

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-1054.01 Richard Sweetman x4333

HOUSE BILL 22-1398

HOUSE SPONSORSHIP

Bird and Holtorf,

SENATE SPONSORSHIP

Kolker and Liston,

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE DESIGNATION OF REGISTERED AGENTS BY**
102 **INSURANCE COMPANIES FOR THE PURPOSE OF RECEIVING**
103 **SERVICE OF PROCESS, AND, IN CONNECTION THEREWITH,**
104 **REQUIRING THE COMMISSIONER OF INSURANCE TO MAINTAIN A**
105 **LIST OF SUCH REGISTERED AGENTS AND DESCRIBING**
106 **CIRCUMSTANCES WHEN SERVICE OF PROCESS MAY BE MADE ON**
107 **THE COMMISSIONER RATHER THAN ON AN INSURANCE**
108 **COMPANY'S REGISTERED AGENT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
2nd Reading Unamended
April 28, 2022

<http://leg.colorado.gov>.)

Under current law, with certain exceptions, an insurance company that is formed by authority of any other state or government (foreign insurance company) may not transact business in Colorado until it has first appointed, in writing, the commissioner of insurance (commissioner) to be the true and lawful attorney of the company in and for Colorado, upon whom all lawful process in any action or proceeding against the company may be served with the same effect as if the company existed in Colorado. However, an insurance company that maintains a home office or regional home office in Colorado is not subject to this requirement but must instead file with the commissioner the name of a person designated to receive service of process.

The bill removes the requirement that a foreign insurance company appoint the commissioner as its lawful attorney for receipt of service of process and instead requires each insurance company to designate a registered agent for receipt of service of process regardless of whether the insurance company maintains a home office or regional home office in Colorado. However, service of process may be made on the commissioner if:

- An insurance company fails to appoint or maintain a registered agent as required;
- An insurance company's registered agent cannot be found with reasonable diligence; or
- An insurance company's certificate of authority is revoked.

If an individual reasonably relies on the list of registered agents maintained by the commissioner and serves otherwise valid process on the registered agent of an insurance company so designated in the list, and it is later determined that the registered agent listed by the commissioner is not the correct registered agent properly designated by the company, then:

- The individual may serve process upon the commissioner; and
- If the individual uses due diligence to serve the commissioner, the applicable statute of limitations is tolled for the period of time beginning when the incorrect registered agent received service of process and ending when the commissioner receives service of process.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 10-3-107 as
3 follows:

1 **10-3-107. Appointment of registered agent to receive service**
2 **of process - commissioner required to maintain list - when service of**
3 **process may be made on commissioner.** (1) (a) ~~Except pursuant to the~~
4 ~~provisions of article 5 of this title, no foreign insurance company, directly~~
5 ~~or indirectly, shall issue policies, take risks, or transact~~ AN INSURANCE
6 COMPANY SHALL NOT ENGAGE IN THE business OF INSURANCE in this state
7 ~~until~~ UNLESS it has ~~first appointed, in writing,~~ FILED WITH the
8 commissioner ~~to be the true and lawful attorney of such company in and~~
9 ~~for this state, upon whom all lawful process in any action or proceeding~~
10 ~~against the company may be served with the same effect as if the~~
11 ~~company existed in this state. Such power of attorney shall stipulate and~~
12 ~~agree, upon the part of the company, that any lawful process against the~~
13 ~~company that is served on said attorney, or in the commissioner's absence~~
14 ~~any employee in charge of the commissioner's office, shall be of the same~~
15 ~~legal force and validity as if served on the company and that the authority~~
16 ~~shall continue in force so long as any liability remains outstanding against~~
17 ~~the company in this state. A certificate of such appointment, duly certified~~
18 ~~and authenticated, shall be filed in the office of the commissioner, and~~
19 ~~copies certified by the commissioner shall be deemed sufficient evidence,~~
20 ~~and service upon such attorney shall be deemed sufficient service upon~~
21 ~~the principal. The certificate of appointment may be filed in an electronic~~
22 ~~format~~ THE NAME OF A REGISTERED AGENT IN THIS STATE DESIGNATED TO
23 RECEIVE SERVICE OF PROCESS.

