

As Introduced

125th General Assembly
Regular Session
2003-2004

H. B. No. 137

Representative G. Smith

A BILL

To amend sections 3909.09 and 3909.15, to enact new
sections 3909.05 and 3927.03, and to repeal
sections 3909.05 and 3927.03 of the Revised Code
relative to the appointment of agents by foreign
insurance companies doing business in Ohio.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3909.09 and 3909.15 be amended and
new sections 3909.05 and 3927.03 of the Revised Code be enacted to
read as follows:

Sec. 3909.05. (A) Any life insurance company organized by act
of congress or under the laws of another state of the United
States that transacts any business of insurance in this state
shall have and maintain an agent, sometimes referred to as the
"statutory 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 this state
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. A
statutory agent need not be a licensed insurance agent.

(B) The written appointment of an agent shall be in the form

the superintendent of insurance prescribes, which may include a
consent to service of process. The appointment shall set forth the
name and complete address of the agent. The agent shall reside or
maintain a business address within this state.

The superintendent shall keep a record of the foreign life
insurance companies transacting business in this state and the
name and address of their respective agents.

(C) If any agent dies, moves out of the state, or resigns,
the company immediately shall appoint another agent and file with
the superintendent a written appointment as described in division
(B) of this section.

(D) If an agent changes the agent's address, the company or
agent immediately shall notify the superintendent of the change,
and shall set forth the agent's new address, on a form prescribed
by superintendent.

(E) An agent may resign by filing with the superintendent a
written notice signed by the agent. The agent shall send a copy of
the notice to the company at the current or last known address of
the company's principal office prior to the date the notice is
filed with the superintendent. The notice shall set forth the
company's name, the current or last known address of the company,
the name and address of the agent, the resignation of the agent,
and a statement that a copy of the notice has been sent to the
company and the date the copy was sent. The agent's authority
shall terminate thirty days after the notice is filed with the
superintendent.

(F) A company may revoke the appointment of an agent by
filing with the superintendent a written appointment of another
agent and a statement that the appointment of the former agent is
revoked. The authority of the agent whose appointment has been
revoked shall terminate thirty days after the notice is filed with

the superintendent.

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(G) Any process, notice, or demand required or permitted by
law to be served upon a company 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, the agent no longer has that address, or the
company has failed to maintain an agent as required by this
section, the party desiring that the process, notice, or demand be
served, or its agent, may file with the superintendent an
affidavit stating that one of the foregoing conditions exists and
stating the most recent address of the company that the party,
after diligent search, has been able to ascertain. Upon the filing
of the affidavit, service of process, notice, or demand may be
initiated upon the superintendent as the company's agent by
delivering two copies of the process, notice, or demand to the
superintendent and paying a fee of fifty dollars. The
superintendent shall give notice to the company at its principal
office as shown in the superintendent's records or at the address
set forth in the affidavit. The superintendent shall give notice
by regular mail with a copy of the process, notice, or demand
enclosed. After the superintendent has mailed the appropriate
documents, service upon the company is deemed complete.

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(H) The superintendent shall keep a record of each process,
notice, and demand delivered to the superintendent under this
section or any other law of this state that authorizes service
upon the superintendent.

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(I) This section does not limit or affect the right to serve
any process, notice, or demand upon a company in any other manner
permitted by law.

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(J) A company shall include a fee of five dollars with any
change of agent appointment or change of address. This division

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does not apply to an agent appointment filed with an original
application for a certificate of authority.

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(K) If a company fails to appoint or maintain an agent or to
notify the superintendent of an agent's change of address, the
superintendent shall fine the company not less than twenty-five
nor more than two hundred dollars per violation, after the
superintendent has provided notice by certified mail and upon the
expiration of thirty days from the date of mailing or such further
time as the superintendent allows.

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(L) The superintendent shall pay all moneys collected by the
superintendent in accordance with this section into the state
treasury to the credit of the department of insurance operating
fund.

