

CHAPTER 21

UNAUTHORIZED INSURERS -- PROHIBITIONS, PROCESS AND ADVERTISING

§2101. Representing or aiding unauthorized insurer prohibited

1. No person shall in this State directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such business in this State, in the solicitation, negotiation, procurement or effectuation of insurance or annuity contracts, or renewal thereof, or forwarding of applications for insurance or annuities, or the dissemination of information as to coverage or rates, or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this State.

[PL 1969, c. 132, §1 (NEW).]

2. This section does not apply to:

A. Matters authorized to be done by the superintendent under the Unauthorized Insurers Process Act, sections 2102 to 2108; [PL 1973, c. 625, §141 (AMD).]

B. Transactions as to which the insurer is not required to have a certificate of authority pursuant to section 405 (exceptions to certificate of authority requirement); [PL 1969, c. 132, §1 (NEW).]

C. A licensed adjuster or attorney at law representing such an insurer from time to time in the adjuster's or attorney's professional capacity; [RR 2021, c. 1, Pt. B, §201 (COR).]

D. Transactions in this State relating to a policy of wet marine and transportation insurance delivered or issued for delivery outside this State; [PL 1969, c. 132, §1 (NEW).]

E. The employee, compensated on salary only, of a Maine employer who on behalf of the employer assists in the procurement or administration of insurance coverages on the property, risks and insurable interests of the employer; or [PL 2011, c. 331, §6 (AMD); PL 2011, c. 331, §§16, 17 (AFF).]

F. Transactions outside this State arising from the unsolicited application of the insured, if the transaction is lawful in the jurisdiction in which it occurs and the applicable premium tax has been paid in compliance with Title 36, section 2513. [PL 2011, c. 331, §7 (NEW); PL 2011, c. 331, §§16, 17 (AFF).]

[RR 2021, c. 1, Pt. B, §201 (COR).]

3. If the superintendent has reason to believe that any insurer or other person is acting in violation of this section or section 404, the superintendent shall commence proceedings in accordance with sections 12-A and 404. Section 2105 applies to all process, notices and statements of charges to be served on the unauthorized insurer or insurers.

[PL 1991, c. 298, §6 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1973, c. 625, §141 (AMD). PL 1991, c. 298, §6 (AMD). PL 2011, c. 331, §§6, 7 (AMD). PL 2011, c. 331, §§16, 17 (AFF). RR 2021, c. 1, Pt. B, §201 (COR).

§2102. Purposes as related to Unauthorized Insurers

The purpose of section 12-A and sections 2102 to 2108 (Unauthorized Insurers Process Act) is to subject certain insurers to the jurisdiction of the superintendent and the courts of this State in suits and

disciplinary proceedings as provided therein, by or on behalf of insureds or beneficiaries under insurance contracts or the superintendent. The Legislature declares its concern that many Maine residents hold insurance policies delivered in this State by unauthorized insurers, other than as to surplus lines coverages written pursuant to chapter 19, thus presenting to such residents the often insuperable obstacle of resort to distant courts for the assertion of legal rights under their policies; and that such insurers may induce residents to purchase insurance through false advertising sent into this State. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers, declares that in so doing it exercises its power to protect Maine residents, to define, for the purposes of this chapter, what constitutes doing business in this State, and also exercises powers and privileges available to the State under Public Law 15, 79th Congress of the United States, chapter 20, 1st Session, S. 340, as amended, which declares that the business of insurance and every person engaged therein are subject to the laws of the several states. [PL 1991, c. 298, §7 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1973, c. 625, §142 (AMD). PL 1991, c. 298, §7 (AMD).

§2103. Unauthorized Insurers Process Act; title; interpretation

1. Sections 2102 to 2108 constitute and may be cited as the Unauthorized Insurers Process Act. [PL 1969, c. 177, §31 (AMD).]

2. The Act shall be so interpreted as to effectuate its general purpose to make uniform the laws of those states which enact it. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §31 (AMD).

