§ 1213. Service of process on superintendent as attorney for unauthorized insurers. (a) The purpose of this section is to subject certain insurers to the jurisdiction of the courts of this state in suits by or on behalf of insureds or beneficiaries under certain 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 section, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of public law number fifteen, seventy-ninth congress of the United States, chapter twenty, first session, senate number three hundred forty, as amended, (15 U.S.C. § 1011) which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(b) (1) Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer:

(A) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein,

(B) the solicitation of applications for such contracts,

(C) the collection of premiums, membership fees, assessments or other considerations for such contracts, or

(D) any other transaction of business,

is equivalent to and constitutes its appointment of the superintendent, and his successors in office, to be its true and lawful attorney upon whom may be served all lawful process in any proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and shall signify 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.

(2) Such service of process upon any such insurer in any such proceeding in any court of competent jurisdiction of this state may be

made by serving the superintendent, any deputy superintendent or any salaried employee of the department whom the superintendent designates for such purpose with two copies thereof and the payment to him or her of a fee of forty dollars. The superintendent shall forward a copy of such process by registered or certified mail to the defendant at its last known principal place of business, as designated by the issuer of such process, and shall keep a record of all process so served upon him or her. Such service of process under this paragraph is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by or on behalf of the plaintiff to the defendant at its last known principal place of business by registered or certified mail with return receipt requested. The plaintiff shall file with the clerk of the court in which the action is pending, or with the judge or justice of such court if there be no clerk, an affidavit of compliance herewith, a copy of the process, and either a return receipt purporting to be signed by the defendant or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post office department, or, if acceptance was refused by the defendant or its agent, the original envelope bearing a notation by the postal authorities that receipt was refused. Service of process so made shall be deemed made within the territorial jurisdiction of any court in this state.

(3) Service of process in any such proceeding shall in addition to the manner provided in paragraph two of this subsection be valid if served upon any person within this state who, in this state on behalf of such insurer, is:

(A) soliciting insurance;

(B) making, issuing or delivering any contract of insurance; or

(C) collecting or receiving any premium, membership fee, assessment or other consideration for insurance;

provided notice of such service and a copy of such process are sent within ten days thereafter, by or on behalf of the plaintiff to the defendant at the last known principal place of business of the defendant, by registered mail with return receipt requested. The plaintiff shall file with the clerk of the court in which the action is pending, or with the judge or justice of such court in case there be no clerk, an affidavit of compliance herewith, a copy of the process, and

either a return receipt purporting to be signed by the defendant or a person qualified to receive its registered mail in accordance with the rules and customs of the post office department; or, if acceptance was refused by the defendant or its agent the original envelope bearing a notation by the postal authorities that receipt was refused.

(4) The papers referred to in paragraphs two and three of this subsection shall be filed within thirty days after the return receipt or other official proof of delivery, or the original envelope bearing a notation of refusal, is received by the plaintiff. Service of process shall be complete when such process and the accompanying papers are filed pursuant to this section.

(5) Nothing contained in this section shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner permitted by law.

(c) (1) Before any unauthorized foreign or alien insurer files any pleading in any proceeding against it, it shall either:

(A) deposit with the clerk of the court in which the 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 payment of any final judgment which may be rendered in the proceeding, but the court may in its discretion make an order dispensing with such deposit or bond if the superintendent certifies to it that such insurer maintains within this state funds or securities in trust or otherwise sufficient and available to satisfy any final judgment which may be entered in the proceeding, or

(B) procure a license to do an insurance business in this state.

(2) The court in any proceeding wherein service is made pursuant to paragraph two or three of subsection (b) of this section may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of paragraph one of this subsection and to defend such proceeding.

(3) Nothing in paragraph one of this subsection is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to set aside service made in the manner provided in paragraph two or three of subsection (b) hereof on the ground (i) that such unauthorized insurer has not done any act enumerated in paragraph one of subsection (b) of this section, or (ii) that the person on whom service was made

pursuant to paragraph three of subsection (b) hereof was not doing any act therein enumerated.

(d) In any action 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 thirty days after demand prior to the commencement of the action to make payment pursuant to the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow plaintiff a reasonable attorney's fee and include such fee in any judgment rendered in such action. Such fee shall not exceed twelve and one-half percent of the amount the court finds the plaintiff is entitled to recover against the insurer nor be less than twenty-five dollars. Failure of an insurer to defend any such action shall be prima facie evidence that its failure to pay was vexatious and without reasonable cause.

(e) This section shall not apply to any proceeding against any unauthorized foreign or alien insurer arising out of any contract of insurance effectuated in accordance with subsection (b) or (c) of section two thousand one hundred seventeen of this chapter or in accordance with section two thousand one hundred five of this chapter where such contract designates the superintendent or his successors in office the insurer's true and lawful attorney upon whom may be served all lawful process in any proceeding instituted by or on behalf of an insured or beneficiary arising out of such contract.

(f) The superintendent shall keep a record of each process served upon him under this section and pursuant to section one thousand two hundred twelve of this article, including the date of service. He shall, upon request made within ten years of such service, issue a certificate under his seal certifying as to the receipt of the process by an authorized person, the date and place of service and the receipt of the statutory fee. Process served upon the superintendent pursuant to this section or section one thousand two hundred twelve of this article shall be destroyed by him after a period of ten years from such service.