

IC 27-1-17

Chapter 17. Admission of Foreign and Alien Companies to Transact Business in Indiana

IC 27-1-17-1

Necessity of certificate of authority

Sec. 1. Any foreign or alien insurance company organized for the purpose of transacting any insurance business, not qualified as of March 8, 1935, to transact business in this state, before transacting business in this state shall procure a certificate of authority from the department in the manner provided in this chapter and shall otherwise comply with the provisions and be subject to the regulations set forth in this chapter.

(Formerly: Acts 1935, c.162, s.226.) As amended by P.L.252-1985, SEC.71.

IC 27-1-17-2

Equality of treatment between domestic companies and foreign or alien companies; exception

Sec. 2. No foreign or alien company shall be admitted for the purpose of transacting any kind or kinds of insurance business in this state, the transaction of which by a domestic company is not permitted by the laws of this state; provided, however, that where a foreign or alien company whose charter provides for the transaction of the kind or kinds of insurance described in more than one (1) class of IC 27-1-5-1 has been transacting business in this state under a certificate of authority issued by the insurance department or insurance commissioner prior to March 8, 1935, such company may be issued a certificate of authority under the provisions of this article to make the kind or kinds of insurance provided by its charter. A foreign or alien insurance company admitted to do an insurance business in this state shall have the same but no greater rights and privileges than a domestic company.

(Formerly: Acts 1935, c.162, s.227.) As amended by P.L.252-1985, SEC.72.

IC 27-1-17-3

Name

Sec. 3. No foreign or alien insurance company shall be admitted to do business in this state having a name which, at the date of such admission, could not be taken by a domestic corporation under the provisions of IC 27-1-6-3, except that the name of a foreign or alien insurance company need not include the word "company", "corporation", "incorporated", or "mutual", or one (1) of the abbreviations thereof, nor the word "insurance" or the word "assurance" provided the name of such company is authorized by the laws of the state or territory of its organization or domicile and provided such name does not negate the characteristic of such company as an insurance company. No such foreign or alien insurance company after it has been admitted shall, by amendment

to its charter, assume any name which, at the date of the filing of such amendment as provided in this chapter, could not be taken by a domestic corporation under the provisions of IC 27-1-6-3.

(Formerly: Acts 1935, c.162, s.228; Acts 1969, c.164, s.7.) As amended by P.L.252-1985, SEC.73.

IC 27-1-17-4

Documents required for admittance

Sec. 4. Whenever a foreign or an alien insurance company desires to be admitted to do an insurance business in this state, it shall execute in the English language and present the following to the department, at its office, accompanied by the fees prescribed by law:

(1) A copy of its articles of incorporation or association, with all amendments thereto, duly authenticated by the proper officer of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States.

(2) An application for admission, executed in the manner provided in this chapter, setting forth:

(A) the name of such company;

(B) the location of its principal office or place of business without this state;

(C) the names of the states in which it has been admitted or qualified to do business;

(D) the character of insurance business under its articles of incorporation or association which it intends to transact in this state, which must conform to the class or classes set forth in the provisions of IC 27-1-5-1;

(E) the total authorized capital stock of the company and the amount thereof issued and outstanding, and the surplus required of such company by the laws of the state, country, province, or government under which it is organized, or the state in which it is domiciled in the United States, if a stock company, which shall equal at least the requirements set forth in section 5(a) of this chapter;

(F) the total amount of assets and the surplus of assets over all its liabilities, if other than a stock company, which shall equal at least the requirements set forth in section 5(b) of this chapter;

(G) if an alien company, the surplus of assets invested according to the laws of the state in the United States where it has its deposit, which shall equal at least the requirements set forth in section 5(c) of this chapter; and

(H) such further and additional information as the department may from time to time require.

The application shall be signed in duplicate, in the form prescribed by the department, by the president or a vice president and the secretary or an assistant secretary of the corporation, and verified under oath by the officers signing the same.

(3) A statement of its financial condition and business, in the form prescribed by law for annual statements, signed and sworn to by the president or secretary or other principal officers of the company; provided, however, that an alien company shall also furnish a separate statement comprising only its condition and business in the United States, which shall be signed and sworn to by its United States manager.

(4) A copy of the last report of examination certified to by the insurance commissioner or other proper supervisory official of the state in which such company is domiciled; provided, however, that the commissioner may cause an examination to be made of the condition and affairs of such company before authority to transact business in this state is given.

(5) A certificate from the proper official of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States, that it is duly organized or incorporated under those laws and authorized to make the kind or kinds of insurance which it proposes to make in this state.

(6) A copy of its bylaws or regulations, if any, certified to by the secretary or similar officer of the insurance company.

