

304.11-040 Service of process on unauthorized persons doing acts of insurance business in Kentucky -- Requirements for defense of action -- Reports to commissioner required.

- (1) No person or insurer shall directly or indirectly perform any of the acts of doing an insurance business as defined in KRS 304.11-020 to 304.11-050, inclusive, except as provided by and in accordance with the specific authorization by statute. However, should any unauthorized person or insurer perform any act of doing an insurance business as set forth in KRS 304.11-020 to 304.11-050, inclusive, it shall be equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon the person or insurer, his or her executor or administrator, or successor in interest if a corporation, of the Secretary of State or his or her successor in office to be the true and lawful attorney upon whom may be served all lawful process in any action, suit, administrative hearing 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 of doing an insurance business. Any act of doing an insurance business by any 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 in any action may be made by service upon the Secretary of State as provided in KRS 304.3-230.
- (3) Service of process in any such action, suit, or proceeding shall in addition to the manner as provided in KRS 304.11-020 to 304.11-050, inclusive, be valid if served upon any 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:
 - (a) A copy of such process is sent within ten (10) days thereafter by certified mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant; and
 - (b) The defendant's receipt, or the receipt issued by the post office showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and an affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith 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 plaintiff shall be entitled to a judgment by default under KRS 304.11-020 to 304.11-050, inclusive, until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.
- (5) Nothing in subsections (1) to (5), inclusive, of 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.

- (6) The Attorney General upon request of the commissioner may proceed in the courts of this state or any other state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.
- (7) Before any unauthorized person or insurer files or causes to be filed in any pleading in any court action, suit or proceeding or in any notice, order, pleading, or process in such administrative proceeding before the commissioner instituted against such person or insurer, by services made as provided in subsections (1) to (5), inclusive, of this section such person or insurer shall either:
 - (a) Deposit with the clerk of the court in which such action, suit, or proceeding is pending, or with the commissioner in administrative proceedings before the commissioner, cash or securities, or file with such clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding.
 - (b) Procure a certificate of authority to transact the business of insurance in this state.
- (8) The court in any action, suit, or proceeding in which service is made as provided in subsections (1) to (5), inclusive, of this section may in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (7) of this section and to defend such action.
- (9) Nothing in subsection (7) of this section shall be construed to prevent an unauthorized person or foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subsections (1) to (5), inclusive, of this section on the ground that such unauthorized person or insurer has not done any of the acts enumerated in subsections (1) to (3), inclusive, of KRS 304.11-030.
- (10) In an action against an unauthorized person or 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 person or 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 such refusal was without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Failure of the person or insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was without reasonable cause.
- (11) Whenever the commissioner has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer the commissioner shall in writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the commissioner the amount of insurance, name and address of each insurer, gross amount of premium paid or to be

paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation, or effectuation of such insurance.

- (12) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the commissioner every insurance policy or contract which has been entered into by an insurer not authorized to transact such insurance in this state.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1103, effective July 15, 2010. -- Amended 1982 Ky. Acts ch. 319, sec. 7, effective July 15, 1982; and ch. 320, sec. 17, effective July 15, 1982. -- Created 1970 Ky. Acts ch. 301, subtit. 11, sec. 4, effective June 18, 1970.