

AN ACT TO PROVIDE FOR ACTIONS AGAINST AND SERVICE OF PROCESS UPON INSURERS NOT AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH AND PROVIDING FOR DEFENCES TO SUCH ACTIONS AND FOR ATTORNEYS FEES THEREIN. Chap. 781

Be it enacted, etc., as follows:

The General Laws are hereby amended by inserting after chapter 175A the following chapter: —

G. L. (Ter. Ed.), new chapter 175B, added.

CHAPTER 175B.

UNAUTHORIZED INSURER'S PROCESS ACT.

Section 1. The purpose of this chapter is to subject certain insurers to the jurisdiction of courts of the commonwealth in suits by or on behalf of insureds or beneficiaries under insurance contracts. The legislature declares that it is a subject of concern that many residents of this commonwealth hold policies of insurance issued or delivered in this commonwealth by insurers while not authorized to do business in the commonwealth, 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 statute, what constitutes doing business in this commonwealth, and also exercises powers and privileges available to the commonwealth by virtue of Public Law 15, 79th Congress of the United States, chapter 20, 1st Sess., S. 340, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

Certain insurers to be subject to jurisdiction of courts of commonwealth in certain cases.

Section 2. (a) Any of the following acts in this commonwealth, effected by mail or otherwise, by an unauthorized foreign or alien insurer: (1) the issuance or delivery of contracts of insurance to residents of this commonwealth or to corporations authorized to do business therein; (2) the solicitation of applications for such contracts; (3) the collection of premiums, membership fees, assessments or other considerations for such contracts; or (4) any other transaction of business, is equivalent to and shall constitute an appointment by such insurer of the commissioner of insurance and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contracts of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this commonwealth upon such insurer.

Appointment of insurance commissioner as agent for service of process, what constitutes.

Service on
commissioner.

(b) Such service of process shall be made by delivering to and leaving with the commissioner of insurance or some person in apparent charge of his office two copies thereof and the payment to him of such fees as may be prescribed by law. The commissioner of insurance shall forthwith mail by registered mail one of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, 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, and the affidavit of the plaintiff or plaintiff's attorney showing compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

Service on
certain other
persons
authorized.

(c) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection (b) be valid if served upon any person within this commonwealth who, in this commonwealth on behalf of such insurer, is —

1. Soliciting insurance, or
2. Making, issuing or delivering any contract of insurance,

or

3. Collecting or receiving any premium, membership fee, assessment or other consideration for insurance; provided notice of such service and a copy of such process is sent within ten days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, 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, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(d) No plaintiff shall be entitled to a judgment by default, or a judgment with leave to prove damages, or a judgment pro confesso under this section until the expiration of thirty days from date of the filing of the affidavit of compliance.

(e) Nothing in this section contained shall limit or abridge

the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

Section 3. (a) Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading other than a plea in bar, in abatement, to the jurisdiction, or a motion to dismiss in any action, suit or proceeding instituted against it, such unauthorized insurer shall either (1) deposit with the clerk of the court in which such action, suit or 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 the payment of any final judgment which may be rendered in such action; provided, however, that the court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to such court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action, suit or proceeding; or (2) procure a certificate of authority to transact the business of insurance in the commonwealth.

Restricting certain pleadings in suits against certain unauthorized insurers.

(b) The court in any action, suit or proceeding, in which service is made in the manner provided in subsections (b) or (c) of section two may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a) of this section and to defend such action.

(c) Nothing in subsection (a) of this section is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subsections (b) or (c) of section two hereof, on the ground either (1) that such unauthorized insurer has not done any of the acts enumerated in subsection (a) of section two, or (2) that the person on whom service was made pursuant to subsection (c) of section two was not doing any of the acts therein enumerated.

Section 3A. The provisions of this chapter shall not apply to any suit, action or proceeding against any foreign company not lawfully admitted to transact business in the commonwealth arising out of any contract of insurance effectuated in accordance with section one hundred and sixty or one hundred and sixty-eight of chapter one hundred and seventy-five, or to any contract of reinsurance, provided that such contract contains a provision designating the commissioner of insurance or his successor in office its true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of such contract of insurance.

Certain insurers exempted from provisions of this chapter.

Section 4. In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or de-

Certain fees allowed in actions against

certain
insurers.

livered in the commonwealth 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 in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one half per cent of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars. Failure of an insurer to defend on the merits any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

Invalidity of
certain pro-
visions not
to void
chapter.

Section 5. If any provision of this chapter, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Section 6. This chapter may be cited as the unauthorized insurer's process act.

Approved August 16, 1950.

Chap. 782 AN ACT RELATIVE TO THE RETIREMENT OF MALCOLM E. NICHOLS OF BOSTON.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding any other provisions of law to the contrary, Malcolm E. Nichols of Boston, who served in the general court for a period of seven years, and as mayor of the city of Boston for a period of four years, and more recently as chairman of the transit commission of said Boston, shall, in consideration of his long and faithful public service and of the fact that said office as chairman of the transit commission was abolished by the provisions of chapter five hundred and seventy-two of the acts of nineteen hundred and forty-nine during his incumbency therein, become eligible for membership in the State-Boston retirement system as of August second, nineteen hundred and forty-nine upon the payment by him into the annuity savings fund of said system of an amount equal to five per cent of the salary received in the public offices in state and city government held by him, or such portion thereof as he shall elect, with interest, and shall thereupon be retired and receive a retirement allowance from said August second, nineteen hundred and forty-nine for his prior service computed upon the amount of his contribution into said fund. The commonwealth shall be reimbursed in accordance with the provisions of paragraph (c) of subdivision (8) of section three of chapter thirty-two of the General Laws for that portion