24 (b) THE COMMISSIONER SHALL MAINTAIN A LIST OF REGISTERED
25 AGENTS THAT ARE DESIGNATED TO RECEIVE SERVICE OF PROCESS
26 PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION AND SHALL MAKE
27 INFORMATION FROM THE LIST AVAILABLE TO ANY PERSON UPON REQUEST.

1 EACH INSURANCE COMPANY MUST REPORT ANY CHANGE IN THE
2 REGISTERED AGENT DESIGNATED TO RECEIVE SERVICE OF PROCESS TO THE
3 COMMISSIONER WITHIN TEN DAYS AFTER MAKING THE CHANGE.

4 (c) THE INFORMATION REQUIRED TO BE FILED WITH THE
5 COMMISSIONER PURSUANT TO THIS SUBSECTION (1) MAY BE FILED IN AN
6 ELECTRONIC FORMAT.

7 ~~(1.5) (a) The provisions of subsection (1) of this section shall not~~
8 ~~apply to any insurance company maintaining a home office or a regional~~
9 ~~home office in this state.~~

10 ~~(b) Each insurance company maintaining a home office or~~
11 ~~regional home office in this state shall file with the commissioner the~~
12 ~~name of a person designated to receive service of process. The~~
13 ~~commissioner shall maintain a list of persons so designated and shall~~
14 ~~make information from such list available to any person upon request.~~
15 ~~Each company must report any change in the name of the person~~
16 ~~designated to receive service of process to the commissioner within ten~~
17 ~~days after making such change.~~

18 ~~(c) The information required to be filed with the commissioner~~
19 ~~pursuant to this subsection (1.5) may be filed in an electronic format.~~

20 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, SERVICE
21 OF PROCESS MAY BE MADE ON THE COMMISSIONER IF:

22 (a) AN INSURANCE COMPANY FAILS TO APPOINT OR MAINTAIN A
23 REGISTERED AGENT AS REQUIRED BY SUBSECTION (1) OF THIS SECTION;

24 (b) AN INSURANCE COMPANY'S REGISTERED AGENT UNDER
25 SUBSECTION (1) OF THIS SECTION CANNOT BE FOUND WITH REASONABLE
26 DILIGENCE; OR

27 (c) AN INSURANCE COMPANY'S CERTIFICATE OF AUTHORITY IS

1 REVOKED.

2 (3) IF AN INDIVIDUAL REASONABLY RELIES ON THE LIST OF
3 REGISTERED AGENTS MAINTAINED BY THE COMMISSIONER PURSUANT TO
4 SUBSECTION (1)(b) OF THIS SECTION AND SERVES OTHERWISE VALID
5 PROCESS ON AN INSURANCE COMPANY'S REGISTERED AGENT SO
6 DESIGNATED IN THE LIST, AND IT IS LATER DETERMINED THAT THE
7 REGISTERED AGENT LISTED BY THE COMMISSIONER IS NOT THE CORRECT
8 REGISTERED AGENT PROPERLY DESIGNATED BY THE COMPANY, THEN:

9 (a) THE INDIVIDUAL MAY SERVE PROCESS UPON THE
10 COMMISSIONER; AND

11 (b) IF THE INDIVIDUAL USES DUE DILIGENCE TO SERVE THE
12 COMMISSIONER, THE APPLICABLE STATUTE OF LIMITATIONS IS TOLLED FOR
13 THE PERIOD OF TIME BEGINNING WHEN THE INCORRECT REGISTERED AGENT
14 RECEIVED SERVICE OF PROCESS AND ENDING WHEN THE COMMISSIONER
15 RECEIVES SERVICE OF PROCESS.

16 ~~(2)~~ (4) Whenever lawful process against any insurance company
17 is served upon the commissioner, three copies shall be furnished, and ~~he~~
18 THE COMMISSIONER shall ~~forthwith~~ forward a copy of the process served
19 ~~on him by certified mail, postpaid,~~ to the secretary of the company or, in
20 case of companies of foreign countries, to the resident manager in this
21 country, and ~~he~~ THE COMMISSIONER shall also forward a copy ~~thereof~~ OF
22 THE PROCESS to the general agent of said company in this state.

23 **SECTION 2. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly; except
26 that, if a referendum petition is filed pursuant to section 1 (3) of article V
27 of the state constitution against this act or an item, section, or part of this

1 act within such period, then the act, item, section, or part will not take
2 effect unless approved by the people at the general election to be held in
3 November 2022 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.