

**40-2705. Deposit of bond or procurement of certificate by unauthorized insurer before pleading in action; continuance; setting aside service.** (a) Before any unauthorized insurer files or causes to be filed any pleading in any court action, suit or proceeding, or any notice, order, pleading or process in an administrative proceeding before the commissioner of insurance, instituted against such person or insurer by services made as provided in K.S.A. 40-2704, and amendments thereto, such insurer shall either:

(1) Deposit with the clerk of the court in which such action, suit or proceeding is pending, or with the commissioner of insurance 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 judge or commissioner of insurance, respectively, in an amount to be fixed by the court or commissioner, as the case may be, sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding; or

(2) Procure a certificate of authority to transact the business of insurance in this state. In considering the application of an insurer for a certificate of authority, for the purposes of this paragraph, the commissioner of insurance need not assert the provisions of K.S.A. 40-253, and amendments thereto, against such insurer with respect to its application, if the commissioner determines that such company would otherwise comply with the requirements for such certificate of authority.

(b) The commissioner of insurance, in any administrative proceeding in which service is made as provided in K.S.A. 40-2704, and amendments thereto, in the commissioner's discretion, may order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a) and to defend such action.

(c) Nothing in subsection (a) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof, made in the manner provided in K.S.A. 40-2704, and amendments thereto, on the grounds that such unauthorized insurer has not done any of the acts enumerated in K.S.A. 40-2702, and amendments thereto.

**History:** L. 1969, ch. 240, § 5; L. 1992, ch. 314, § 6; July 1.