

THE INSURANCE CODE OF 1956 (EXCERPT)

Act 218 of 1956

CHAPTER 50

ORGANIZATION OF DOMESTIC STOCK AND MUTUAL INSURERS

500.5000 Scope of chapter.

Sec. 5000. This chapter covers incorporation and procedures for organization of new domestic stock, mutual, and cooperative plan insurers; except, that this chapter shall apply to domestic general mutual insurers only as stated in section 5804.

History: 1956, Act 218, Eff. Jan. 1, 1957.

Popular name: Act 218

500.5001 Compliance with chapter required.

Sec. 5001. No stock or mutual insurer or other form of corporate body, shall hereafter be incorporated in this state for the purpose of transacting any form of insurance or surety bonding business, without complying with the procedure prescribed in this chapter.

History: 1956, Act 218, Eff. Jan. 1, 1957.

Popular name: Act 218

500.5002 Organization of insurers; definitions.

Sec. 5002. Definitions, as used in this code:

(1) Except as otherwise indicated "corporation" means a corporation formed or existing under the laws of this state.

(2) "Articles" means articles of incorporation, and all amendments thereto, and includes what has heretofore been referred to as articles of association and/or charters and amendments thereto of corporations governed by this code.

(3) "Incorporator" means a person, natural or corporate, who signs the articles.

(4) "Director" and "directors" shall be construed to be synonymous with "trustee" and "trustees" respectively. "Directors," when used in relation to any power or duty requiring collective action, shall be construed to mean "board of directors."

(5) "Registered office" means the place designated in the articles or bylaws as the office of the corporation in this state.

History: 1956, Act 218, Eff. Jan. 1, 1957.

Popular name: Act 218

500.5006 Stock insurers; formation, number of incorporators required.

Sec. 5006. (1) Any number of persons, not less than 7, may associate together and form a stock insurer to transact any or all of the following kinds of insurance: Property, marine, inland navigation and transportation, or automobile insurance (limited), all as defined in chapter 6.

(2) Thirteen or more persons may organize a stock insurer for the purpose of transacting any of the following kinds of insurance: Life, disability, casualty, or fidelity and surety, all as defined in chapter 6 or title as defined in chapter 73.

(3) Any number of persons, not less than 20, a majority of whom shall be citizens of this state, may become together with others who may hereafter be associated with them or their successors, a body corporate for the purpose of transacting life insurance, or life and disability insurance, on the mutual plan.

(4) Any number of persons, not less than 13, may incorporate a stock insurer for the purpose of insuring railway employees against loss of position, for transacting disability and life insurance, and granting annuities, all as identified in section 6604.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1966, Act 221, Imd. Eff. July 11, 1966.

Popular name: Act 218

500.5008 Articles of incorporation; blank forms; subscribing in duplicate; contents; permissible provisions; liability of director; certificate of acknowledgment.

Sec. 5008. (1) The commissioner shall prepare and keep on hand blank forms of articles of incorporation for insurers desiring to incorporate under this act, which forms may be had on application.

(2) The incorporators shall subscribe articles of incorporation in duplicate, which articles shall contain all of the following:

