

As Reported by the House Insurance Committee

125th General Assembly

Regular Session

2003-2004

Am. H. B. No. 137

Representatives G. Smith, Book, Hughes, Setzer, Gibbs, Olman, Wolpert,
D. Evans, T. Patton, Fessler, Brown

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 20
the superintendent of insurance prescribes, which may include a 21
consent to service of process. The appointment shall set forth the 22
name and complete address of the agent. The agent shall reside or 23
maintain a business address within this state. 24

The superintendent shall keep a record of the foreign life 25
insurance companies transacting business in this state and the 26
name and address of their respective agents. 27

(C) If any agent dies, moves out of the state, or resigns, 28
the company immediately shall appoint another agent and file with 29
the superintendent a written appointment as described in division 30
(B) of this section. 31

(D) If an agent changes the agent's address, the company or 32
agent immediately shall notify the superintendent of the change, 33
and shall set forth the agent's new address, on a form prescribed 34
by superintendent. 35

(E) An agent may resign by filing with the superintendent a 36
written notice signed by the agent. The agent shall send a copy of 37
the notice to the company at the current or last known address of 38
the company's principal office prior to the date the notice is 39
filed with the superintendent. The notice shall set forth the 40
company's name, the current or last known address of the company, 41
the name and address of the agent, the resignation of the agent, 42
and a statement that a copy of the notice has been sent to the 43
company and the date the copy was sent. The agent's authority 44
shall terminate thirty days after the notice is filed with the 45
superintendent. 46

(F) A company may revoke the appointment of an agent by 47
filing with the superintendent a written appointment of another 48
agent and a statement that the appointment of the former agent is 49
revoked. The authority of the agent whose appointment has been 50

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. 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

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change of agent appointment or change of address. This division 82
does not apply to an agent appointment filed with an original 83
application for a certificate of authority. 84

(K) If a company fails to appoint or maintain an agent or to 85
notify the superintendent of an agent's change of address, the 86
superintendent shall fine the company not less than twenty-five 87
nor more than two hundred dollars per violation, after the 88
superintendent has provided notice by certified mail and upon the 89
expiration of thirty days from the date of mailing or such further 90
time as the superintendent allows. The superintendent may also 91
charge a company a fifty-dollar fee for each time the 92
superintendent is required to give notice to the company in 93
accordance with division (G) of this section. 94

(L) The superintendent shall pay all moneys collected by the 95
superintendent in accordance with this section into the state 96
treasury to the credit of the department of insurance operating 97
fund. 98

Sec. 3909.09. No person shall act in this state as agent, or 99
otherwise, in receiving or procuring applications for life 100
insurance, nor in any manner aid in transacting the business of 101
any company, partnership, or association incorporated by or 102
organized under the laws of any foreign government, until such 103
company, partnership, or association completes the following acts: 104

(A) Deposits with the superintendent of insurance, for the 105
benefit of policyholders of the company, partnership, or 106
association, who are citizens or residents of the United States, 107
securities to the amount of one hundred thousand dollars, of the 108
kind required for similar companies of this state; 109

(B) ~~Executes a waiver as provided in~~ Appoints a statutory 110
agent in accordance with section 3909.05 of the Revised Code; 111

~~(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;~~

~~(D) Files with the superintendent a certified copy of its charter, or deed of settlement, and a duplicate original copy of the letter or power of attorney of the company, partnership, or association, appointing the attorney thereof, which appointment shall continue until another attorney is substituted.~~

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

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

~~If any such company, partnership, or association ceases to~~

~~transact business in this state according to law, the agents~~ 143
statutory agent last designated by or acting for it ~~are~~ is deemed 144
to continue as ~~agents~~ agent for it, unless a new statutory agent 145
is appointed, for the purpose of serving process, and for 146
commencing actions upon any policy or liability issued or 147
contracted while it transacted business in this state, and service 148
of process upon any such agent, for such causes, is a valid 149
service upon the company, partnership, or association. 150

This section does not limit or affect the right to serve any 151
process, notice, or demand upon a company, partnership, or 152
association in any other manner permitted by law. 153

Sec. 3927.03. (A) Any foreign insurance company that 154
transacts any business in this state shall have and maintain an 155
agent, sometimes referred to as the "statutory agent," upon whom 156
any process, notice, or demand required or permitted by law to be 157
served upon a company may be served. The agent may be a natural 158
person residing in this state or may be a corporation holding a 159
license under the laws of this state that is authorized by its 160
articles of incorporation to act as an agent and that maintains a 161
business address in this state. A statutory agent need not be a 162
licensed insurance agent. 163

(B) The written appointment of an agent shall be in the form 164
the superintendent of insurance prescribes, which may include a 165
consent to service of process. The appointment shall set forth the 166
name and complete address of the agent. The agent shall reside or 167
maintain a business address within this state. 168

