

pay the commissioner, for the use of the state, a penalty of \$25 for each offense; and, in the event of failure to pay the penalty within ten days after notice from the commissioner, the authority of the insurer to do business in this state shall be revoked by the commissioner until the penalty is paid, and no insurer shall be readmitted until it shall have complied with all the terms and conditions imposed for admission in the first instance; provided, that any action taken by the commissioner under the provisions of this subdivision shall be subject to review by the district court of the county in which the office of the commissioner is located.

Approved April 14, 1961.

CHAPTER 383—H. F. No. 368

[Coded]

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

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [60.921] Unauthorized insurers process act; purpose of act. The purpose of the unauthorized insurers process 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 such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest the legislature herein provides a method of substituted service of process upon such 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 Public Law 15, 79th Con-

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gress of the United States, Chapter 20, 1st Session, S. 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

Sec. 2. [60.922] **Service of process upon unauthorized insurer.** Subdivision 1. Any of the following acts in this state effected by mail or otherwise by an unauthorized foreign or alien insurer: (1) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein; (2) the solicitation of applications for such contracts; (3) the collection of premiums, membership fees, assessments, or other considerations for such contracts; or (4) any other transaction of insurance business, is equivalent to and shall constitute an appointment by such insurer of the commissioner of insurance and his 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 any such contract of insurance and any such act 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 insurer.

Subd. 2. Such service of process shall be made by delivering to and leaving with the commissioner of insurance or some person in apparent charge of his office two copies thereof and the payment to him of a filing fee of \$3. The commission of insurance shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business and shall keep a record of all process so served upon him. Such service of process is sufficient provided notice of such service and a copy of the process are sent within ten days thereafter by registered mail by 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 postoffice 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 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.

Subd. 3. Service of process in any such action, suit, or proceeding shall in addition to the manner provided in

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subdivision 2 of this section be valid if served upon any person within this state who, in this state on behalf of such 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 if a copy of such process is sent within ten 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 postoffice 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 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.

Subd. 4. No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

Subd. 5. 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.

Subd. 6. The provisions of this act shall not apply to surplus line insurance lawfully effectuated under Minnesota law, or to reinsurance, nor to any action or proceeding against an unauthorized insurer arising out of:

- (1) Wet marine and transportation insurance.
- (2) Insurance on or with respect to subjects located, resident, or to be performed wholly outside this state, or on or with respect to vehicles or aircraft owned and principally garaged outside this state.
- (3) Insurance on property or operations of railroads engaged in interstate commerce, or
- (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, where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or

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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.

Sec. 3. [60.923] Defense of action by unauthorized insurer. Subdivision 1. 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 such unauthorized insurer shall: (1) deposit with the clerk of the court in which such action, suit, 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; or (2) procure a certificate of authority to transact the business of insurance in this state.

Subd. 2. The court in any action, suit, or proceeding in which service is made in the manner provided in subdivisions 2 or 3 of section 2 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subdivision 1 of this section and to defend such action.

Subd. 3. Nothing in subdivision 1 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 subdivisions 2 or 3 of section 2 hereof on the ground either (1) that such unauthorized insurer has not done any of the acts enumerated in subdivision 1 of section 2, or (2) that the person on whom service was made pursuant to subdivision 3 of section 2 was not doing any of the acts therein enumerated.

Sec. 4. [60.924] Attorney fees. In any action hereunder 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 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 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 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.

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Sec. 5. [60.925] **Constitutionality.** If any provision of this act or the application thereof to any person or circumstances is held invalid such 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.

Sec. 6. [60.926] **Short title.** This act may be cited as the Unauthorized Insurers Process Act.

Approved April 14, 1961.

CHAPTER 384—H. F. No. 496

An act relating to cooperative marketing associations; raising certain filing fees; amending Minnesota Statutes 1957, Section 22.35.

Be it enacted by the Legislature of the State of Minnesota:

22.35 **Fees.** For filing articles of incorporation, or amendments thereto, any association organized under sections 22.03 to 22.34 shall pay \$5 \$10; and for filing an amendment to the articles, \$2.50.

Approved April 14, 1961.

CHAPTER 385—H. F. No. 500

[Coded]

An act authorizing the commissioner of conservation to acquire lands for park purposes.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. [85.182] **Bear Head Lake state park.** The commissioner of conservation is authorized to acquire by gift, purchase or condemnation, as funds are available, the following described lands in the county of St. Louis, and state of Minnesota:

All of sections 35 and 36 and the south half of the south half of sections 25 and 26, in township 62 north, range 14 west.

All of sections 1, 2, 11 and 12 and the southeast quarter and the south half of the northeast quarter of section 3 and

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