

**Insurance Companies, Plate Glass, Health, Accident, Live Stock, Steam Boiler or Credit, Capital Stock Of.**

The proviso at the end of Sec. 4062, Revised Codes, as amended by Chapter 25, Laws of 1909, applies to foreign and domestic insurance companies engaged in plate glass, health, accident, live stock, steam boiler or credit insurance; and if such company is possessed of an actual paid up cash capital of not less than \$100,000.00 may be authorized to do business in this state.

February 10, 1912.

Honorable Charles M. McCoy,  
State Auditor & Commissioner of Insurance, Ex-Officio,  
Helena, Montana.

Dear Sir:

I acknowledged receipt of your letter of February 1st., requesting my official opinion as to whether, under the laws of this state, a health and accident insurance company organized and having its principal place of business in another state of the United States and having a paid up in cash capital of \$100,000.00 can be licensed to transact business in the State of Montana.

Sec. 4044, Revised Codes, provides:

"The capital of every corporation formed under the provisions of this chapter shall not be less than two hundred thousand dollars, nor more than one million dollars, as may be specified in the articles of incorporation. Any such corporation shall issue stock divided into shares of the par value of one hundred dollars each, at least fifty per cent of which stock shall be fully paid up in cash, and the remainder of the stock shall be paid for by notes made to the corporation by the stockholders, secured by at least one surety, or by mortgages or unincumbered real estate within this state, worth at least twice the amount of such notes, which notes or other security shall be approved by the state auditor."

Sec. 4062, Revised Codes, as amended by Chapter 25, Laws of 1909, makes it unlawful for any insurance company organized, for the purposes specified in the Chapter, under the laws of any other state of the United States, or any foreign government, to take risks or transact business of insurance in this state, unless possessed of \$200,000.00 actual paid up capital exclusive of any assets of such company deposited in any other states or territories. This chapter at the end thereof contains the following proviso:

"Provided, that no plate glass, health, accident, live stock, steam boiler, credit or other liability insurance company shall be permitted to do any business in this state unless possessed of an actual paid up cash capital of not less than one hundred thousand dollars."

The chapter in which sections 4044 and 4062 of the Revised Codes as amended are found deals with stock and mutual fire insurance corporations, both domestic and foreign, but section 4044 has to do with domestic corporations and section 4062 apparently has reference to foreign corporations.

Sec. 11, Art. XV. of the Constitution of the State of Montana provides that no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this state.

If the proviso above quoted contained in Sec. 4062 as amended permitting plate glass, health, accident, live stock, steam boiler, credit or other liability insurance companies to do business in this state if possessed of an actual paid up cash capital of not less than \$100,000.00, applies only to foreign corporations, then that portion of such section would be unconstitutional as extending to foreign corporations greater rights and privileges than those given to domestic corporations under the provisions of Sec. 4044 above quoted. However, there is nothing in the proviso itself or in the act amending Sec. 4062 which limits the provisions of the proviso to foreign corporations; and it is a general rule of construction of statutes in this state that they are to be so construed, if possible, as to give effect to all (Sec. 7875 Rev. Codes). The proviso above referred to in Sec. 4062 as amended indirectly authorizes the class of insurance companies or corporations mentioned in the proviso to do business in this state if possessed of a paid up capital of not less than \$100,000.00; and it is my opinion that this proviso would be construed to refer to domestic as well as foreign corporations.

You are, therefore, advised that any domestic or foreign insurance company or corporation engaged in plate glass, health, accident, live stock, steam boiler, or credit insurance if possessed of an actual paid up cash capital of not less than \$100,000.00 is authorized to do business in this state.

Yours very truly,

ALBERT J. GALEN,

Attorney General.