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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.*)

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 4. Foreign Insurers [1561 - 1620.7] (*Chapter 4 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 4.5. Unauthorized Insurers False Advertising Process Act [1620.1 - 1620.7] (*Article 4.5 added by Stats. 1961, Ch. 297.*)

1620.1. (a) The purpose of this article is to subject to the jurisdiction of the commissioner and to the jurisdiction of the courts of this State, insurers not authorized to transact business in this State which place in or send into this State any false advertising designed to induce residents of this State to purchase insurance from insurers not authorized to transact business in this State. The Legislature declares it is in the interest of the citizens of this State who purchase insurance from insurers which solicit insurance business in this State in the manner set forth in the preceding sentence that such insurers be subject to the provisions of this article. In furtherance of such state interest, the Legislature in this article 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 also exercises powers and privileges available to the State by virtue of Public Law 15, 79th Congress 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; the authority provided in such sections to be in addition to any existing powers of this State.

(b) The provisions of this article shall be liberally construed.

(*Added by Stats. 1961, Ch. 297.*)

1620.2. As used in this article (commencing with Section 1620.1):

(a) "Unfair Trade Practices Act" means Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 of Division 1.

(b) "Residents" means any person defined in Section 19 who is resident within the meaning of Section 30.

(*Added by Stats. 1961, Ch. 297.*)

1620.3. No unauthorized foreign or alien insurer shall make, issue, circulate or cause to be made, issued or circulated to residents of this State any estimate, illustration, circular, pamphlet, or letter, or cause to be made in any newspaper, magazine or other publication or over any radio or television station, any announcement or statement to such residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the Unfair Trade Practice Act, and whenever the commissioner shall have reason to believe that any such insurer is engaging in unlawful advertising, it shall be his duty to give notice of such fact by registered mail to the insurer and to the insurance supervisory official of the domiciliary state of the insurer. For the purpose of this section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States.

(*Added by Stats. 1961, Ch. 297.*)

1620.4. If after 30 days following the giving of the notice mentioned in Section 1620.3 the insurer has failed to cease making, issuing, or circulating such false misrepresentations or causing the same to be made, issued or circulated in this State, and if the commissioner has reason to believe that a proceeding by him in respect to such matters would be to the interest of the public, and that the insurer is issuing or delivering contracts of insurance to residents of this State or collecting premiums on such contracts or doing any of the acts enumerated in Section 1620.5, he shall take action against the insurer under the Unfair Trade Practice Act.

(*Added by Stats. 1961, Ch. 297.*)

1620.5. (a) Any of the following acts in this State, effected by mail or otherwise, by any unauthorized foreign or alien insurer: (1) the issuance or delivery of contracts of insurance to residents of this State, (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 the insurer of the commissioner and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in Section 1620.3 under the provisions of the Unfair Trade Practice Act, or in any action, suit or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that the service of statement of charges, notices or process is of the same legal force and validity as personal service of the statement of charges, notices or process in this State, upon such insurer.

(b) Service of a statement of charges and notices under the Unfair Trade Practice Act shall be made by any deputy or employee of the Department of Insurance delivering to and leaving with the commissioner or some person in apparent charge of his office, two copies thereof. Service of process issued by any court in any action, suit or proceeding to collect any penalty under the act provided, shall be made by delivering and leaving with the commissioner, or some person in apparent charge of his office, two copies thereof. The commissioner shall forthwith cause to be mailed by registered mail one of the copies of the statement of charges, notices or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices and process so served. Such service of statement of charges, notices or process shall be sufficient provided they shall have been so mailed and the defendant's receipt or receipt issued by the post office 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 person mailing the letter showing a compliance herewith are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which the action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

(c) Service of statement of charges, notices and process in any such proceeding, action or suit shall in addition to the manner provided in subsection (b) of this section be valid if served upon any person within this State who on behalf of such insurer is

- (1) Soliciting insurance, or
- (2) Making, issuing or delivering any contract of insurance, or
- (3) Collecting or receiving in this State any premium for insurance;

and a copy of such statement of charges, notices or process is sent within 10 days thereafter by registered mail by or on behalf of the commissioner 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, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing a compliance herewith, are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

(d) No cease or desist order or judgment by default under this section shall be entered until the expiration of 30 days from the date of the filing of the affidavit of compliance.

(e) Service of process and notice under the provisions of this article (commencing with Section 1620.1) shall be in addition to all other methods of service provided by law, and nothing in these sections shall limit or prohibit the right to serve any statement of charges, notices or process upon any insurer in any other manner now or hereafter permitted by law.

(Added by Stats. 1961, Ch. 297.)

1620.6. If any provision of this article (commencing with Section 1620.1) or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

(Added by Stats. 1961, Ch. 297.)

1620.7. This article (commencing with Section 1620.1) may be cited as the Unauthorized Insurers False Advertising Process Act.

(Amended by Stats. 1963, Ch. 313.)