The superintendent shall keep a record of the foreign 169
insurance companies transacting business in this state and the 170
name and address of their respective agents. 171

(C) If any agent dies, moves out of the state, or resigns, 172

the company immediately shall appoint another agent and file with 173
the superintendent a written appointment as described in division 174
(B) of this section. 175

(D) If an agent changes the agent's address, the company or 176
agent immediately shall notify the superintendent of the change, 177
and shall set forth the agent's new address, on a form prescribed 178
by the superintendent. 179

(E) An agent may resign by filing with the superintendent a 180
written notice signed by the agent. The agent shall send a copy of 181
the notice to the company at the current or last known address of 182
the company's principal office prior to the date the notice is 183
filed with the superintendent. The notice shall set forth the 184
company's name, the current or last known address of the company, 185
the name and address of the agent, the resignation of the agent, 186
and a statement that a copy of the notice has been sent to the 187
company and the date the copy was sent. The agent's authority 188
shall terminate thirty days after the notice is filed with the 189
superintendent. 190

(F) A company may revoke the appointment of an agent by 191
filing with the superintendent a written appointment of another 192
agent and a statement that the appointment of the former agent is 193
revoked. The authority of the agent whose appointment has been 194
revoked shall terminate thirty days after the notice is filed with 195
the superintendent. 196

(G) Any process, notice, or demand required or permitted by 197
law to be served upon a company may be served by delivering a copy 198
of the process, notice, or demand to the agent of record at the 199
address appearing in the superintendent's records. If the agent 200
cannot be found, the agent no longer has that address, or the 201
company has failed to maintain an agent as required by this 202
section, the party desiring that the process, notice, or demand be 203

served, or its agent, may file with the superintendent an 204
affidavit stating that one of the foregoing conditions exists and 205
stating the most recent address of the company that the party, 206
after diligent search, has been able to ascertain. Upon the filing 207
of the affidavit, service of process, notice, or demand may be 208
initiated upon the superintendent as the company's agent by 209
delivering two copies of the process, notice, or demand to the 210
superintendent. The superintendent shall give notice to the 211
company at its principal office as shown in the superintendent's 212
records or at the address set forth in the affidavit. The 213
superintendent shall give notice by regular mail with a copy of 214
the process, notice, or demand enclosed. After the superintendent 215
has mailed the appropriate documents, service upon the company is 216
deemed complete. 217

(H) The superintendent shall keep a record of each process, 218
notice, and demand delivered to the superintendent under this 219
section or any other law of this state that authorizes service 220
upon the superintendent. 221

(I) This section does not limit or affect the right to serve 222
any process, notice, or demand upon a company in any other manner 223
permitted by law. 224

(J) A company shall include a fee of five dollars with any 225
change of agent appointment or change of address. This division 226
does not apply to an agent appointment filed with an original 227
application for a certificate of authority. 228

(K) If a company fails to appoint or maintain an agent or to 229
notify the superintendent of an agent's change of address, the 230
superintendent shall fine the company not less than twenty-five 231
nor more than two hundred dollars per violation, after the 232
superintendent has provided notice by certified mail and upon the 233
expiration of thirty days from the date of mailing or such further 234

time as the superintendent allows. The superintendent may also 235
charge a company a fifty-dollar fee for each time the 236
superintendent is required to give notice to the company in 237
accordance with division (G) of this section. 238

(L) The superintendent shall pay all moneys collected by the 239
superintendent in accordance with this section into the state 240
treasury to the credit of the department of insurance operating 241
fund. 242

(M) Any foreign insurance company transacting business in 243
this state by an agent consents that suit may be brought against 244
it in the county where the property insured was situated, or was 245
insured, or the application for insurance taken. 246

(N) If a foreign insurance company ceases to do business in 247
this state according to law, the statutory agent last designated 248
by or acting for it is deemed to continue as agent for it, unless 249
a new statutory agent is appointed, for the purpose of serving 250
process, and for commencing actions upon any policy or liability 251
issued or contracted while it transacted business in this state, 252
and service of process upon any such agent, for such causes, is a 253
valid service upon the company. 254

Section 2. That existing sections 3909.09 and 3909.15 and 255
sections 3909.05 and 3927.03 of the Revised Code are hereby 256
repealed. 257

Section 3. An insurance company organized under the laws of 258
any other state that was authorized to transact any business of 259
insurance in this state prior to the effective date of this 260
section shall appoint a "statutory agent," as required by this 261
act, no later than the later of the effective date of this section 262
or sixty days after the Superintendent of Insurance issues a 263
bulletin specifying the method by which the insurance company is 264

to appoint a statutory agent.

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