

40-2704. Secretary of state as process agent for unauthorized insurer; procedure; notice; service of process in other manner. (a)

Any act of transacting an insurance business, as set forth in K.S.A. 40-2701, by any unauthorized insurer is equivalent to and shall constitute an irrevocable appointment by such insurer, binding upon him, his executor or administrator, or successor in interest if a corporation, of the secretary of state of the state of Kansas or his successor in office, to be the true and lawful attorney of such insurer upon whom may be served all lawful process in any action, suit or proceeding in any court by the commissioner of insurance, or by the state, and upon whom may be served any notice, order, pleading or process in any administrative proceeding before the commissioner of insurance which arises out of transacting an insurance business in this state by such insurer. Any act of transacting an insurance business in this state by any unauthorized insurer shall be signification of its agreement that any such lawful process in such court action, suit or proceeding, and any such notice, order, pleading or process in such administrative proceeding before the commissioner of insurance so served, shall be of the same legal force and validity as personal service of process in this state upon such insurer.

(b) Service of process in such action shall be made by delivering to and leaving with the secretary of state, or some person in apparent charge of his office, two (2) copies thereof and by payment to the secretary of state of the fee prescribed by law. Service upon the secretary of state as such attorney shall be service upon the principal.

(c) The secretary of state shall forthwith forward by certified mail one (1) of the copies of such process or such notice, order, pleading or process in administrative proceedings before the commissioner to the defendant in such court proceeding, or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed, at his last known principal place of business and shall keep a record of all process so served on him, which shall show the day and hour of service. Such service is sufficient if:

(1) Notice of such service and a copy of the court process are sent by certified mail within ten (10) days thereafter by the plaintiff or the plaintiff's attorney to the defendant in the court proceeding at the last known principal place of business of the defendant; or the notice, order, pleading or process in an administrative proceeding before the commissioner of insurance is sent within such time to the respondent in the administrative proceeding at his last known principal place of business; and

(2) The defendant's receipt or receipts 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 or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in a court proceeding, or of the commissioner of insurance in an administrative proceeding, showing compliance therewith, are filed with the clerk of the court in which such action, suit or proceeding is pending, or with the commissioner of insurance in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or commissioner of insurance may allow.

(d) No plaintiff shall be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process, or notice, order, pleading, or process in administrative proceedings before the commissioner of insurance, is served under this section until the expiration of forty-five (45) days from the date of filing of the affidavit of compliance.

(e) Nothing in this section shall limit or affect the right to serve any process, notice, order or demand upon any person or insurer in any other manner now or hereafter permitted by law.

History: L. 1969, ch. 240, § 4; April 19.