§2104. Superintendent process agent

Solicitation, effectuation or delivery of any insurance contract, by mail or otherwise, within this State by an unauthorized insurer, or the performance within this State of any other service or transaction connected with such insurance by or on behalf of such insurer, is deemed to constitute an appointment by such insurer of the superintendent and the superintendent's successors in office as its attorney, upon whom may be served all lawful process issued within this State in any action or proceeding against such insurer arising out of any such contract or transaction; and is deemed to signify the insurer's agreement that any such service of process has the same legal effect and validity as personal service of process upon it in this State. [RR 2021, c. 1, Pt. B, §202 (COR).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §202 (COR).

§2105. Service of process

1. Service of process upon any such insurer pursuant to section 2104 must be made by delivering to and leaving with the superintendent or some person in apparent charge of the superintendent's office 2 copies thereof and the payment to the superintendent of the fees as prescribed by section 601. The superintendent shall forthwith mail by registered or certified mail one of the copies of such process to the defendant at its principal place of business last known to the superintendent, and shall keep a record of all process so served upon the defendant. Such service of process is sufficient, as long as notice of such service and a copy of the process are sent within 10 days thereafter by registered or certified mail by 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 or certified, 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'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.

[RR 2021, c. 1, Pt. B, §203 (COR).]

2. Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection 1 be valid if served upon any person within this State, who in this State on behalf of such insurer, is:

A. Soliciting insurance; or [PL 1969, c. 132, §1 (NEW).]

B. Making any contract of insurance or issuing or delivering any policies or written contracts of insurance; or [PL 1969, c. 132, §1 (NEW).]

C. Collecting or receiving any premium for insurance; and a copy of such process is sent within 10 days thereafter by registered or certified mail by the 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 or certified, 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'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. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

3. A plaintiff or complainant is not entitled to a judgment or to have the plaintiff's or complainant's complaint taken pro confesso under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

[RR 2021, c. 1, Pt. B, §204 (COR).]

4. Nothing in 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.

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §§203, 204 (COR).

§2106. Exemptions from service or process provisions

Sections 2104 and 2105 shall not apply to surplus lines insurance lawfully effectuated under chapter 19, or to reinsurance, or to any action or proceeding against an unauthorized insurer arising out of any of the following where the policy or contract contains a provision designating the superintendent as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such policy, or where the insurer enters a general appearance in any such action: [PL 1973, c. 585, §12 (AMD).]

1. Wet marine and transportation insurance;
[PL 1969, c. 132, §1 (NEW).]

2. Insurance on or with respect to subjects located, resident, or to be performed wholly outside this State, or on vehicles or aircraft owned and principally garaged outside this State;
[PL 1969, c. 132, §1 (NEW).]

3. Insurance on property or operations of railroads engaged in interstate commerce; or
[PL 1969, c. 132, §1 (NEW).]

4. Insurance on aircraft or cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft.

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD).

§2107. Defense of action by unauthorized insurer

1. Before an unauthorized insurer files or causes to be filed any pleading in any action or proceeding instituted against it under sections 2104 and 2105, such insurer shall:

A. Procure a certificate of authority to transact insurance in this State; or [PL 1969, c. 132, §1 (NEW).]

B. Deposit with the clerk of the court in which such action or proceeding is pending cash or securities, or file with such 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 such action. The court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action or proceeding, and that the insurer will pay final judgment entered therein without requiring suit to be brought on such judgment in the state where such funds or securities are located. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

2. The court in any action or proceeding in which service is made in the manner provided in section 2105 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection 1, and to defend such action.

[PL 1969, c. 132, §1 (NEW).]

3. Nothing in subsection 1 is to be construed to prevent an unauthorized insurer from filing a motion to quash or to set aside the service of any process made in the manner provided in section 2105 on the ground either:

A. That such unauthorized insurer has not done any of the acts enumerated in section 2104; or [PL 1969, c. 132, §1 (NEW).]