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Sec. 3909.09. No person shall act in this state as agent, or
otherwise, in receiving or procuring applications for life
insurance, nor in any manner aid in transacting the business of
any company, partnership, or association incorporated by or
organized under the laws of any foreign government, until such
company, partnership, or association completes the following acts:

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(A) Deposits with the superintendent of insurance, for the
benefit of policyholders of the company, partnership, or
association, who are citizens or residents of the United States,
securities to the amount of one hundred thousand dollars, of the
kind required for similar companies of this state;

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(B) ~~Executes a waiver as provided in~~ Appoints a statutory
agent in accordance with section 3909.05 of the Revised Code;

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(C) ~~Appoints an agent or attorney in each county in this~~
~~state in which the company established an agency, on whom process~~
~~of law can be served;~~

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~~(D)~~ Files with the superintendent a certified copy of its

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charter, or deed of settlement, and a duplicate original copy of 113
the letter or power of attorney of the company, partnership, or 114
association, appointing the attorney thereof, which appointment 115
shall continue until another attorney is substituted. 116

Sec. 3909.15. If a company, partnership, or association, 117
organized under the laws of any other state or government, ceases 118
to ~~do~~ transact the business of life insurance in this state 119
according to law, ~~it shall appoint, in the manner provided in~~ 120
~~sections 3909.01 to 3909.17, inclusive, of the Revised Code, in~~ 121
~~every county in which an agency existed at the date of such~~ 122
~~discontinuance, one or more agents for the purpose of receiving~~ 123
~~service of process in all actions upon policies of insurance~~ 124
~~issued to the citizens of this state while it was lawfully~~ 125
~~transacting the business of insurance in this state. Service of~~ 126
~~process upon such agents, in such actions, is as valid as actual~~ 127
~~service upon the company, partnership, or association.~~ 128

~~In every case in which no such agent is appointed, the agent~~ 129
~~last designated and acting for the company, partnership, or~~ 130
~~association shall be deemed authorized by it to receive service of~~ 131
~~process. The officer who serves such process shall also send a~~ 132
~~copy of the process served on the agent, by mail, to the address~~ 133
~~of such company, partnership, or association at the place of its~~ 134
~~principal or home office at the time it ceased to do business in~~ 135
~~this state, and his return must distinctly show that at least~~ 136
~~thirty days have elapsed since the mailing of such copy before any~~ 137
~~judgment is rendered in such action.~~ 138

~~If any such company, partnership, or association ceases to~~ 139
~~transact business in this state according to law, the agents~~ 140
statutory agent last designated by or acting for it ~~are~~ is deemed 141
to continue as ~~agents~~ agent for it, unless a new statutory agent 142
is appointed, for the purpose of serving process, and for 143

commencing actions upon any policy or liability issued or 144
contracted while it transacted business in this state, and service 145
of process upon any such agent, for such causes, is a valid 146
service upon the company, partnership, or association. 147

This section does not limit or affect the right to serve any 148
process, notice, or demand upon a company, partnership, or 149
association in any other manner permitted by law. 150

Sec. 3927.03. (A) Any foreign insurance company that 151
transacts any business in this state shall have and maintain an 152
agent, sometimes referred to as the "statutory agent," upon whom 153
any process, notice, or demand required or permitted by law to be 154
served upon a company may be served. The agent may be a natural 155
person residing in this state or may be a corporation holding a 156
license under the laws of this state that is authorized by its 157
articles of incorporation to act as an agent and that maintains a 158
business address in this state. A statutory agent need not be a 159
licensed insurance agent. 160

(B) The written appointment of an agent shall be in the form 161
the superintendent of insurance prescribes, which may include a 162
consent to service of process. The appointment shall set forth the 163
name and complete address of the agent. The agent shall reside or 164
maintain a business address within this state. 165

The superintendent shall keep a record of the foreign 166
insurance companies transacting business in this state and the 167
name and address of their respective agents. 168

(C) If any agent dies, moves out of the state, or resigns, 169
the company immediately shall appoint another agent and file with 170
the superintendent a written appointment as described in division 171
(B) of this section. 172

(D) If an agent changes the agent's address, the company or 173

agent immediately shall notify the superintendent of the change, 174
and shall set forth the agent's new address, on a form prescribed 175
by the superintendent. 176

