurisdiction of courts of Alaska in
19 suits by or on behalf of insureds or beneficiaries under insurance
20 contracts. The legislature declares that it is a subject of
21 concern that many residents of Alaska hold policies of insurance
22 issued by insurers not authorized to do business in Alaska, thus
23 presenting to such residents the often insuperable obstacle of
24 resorting to distant forums for the purpose of asserting legal
25 rights under such policies. In furtherance of such state interest,
26 the legislature herein provides a method of substituted service of
27 process upon such insurers and declares that in so doing it
28 exercises its power to protect its residents and to define, for
29 the purpose of this statute, what constitutes doing business in

1 Alaska, and also exercises powers and privileges available to the
2 state by virtue of Public Law 15, 79th Congress of the United
3 States, Chapter 20, 1st Sess., S. 340, as amended, which declares
4 that the business of insurance and every person engaged therein
5 shall be subject to the laws of the several states.

6 Sec. 3. SERVICE OF PROCESS UPON UNAUTHORIZED INSURER. (a)
7 Any of the following acts in Alaska, effected by mail, or other-
8 wise, by an unauthorized foreign or alien insurer: (1) the
9 issuance or delivery of contracts of insurance to residents of
10 Alaska or to corporations authorized to do business therein, (2)
11 the solicitation of applications for such contracts, (3) the
12 collection of premiums, membership fees, assessments or other
13 considerations for such contracts, or (4) any other transaction of
14 business, is equivalent to and shall constitute an appointment by
15 such insurer of the Commissioner of Insurance and his successor
16 or successors in office, to be its true and lawful attorney, upon
17 whom may be served all lawful process in any action, suit, or
18 proceeding instituted by or on behalf of an insured or beneficiary
19 arising out of any such contract of insurance, and any such act
20 shall be signification of its agreement that such service of
21 process is of the same legal force and validity as personal service
22 of process in this state upon such insurer.

23 (b) Such service of process shall be made by delivering
24 to and leaving with the Commissioner of Insurance or some person
25 in apparent charge of his office two copies thereof and the pay-
26 ment to him of such fees as may be prescribed by law. The Com-
27 missioner of Insurance shall forthwith mail by registered mail one
28 of the copies of such process to the defendant at its last known
29 principal place of business, and shall keep a record of all process

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

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

17 (1) soliciting insurance, or

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

20 (3) collecting or receiving any premium, membership
21 fee, assessment or other consideration for insurance; and a
22 copy of such process is sent within ten days thereafter by
23 registered mail by the plaintiff or plaintiff's attorney to
24 the defendant at the last known principal place of business
25 of the defendant, and the defendant's receipt, or the receipt
26 issued by the post office with which the letter is registered,
27 showing the name of the sender of the letter and the name and
28 address of the person to whom the letter is addressed, and the
29 affidavit of the plaintiff or plaintiff's attorney showing a

1 compliance herewith are filed with the clerk of the court in
2 which such action is pending on or before the date the
3 defendant is required to appear, or within such further time
4 as the court may allow.

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

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

11 Sec. 4. DEFENSE OF ACTION BY UNAUTHORIZED INSURER. (a)
12 Before any unauthorized foreign or alien insurer shall file or
13 cause to be filed any pleading in any action, suit or proceeding
14 instituted against it, such unauthorized insurer shall either (1)
15 deposit with the clerk of the court in which such action, suit or
16 proceeding is pending cash or securities or file with such clerk
17 a bond with good and sufficient sureties, to be approved by the
18 court, in an amount to be fixed by the court sufficient to secure
19 the payment of any final judgment which may be rendered in such
20 action; or (2) procure a certificate of authority to transact the
21 business of insurance in this state.

22 (b) The court in any action, suit, or proceeding, in
23 which service is made in the manner provided in subsections (b) or
24 (c) of Section 2 may, in its discretion, order such postponement
25 as may be necessary to afford the defendant reasonable opportunity
26 to comply with the provisions of subsection (a) of this section
27 and to defend such action.

28 (c) Nothing in subsection (a) of this section is to be
29 construed to prevent an unauthorized foreign or alien insurer from

1 filing a motion to quash a writ or to set aside service thereof
2 made in the manner provided in subsections (b) or (c) of Section 2
3 hereof on the ground either (1) that such unauthorized insurer
4 has not done any of the acts enumerated in subsection (a) of
5 Section 2, or (2) that the person on whom service was made pursuant
6 to subsection (c) of Section 2 was not doing any of the acts there-
7 in enumerated.

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

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