B. That the person on whom service was made pursuant to subsection 2 of section 2105 was not doing any of the acts therein enumerated. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§2108. Attorney fees

In any such action against an unauthorized insurer, if the insurer has failed for 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 vexatious and without reasonable cause, the court shall allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action, and in no event shall such fee be less than \$100. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§2109. Unauthorized Insurers False Advertising Process Act; title

(REPEALED)

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1979, c. 541, §A163 (AMD). PL 1991, c. 298, §8 (RP).

§2110. Notice to domiciliary supervisory official

(REPEALED)

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1991, c. 298, §9 (RP).

§2111. Action by superintendent

(REPEALED)

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §32 (AMD). PL 1973, c. 585, §12 (AMD). PL 1977, c. 694, §413 (AMD). PL 1991, c. 298, §10 (RP).

§2112. Reciprocal judgment

The Attorney General upon request of the superintendent may proceed in the courts of this State or any reciprocal 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 superintendent. [PL 1973, c. 585, §12 (AMD).]

1. Definitions. In this section:

A. "Reciprocal state" means any state the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states, against insurers incorporated or authorized to do business in such state. [PL 1969, c. 132, §1 (NEW).]

B. "Foreign decree" means any decree or order in equity of a court located in a "reciprocal state," including a court of the United States located therein, against a "domestic insurer" obtained by a "qualified party." [PL 1969, c. 132, §1 (NEW).]

C. "Domestic insurer" means any insurer incorporated or authorized to do business in this State. [PL 1969, c. 132, §1 (NEW).]

D. "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state. [PL 1969, c. 132, §1 (NEW).]
[PL 1969, c. 132, §1 (NEW).]

2. List of reciprocal states. The superintendent shall determine which states qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.
[PL 1973, c. 585, §12 (AMD).]

3. Filing and status of foreign decrees. A copy of any foreign decree authenticated in accordance with the Act of Congress or the statutes of this State may be filed in the office of the clerk of any Superior Court of this State. The clerk, upon verifying with the superintendent that the decree or order qualifies as a foreign decree shall treat the foreign decree in the same manner as a decree of a Superior Court of this State. A foreign decree so filed has the same effect and shall be deemed as a decree of a Superior Court of this State, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a Superior Court of this State and may be enforced or satisfied in like manner.

[PL 1973, c. 585, §12 (AMD).]

4. Notice of filing.

A. At the time of the filing of the foreign decree, the Attorney General shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant. [PL 1969, c. 132, §1 (NEW).]

B. Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given, and to the superintendent, and shall make a note of the mailing in the docket. In addition, the Attorney General may mail a notice of the filing of the foreign decree to the defendant and to the superintendent and may file proof of mailing with the clerk. Lack of mailing notice or filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the Attorney General has been filed. [PL 1973, c. 585, §12 (AMD).]

C. No execution or other process for enforcement of a foreign decree filed hereunder shall issue until 30 days after the date the decree is filed. [PL 1969, c. 132, §1 (NEW).]

[PL 1973, c. 585, §12 (AMD).]

5. Stay.

A. If the defendant shows the Superior Court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered; [PL 1969, c. 132, §1 (NEW).]

B. If the defendant shows the Superior Court any ground upon which enforcement of a decree of any Superior Court of this State would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this State. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

6. Fees. Any person filing a foreign decree shall pay to the clerk of court the applicable fee. Fees for docketing, transcription or other enforcement proceedings shall be as provided for decrees of the Superior Court.

[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD).

§2113. Report and tax of independently procured coverages.

(REPEALED)

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §33 (AMD). PL 1973, c. 585, §12 (AMD). RR 2001, c. 2, §A39 (COR). PL 2011, c. 331, §8 (RP). PL 2011, c. 331, §§16, 17 (AFF).

§2114. Penalty

Any person who in this State represents an unauthorized insurer in the transaction of business in this State in violation of law, shall, in addition to any other applicable penalty, be liable for the full amount of any loss sustained on any insurance contract made by or through him, directly or indirectly, and for any premium taxes which may become due under any law of this State by reason of such contract. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

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