(7) A duly executed power of attorney in a form prescribed by the department which constitutes and appoints an individual or a corporate resident of Indiana, or an authorized Indiana insurer, as the insurance company's agent, its true and lawful attorney upon whom, except as provided in section 4.2 of this chapter, all lawful processes in any action in law or in equity against it shall be served. Such power of attorney shall contain an agreement by the insurance company that any lawful process against it which may be served upon the agent as its attorney shall be of the same force and validity as if served upon the insurance company and that such power of attorney shall continue in force and be irrevocable so long as any liability of the insurance company remains outstanding in this state. Such power of attorney shall be executed by the president and secretary of the insurance company or other duly authorized officers under its seal and shall be accompanied by a certified copy of the resolution of the board of directors of the company making said appointment and authorizing the execution of said power of attorney. Service of any lawful process shall be by delivering to and leaving with the agent two (2) copies of such process, with copy of the pertinent complaint attached. The agent shall forthwith transmit to the defendant company at its last known principal place of business by registered or certified mail, return receipt requested, one (1) of the copies of such process, with complaint attached, the other copy to be retained in a record which shall show all process served upon and transmitted by him. Such service shall be sufficient provided the returned receipt or, if the defendant company shall refuse to accept such mailing, the registered mail together with an

affidavit of plaintiff or his attorney stating that service was made upon the agent and forwarded as above set forth but that such mail was returned by the post office department is filed with the court. The agent shall make information and receipts available to plaintiff, defendant or their attorneys. No plaintiff or complainant shall be entitled to a judgment by default based on service authorized by this section until the expiration of at least thirty (30) days from the date on which either the post office receipt or the unclaimed mail together with affidavit is filed with the court. Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any company in any other manner permitted by law.

(8) Proof which satisfies the department that it has complied with the financial requirements imposed in this chapter upon foreign and alien insurance companies which transact business in this state and that it is entitled to public confidence and that its admission to transact business in this state will not be prejudicial to public interest.

(Formerly: Acts 1935, c.162, s.229; Acts 1967, c.127, s.5.) As amended by P.L.252-1985, SEC.74; P.L.130-1994, SEC.25; P.L.116-1994, SEC.35; P.L.268-1999, SEC.6; P.L.126-2001, SEC.2; P.L.193-2006, SEC.5.

IC 27-1-17-4.2

Service of process in action on surety bonds

Sec. 4.2. (a) A foreign or alien insurance company that provides a surety bond that is required or permitted under the law of the United States shall execute a power of attorney in a form prescribed by the department irrevocably appointing the commissioner as the insurance company's agent for service of process in an action on the surety bond if the:

- (1) surety bond was provided in Indiana; and
- (2) service of process under this section is in addition to another method of service of process authorized by law or court rule.

(b) Service of process under this section has the same effect as personal service on the insurance company.

(c) Upon receipt of process described in this section, the commissioner shall forward the process to the resident agent designated by the insurance company under section 4(7) of this chapter.

(d) The commissioner may adopt rules under IC 4-22-2 to establish reasonable fees for the acceptance of process described in this section. Fees collected under rules adopted under this subsection must be deposited in the department of insurance fund established by IC 27-1-3-28.

As added by P.L.193-2006, SEC.6.

IC 27-1-17-5

Capital and surplus or surplus of assets over liabilities; investment of surplus

Sec. 5. (a) Every foreign insurance company authorized to do business in this state shall have, in the case of a stock company, at least the capital and surplus required of a domestic insurance company which makes the same kind or kinds of insurance.

(b) Every foreign insurance company authorized to do business in this state shall have, in the case of other than a stock company, at least the assets with a surplus of assets over all liabilities required of a domestic insurance company which makes the same kind or kinds of insurance, and an additional contingent liability of its policyholders equal to not less than the cash premium expressed in the policies in force, if such contingent liability is required of a like domestic insurance company.

(c) Every alien insurance company authorized to do business in this state shall have the surplus of assets invested according to the laws of the state in the United States, wherein it has its deposit, held in the United States in trust for the benefit and security of all its policyholders and creditors in the United States, over all its liabilities in the United States, of an amount equal to the surplus of assets required of a like domestic insurance company.

(Formerly: Acts 1935, c.162, s.230.)

IC 27-1-17-6

Deposit

Sec. 6. Every alien company shall deposit with the department securities of the amount and value of one hundred thousand dollars (\$100,000) invested in the classes of securities in which insurance companies are permitted by the laws of this state to make investments, or, satisfy the department that it has on deposit with the proper official of a state of the United States, authorized by the laws of such state to accept such deposit, securities of the amount and value of one hundred thousand dollars (\$100,000), of the classes in which like insurance companies of such state are permitted to make their investments, for the benefit and security of all its policyholders and creditors in the United States, and the company shall file with the department the certificate of such official of any such deposit held by him.

(Formerly: Acts 1935, c.162, s.231.)