(E) An agent may resign by filing with the superintendent a 177
written notice signed by the agent. The agent shall send a copy of 178
the notice to the company at the current or last known address of 179
the company's principal office prior to the date the notice is 180
filed with the superintendent. The notice shall set forth the 181
company's name, the current or last known address of the company, 182
the name and address of the agent, the resignation of the agent, 183
and a statement that a copy of the notice has been sent to the 184
company and the date the copy was sent. The agent's authority 185
shall terminate thirty days after the notice is filed with the 186
superintendent. 187

(F) A company may revoke the appointment of an agent by 188
filing with the superintendent a written appointment of another 189
agent and a statement that the appointment of the former agent is 190
revoked. The authority of the agent whose appointment has been 191
revoked shall terminate thirty days after the notice is filed with 192
the superintendent. 193

(G) Any process, notice, or demand required or permitted by 194
law to be served upon a company may be served by delivering a copy 195
of the process, notice, or demand to the agent of record at the 196
address appearing in the superintendent's records. If the agent 197
cannot be found, the agent no longer has that address, or the 198
company has failed to maintain an agent as required by this 199
section, the party desiring that the process, notice, or demand be 200
served, or its agent, may file with the superintendent an 201
affidavit stating that one of the foregoing conditions exists and 202
stating the most recent address of the company that the party, 203
after diligent search, has been able to ascertain. Upon the filing 204
of the affidavit, service of process, notice, or demand may be 205

initiated upon the superintendent as the company's agent by 206
delivering two copies of the process, notice, or demand to the 207
superintendent and paying a fee of fifty dollars. The 208
superintendent shall give notice to the company at its principal 209
office as shown in the superintendent's records or at the address 210
set forth in the affidavit. The superintendent shall give notice 211
by regular mail with a copy of the process, notice, or demand 212
enclosed. After the superintendent has mailed the appropriate 213
documents, service upon the company is deemed complete. 214

(H) The superintendent shall keep a record of each process, 215
notice, and demand delivered to the superintendent under this 216
section or any other law of this state that authorizes service 217
upon the superintendent. 218

(I) This section does not limit or affect the right to serve 219
any process, notice, or demand upon a company in any other manner 220
permitted by law. 221

(J) A company shall include a fee of five dollars with any 222
change of agent appointment or change of address. This division 223
does not apply to an agent appointment filed with an original 224
application for a certificate of authority. 225

(K) If a company fails to appoint or maintain an agent or to 226
notify the superintendent of an agent's change of address, the 227
superintendent shall fine the company not less than twenty-five 228
nor more than two hundred dollars per violation, after the 229
superintendent has provided notice by certified mail and upon the 230
expiration of thirty days from the date of mailing or such further 231
time as the superintendent allows. 232

(L) The superintendent shall pay all moneys collected by the 233
superintendent in accordance with this section into the state 234
treasury to the credit of the department of insurance operating 235
fund. 236

(M) Any foreign insurance company transacting business in 237
this state by an agent consents that suit may be brought against 238
it in the county where the property insured was situated, or was 239
insured, or the application for insurance taken. 240

(N) If a foreign insurance company ceases to do business in 241
this state according to law, the statutory agent last designated 242
by or acting for it is deemed to continue as agent for it, unless 243
a new statutory agent is appointed, for the purpose of serving 244
process, and for commencing actions upon any policy or liability 245
issued or contracted while it transacted business in this state, 246
and service of process upon any such agent, for such causes, is a 247
valid service upon the company. 248

Section 2. That existing sections 3909.09 and 3909.15 and 249
sections 3909.05 and 3927.03 of the Revised Code are hereby 250
repealed. 251

Section 3. An insurance company organized under the laws of 252
any other state that was authorized to transact any business of 253
insurance in this state prior to the effective date of this 254
section shall appoint a "statutory agent," as required by this 255
act, no later than the later of the effective date of this section 256
or sixty days after the Superintendent of Insurance issues a 257
bulletin specifying the method by which the insurance company is 258
to appoint a statutory agent. 259