

Insurance Companies, Domestic, Amount of Capital to be Subscribed and Invested Before Doing Business in this State.
Insurance Company, Foreign, Amount of Capital to be Subscribed and Invested Before Doing Business in this State.

Stock companies organized under the laws of this state shall have not less than \$100,000.00 capital subscribed, 50 per cent of which shall be paid up and invested in the character of securities provided by the statute, which securities shall be deposited with the state auditor and upon such deposit and evidence satisfactory to the auditor that at least \$100,000.00 of capital is subscribed in good faith, and the company is the owner of the securities representing the paid up capital, the auditor shall issue to such company a certificate permitting it to do business. The remainder of the capital stock shall be paid within such time as the directors of the company may order, or as the state auditor may direct, and not later than two years from the date of issuance of auditor's certificate, and until paid shall be secured by the notes of the stockholders.

Foreign insurance companies before transacting business in this state shall be possessed of not less than \$100,000.00 of capital actually subscribed and paid for in good faith and invested as provided by statute, which securities shall be deposited with the superintendent of insurance of the state by whose laws the company is incorporated, or of some other state and a certificate furnished the auditor of this state by such officer, that he holds in trust and on deposit for the benefit of all policy holders, such securities, which certificate shall embrace the items of security so held and show that such officer is satisfied the securities are worth \$100,000.00.

May 12, 1911.

Hon. Harry R. Cunningham,
State Auditor and Commissioner of Insurance,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of April 21st, wherein you state that you now have pending in your office awaiting final action the applications of two foreign life insurance companies for admission to transact

business in Montana, in both of which cases the capital stock of said companies has not only not been fully paid, but has not been fully subscribed, and requesting my opinion as to the proper interpretation of Section 4118, Revised Codes of 1907, upon the question as to whether the requirements imposed upon domestic companies that the entire capital stock of such companies shall be fully subscribed, etc., apply to foreign insurance companies.

Section 4118 of the Revised Codes of Montana provides that no company incorporated by or organized under the laws of any other state or government shall transact business in this state, unless it is possessed of the actual amount of capital required of any company organized by the law of this state and the same is invested in securities as therein provided, which securities shall, at the time, be on deposit with the superintendent of insurance or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the auditor of this state is furnished with a certificate by such officer, under his official seal, that he, as such officer holds in trust and on deposit for the benefit of all the policy holders of such company the securities mentioned. This certificate shall embrace the items of security so held and show that such official is satisfied that such securities are worth \$100,000.00.

Section 4114, having reference to domestic corporations, provides that stock companies organized under the laws of this state shall have not less than \$100,000.00 of capital subscribed, 50 per cent of which shall be paid up and invested in securities as therein provided, which securities shall be deposited with the state auditor, and upon such deposit, and evidence satisfactory to the auditor that the capital is all subscribed in good faith, and that the company is the actual and unqualified owner of the securities representing the paid up capital, he shall issue to such company a certificate. Under our construction of this section, in an opinion rendered to you under date of February 2, 1911, we held that you should not issue the company a certificate to do business until evidence satisfactory to you had been submitted showing that the entire capital stock provided for by the articles of incorporation had been subscribed in good faith, and 50 per cent thereof paid up and invested in securities prescribed by the statute, and the remainder of the capital stock secured by notes of the stockholders of the company.

After further careful considering Section 4114 in the light of the provisions of Section 4118, I am constrained to reverse my holding of February 2nd, 1911, as to the construction of Section 4114, and now give you the following as my opinion as to the proper construction to be placed upon this section: Stock companies organized under the laws of this state shall have not less than \$100,000.00 capital subscribed, 50 per cent of which shall be paid up and invested in the character of securities provided for by this section as amended by Chapter 68 of the Twelfth Session Laws of the State of Montana, which security shall be deposited with the state auditor, and upon such deposit and evidence by affidavits, or otherwise, satisfactory to the auditor, that at least \$100,000.00 of capital is subscribed in good faith, and the com-

pany is the actual and unqualified owner of the securities representing the paid up capital, he shall issue to such company a certificate provided for in this section. The remainder of the capital shall be paid within such time as the directors of the company may order, or as the state auditor may direct, and not later than two years from date of issuance of auditor's certificate, and until paid up shall be secured by the notes of the stockholders.

For the purpose of illustration: If a domestic company has an authorized capital of \$500,000.00 and not less than \$100,000.00 of such capital is actually subscribed in good faith, 50 per cent of which amount is paid up and invested in the character of securities provided for by this section, as amended by Chapter 68 of the Twelfth Session Laws, and the remainder of said \$100,000.00 of subscribed capital is secured by the notes of the stockholders, payable within such time as the directors of the company may order, or as the state auditor may direct, and not later than two years from date of issuance of auditor's certificate, then such company is entitled to do business in this state.

In the light of this construction of Section 4114, Section 4118 becomes clear. Under the provisions of the last mentioned section, no company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of not less than \$100,000.00 of capital actually subscribed and paid for in good faith, and the same is invested in bonds of the United States or of this state, or in interest paying bonds, when they are at or above par, of the state in which the company is located, or of some other state, or in notes or bonds secured by mortgages on unincumbered real estate within this or the state where such company is located, worth double the amount loaned thereon, which securities, shall, at the time, be on deposit with the superintendent of insurance, auditor, controller, or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the auditor of this state is furnished with a certificate of such officer, under his official seal, that he, as such officer, holds in trust and on deposit for the benefit of all the policy holders of such company the securities above mentioned. This certificate shall embrace the items of security so held, and show that such officer is satisfied that such securities are worth \$100,000.00.

In other words, a foreign insurance company must have at least \$100,000.00 of capital stock actually subscribed, paid for, and invested in the character of securities mentioned in the section, which securities shall at the time of making the application to do business in this state be on deposit with the superintendent of insurance or officer of the state by whose laws the company is incorporated, or of some other state, and the auditor of this state is furnished with a certificate provided for in the section that such officer holds in trust and on deposit for the benefit of all the policy holders of the company such securities, and which certificate shall show that such officer is satisfied that the securities are worth \$100,000.00.

Yours very truly,

ALBERT J. GALEN,

Attorney General.