IC 27-1-17-7

Trustees of assets of alien insurer

Sec. 7. The directors of an alien company may appoint citizens or corporations of the United States, approved by the commissioner, as its trustees to hold funds and assets in trust for the benefit of the policyholders and creditors of the company in the United States. A certified copy of the record of such appointment and of the deed of trust shall be filed with the commissioner, who may examine such trustees and any officers and agents, books and papers of the company in the same manner as he may examine officer, agents, books, papers and affairs of insurance companies. The funds and assets so held by such trustees shall, with the deposits otherwise

made by the company and the funds and assets held by the company in the United States for the benefit of its policyholders and creditors in the United States, constitute the assets of the company for the purpose of making its financial statements required by this law.

(Formerly: Acts 1935, c.162, s.232.)

IC 27-1-17-8

Issuance of certificate of authority

Sec. 8. When any foreign or alien insurance company has complied with the provisions of sections 1 through 7 of this chapter, then the commissioner may issue a certificate of authority, pursuant to IC 27-1-3-20, which shall license such foreign or alien insurance company to transact only the kind or kinds of insurance specified in its application for admission, and which shall expire on midnight of April 30 next, following the date of issuance.

(Formerly: Acts 1935, c.162, s.233.) As amended by P.L.252-1985, SEC.75.

IC 27-1-17-9

Hazardous financial condition

Sec. 9. (a) If, upon satisfactory evidence, it appears to the commissioner that any foreign or alien insurance company doing business in this state is in a hazardous financial condition as evidenced by the existence of any conditions indicated by, but not limited to, the following, he shall take such action as set forth in subsection (b) or (c), compliance herewith not precluding action under other provisions of law:

- (1) It cannot meet the current applicable requirements for the conduct of the business of insurance in this state.
 - (2) It has commenced, or has attempted to commence, any voluntary liquidation or dissolution proceeding, or any proceeding to procure the appointment of a receiver, liquidator, rehabilitator, sequestrator, conservator, or similar officer for itself.
 - (3) It is the subject of liquidation or dissolution proceedings undertaken by another state, or any other proceeding undertaken by another state to procure the appointment of a receiver, liquidator, rehabilitator, sequestrator, conservator, or similar officer.
 - (4) Its further transaction of business would be hazardous to its policyholders, contract holders, or the public as shown by the following conduct or other conduct:
 - (A) Investment practices not providing availability within a reasonable time of sufficient moneys to promptly meet any demand which might in the ordinary course of business be properly made against it.
 - (B) Embezzlement, sequestration, or wrongful diversion of any of its assets by any of its officers or directors.
 - (C) Willful violation of its charter or any law of this state.
- (b) Upon finding that a company is in a hazardous financial

condition as described in subsection (a), the commissioner shall order the company to take such action as reasonably may be required to correct the situation, such as the following:

(1) Requiring the company to reduce the volume of new business being accepted to an amount and period of time specified by the commissioner in the manner prescribed by his order.

(2) Requiring the submission of such reinsurance contracts for approval and make such requirements relative to the company's reinsurance program as the commissioner deems necessary to protect the interests of Indiana policyholders.

(3) Requiring the company to reinsure all or any part of its Indiana business with a company duly authorized to transact such business in this state.

(4) Requiring a contribution to surplus which will increase the company's surplus for such a period of time, and by such an amount, and in such a manner, as the commissioner may deem necessary and essential.

(5) Requiring the company to maintain a special deposit with the commissioner of insurance of this state in cash or securities of the kinds in which a domestic insurer is permitted to invest its funds, in an amount not less than the lesser of:

(A) the amounts required to be maintained as reserves, for losses and loss adjustment expenses on Indiana business and reserves for unearned premiums on Indiana business. (In determining the amount of deposit required by this subdivision, the reserves for losses, loss adjustment expenses, and unearned premiums shall be reduced only for reinsurance cessions to approved reinsurers which maintain with an independent custodian cash or marketable securities in an amount not less than the sum of the reinsurer's reserves for losses, loss adjustment expenses, and unearned premiums in regard to reinsurance assumed); and

(B) six hundred thousand dollars (\$600,000).

Any deposit required by this subsection shall be for the protection and benefit of Indiana policyholders or claimants only and shall not be withdrawn without the consent of the commissioner. The commissioner shall require such reports as may be necessary to implement supervision of any order issued under this subsection.

(c) If the company fails to comply with the commissioner's order under subsection (b) within sixty (60) days or if the commissioner finds that the company's financial condition is so serious as to make any efforts under subsection (b) meaningless to the company's policyholders, claimants, or the public, the commissioner shall suspend the authority granted to such company to do business in this state. If no demand for a hearing is made by the suspended company within thirty (30) days after suspension, such suspension shall become a revocation of the authority to transact the business of insurance in this state. Any such hearing shall be held in compliance with IC 4-21.5-3. If during such a hearing satisfactory evidence is

forced to indicate that the company is in a hazardous financial condition as described in subsection (a), the commissioner shall revoke the authority of the company to transact the business of insurance in this state.

As added by Acts 1977, P.L.281, SEC.4. Amended by P.L.7-1987, SEC.138.