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Bill Analysis

Legislative Service Commission

H.B. 137

125th General Assembly
(As Introduced)

Rep. G. Smith

BILL SUMMARY

- Regulates the appointment of statutory agents by foreign insurance companies doing business in Ohio.

CONTENT AND OPERATION

Foreign insurer required to appoint statutory agent for service of process

(secs. 3909.05(A) and 3927.03(A))

The bill requires any "life insurance company organized by act of Congress or under the laws of another state" and any "foreign insurance company" other than a life insurance company, which company transacts any business in Ohio, [hereinafter, "foreign insurer"] to have and maintain an agent upon whom any process, notice or demand required or permitted by law to be served upon a company may be served. The agent may be a natural person residing in Ohio, or may be a corporation holding a license under the laws of this state that is authorized by its articles of incorporation to act as an agent and that maintains a business address in this state. This agent, also known as a "statutory agent," need not be a licensed insurance agent.

The bill repeals existing sections 3909.05 and 3927.03 of the Revised Code. Currently, these sections require foreign insurers to file a signed consent with the Superintendent of Insurance that authorizes any of the insurers' agents in Ohio to acknowledge service of process for the insurer.

Appointment of agent

(secs. 3909.05(B) to (F) and (J) and 3927.03(B) to (F) and (J))

The bill requires foreign insurers to file a written appointment of an agent with the Superintendent of Insurance. The form of the written appointment is to

be prescribed by the Superintendent, and may include a consent to service of process.

Foreign insurers are required to set forth the name and complete address of its agent in the written appointment. The agent must reside or maintain a business address in Ohio. If a foreign insurer's agent dies, moves out of state, or resigns, the foreign insurer must immediately appoint a new agent and file a written appointment with the Superintendent. If its agent's address changes, a foreign insurer must immediately notify the Superintendent of the agent's new address on a form prescribed by the Superintendent.

The bill requires a foreign insurer to include a fee of \$5 with any change of agent appointment or change of address.

The bill permits an agent to resign by filing a signed notice with the Superintendent. The agent must send a copy of the notice to the foreign insurer that appointed the agent, prior to filing the notice with the Superintendent, at the current or last known address of the insurer's principal office. The notice must include the foreign insurer's name, the insurer's current or last known address, the agent's name and address, the agent's resignation statement, a statement that a copy of the notice was sent to the insurer, and the date that the copy of the notice was sent. The agent's authority would terminate 30 days after the notice is filed.

The bill permits a foreign insurer to revoke the appointment of an agent by filing a written appointment of a new agent with the Superintendent, along with a statement that revokes the current agent's appointment. The agent's authority would terminate 30 days after the notice is filed.

The bill requires the Superintendent to keep a record of any foreign insurer transacting business in Ohio, including the name and address of its agent.

Service of process

(secs. 3909.05(G) to (I) and 3927.03(G) to (I))

The bill provides that any process, notice, or demand required or permitted by law to be served upon a foreign insurer may be served by delivering a copy of the process, notice, or demand to the agent of record at the address appearing in the Superintendent's records. If the agent cannot be found, has moved, or the foreign insurer has failed to maintain an agent, the party desiring to serve process, notice, or demand, or its agent, may file an affidavit with the Superintendent stating that one of these conditions exists and stating the most recent address of the foreign insurer that the party, after diligent search, has been able to ascertain. Upon the filing of this affidavit, the service of process, notice, or demand may be

initiated upon the Superintendent as the foreign insurer's agent by delivering two copies of the process, notice, or demand to the Superintendent and paying a fee of \$50. The Superintendent would then be required to give notice to the foreign insurer at its principal office as shown in the Superintendent's records or at the address set forth in the affidavit. Notice would be given by regular mail, with a copy of the process, notice, or demand enclosed. After the Superintendent has mailed these documents, service would be deemed to be complete. These provisions would not limit or affect the right to serve any process, notice, or demand upon a foreign insurer in any other manner permitted by law. Current law provides for a county sheriff to serve process on foreign insurers by mail.

The bill requires the Superintendent to keep a record of each process, notice, or demand delivered to the Superintendent under the law of this or any other state that authorizes service upon the Superintendent.

Violations

(secs. 3909.05(K) and (L) and 3927.03(K) and (L))

If a foreign insurer fails to appoint or maintain an agent, or to notify the Superintendent of an agent's change of address, the bill requires the Superintendent to fine the insurer not less than \$25 nor more than \$200 per violation, after the Superintendent has provided notice of the violation by certified mail and upon the expiration of 30 days from the date of mailing or such further time as the Superintendent allows. All moneys collected, in fees or fines, are to be paid into the state treasury to the credit of the Department of Insurance operating fund.

Property and casualty insurers, service of process

(sec. 3927.03(M) and (N))

The bill provides that any foreign insurer, other than a life insurer, transacting business in this state by an agent consents that suit may be brought against it in the county where the property insured was situated or was insured, or the application for insurance taken. If the insurer ceases to do business in Ohio, the statutory agent last designated by or acting for the insurer continues as its agent, unless a new agent is appointed, for the purpose of serving process and for commencing actions upon any policy or liability issued or contracted while the insurer transacted business in Ohio. Service of process upon an agent, for any of these purposes, would constitute a valid service upon the foreign insurer.

Conforming changes

(secs. 3909.09 and 3909.15)

Current law requires a foreign life insurer to appoint an agent or attorney in each county in this state in which the insurer has established an agency. This provision is repealed; foreign life insurers would be required to appoint only one statutory agent pursuant to this bill's requirements. Current law also requires foreign life insurers that cease to do business in Ohio to appoint agents for service of process in every county in which an agency existed at that time. This provision is also repealed, in conformity with this bill.

Application to foreign insurers currently operating in Ohio

(Section 3)

The bill requires an insurance company, organized under the laws of another state, that was authorized to transact any business of insurance in Ohio prior to the bill's effective date to appoint a statutory agent as required by the bill, no later than the later of the effective date or 60 days after the Superintendent of Insurance issues a bulletin specifying the method by which the insurance company is to appoint a statutory agent.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-25-03	p. 277

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