- (a) The names of the incorporators and their places of residence respectively.
- (b) The location of the principal office for the transaction of business in this state.
- (c) The name by which the incorporation shall be known, which if it be upon the mutual plan shall contain the word "mutual". However, a nonprofit mutual disability insurer into which a nonprofit health care corporation that is organized under the nonprofit health care corporation reform act, 1980 PA 350, MCL 550.1101 to 550.1704, is merged or consolidated may retain and use trade names in use by the nonprofit health care corporation before the merger or consolidation.
- (d) The purposes of the incorporation and the reference to the chapter of this act under which the purposes are enumerated and under which the company intends to operate.
- (e) The manner in which the corporate powers are to be exercised; the number of directors and other officers; the manner of electing the directors and other officers, and how many of the directors constitute a quorum, and the manner of filling all vacancies; and, in the case of mutual life or life and disability insurers, the names and mailing addresses of the directors who shall serve until the first annual meeting of the corporation.
- (f) The amount of capital stock, if any, what proportion is to be paid in before the corporation commences business, and the value of the stock, as provided in section 5014.
- (g) The term of existence of the corporation, subject to section 5010.
- (h) The time for the holding of the annual meetings of the corporation.
- (i) Any terms and conditions of membership that the incorporators have agreed upon and which they consider important to have set forth in the articles.
- (j) Any other terms and conditions prescribed by law for that class of insurer.
- (k) If a mutual company operating on the assessment plan, the number of classes or divisions of members and the object or purpose of the classification or division, all of which shall be definitely and correctly stated; and in what manner assessments, premiums, or payments are to be required from the members, the purpose and objects for which the money so realized are to be appropriated, and the names and objects of each fund into which any the money shall be paid.

(3) The articles of any stock insurer formed or existing under this act may contain, or may be amended to contain, a provision that the shareholders shall have no preemptive rights to subscribe for any additional shares of capital stock and authorizing the board of directors to prescribe the terms and conditions upon which additional shares of capital stock shall be offered for subscription including the price of the stock, which shall not be less than the par value of the stock; and to offer shares that have not been subscribed by stockholders within the time duly fixed by the board of directors for subscription to any other person or persons at a price and upon terms not less favorable than those offered to the stockholders.

(4) The articles of incorporation may contain a provision providing that a director is not personally liable to the corporation or its shareholders or policyholders for monetary damages for a breach of the director's fiduciary duty. However, the provision does not eliminate or limit the liability of a director for any of the following:

- (a) A breach of the director's duty of loyalty to the corporation or its shareholders or policyholders.
- (b) Acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law.
- (c) A violation of section 5036, 5276, or 5280.
- (d) A transaction from which the director derived an improper personal benefit.
- (e) An act or omission occurring before January 1, 1989.

(5) The articles shall be acknowledged by the person signing the articles before some officer of this state authorized to take acknowledgments of deeds, who shall attach his or her certificate of acknowledgment.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1988, Act 290, Eff. Jan. 1, 1989;—Am. 1994, Act 226, Imd. Eff. June 27, 1994;—Am. 2013, Act 5, Imd. Eff. Mar. 18, 2013.

Popular name: Act 218

500.5010 Duration of corporate existence.

Sec. 5010. The corporate existence of any company incorporated under or subject to this code shall not exceed 30 years, unless a longer term is provided in the articles of incorporation. Any company hereafter incorporated under this code may incorporate for a period of any specific number of years, not less than 30, or multiples of 30, or in perpetuity, provided that the legislature may shorten such terms by future laws.

History: 1956, Act 218, Eff. Jan. 1, 1957.

Popular name: Act 218

500.5012 Corporate name; restrictions.

Sec. 5012. No insurer formed under this code shall assume any name which is the same as or closely

resembles the name of any other corporation doing business in this state.

History: 1956, Act 218, Eff. Jan. 1, 1957.

Popular name: Act 218

500.5014 Par value of stock; limitations.

Sec. 5014. Capital stock of domestic stock insurers incorporated under this chapter shall have value as follows:

(1) If organized to transact property, marine, inland navigation and transportation, or automobile insurance (limited), all as defined in chapter 6, each share of authorized capital stock shall have a value of not less than \$1.00 or more than \$100.00.

(2) If organized to transact life, disability, casualty, or fidelity and surety insurance, all as defined in chapter 6 or title insurance as defined in chapter 73, each share of authorized capital stock shall have a value of not less than \$1.00.

(3) If organized to insure railway employees against loss of position, and to transact life and disability insurance, as identified in section 6604, each share of authorized capital stock shall have a par value of \$50.00.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1966, Act 221, Imd. Eff. July 11, 1966.

Popular name: Act 218

500.5020 Examination of articles by attorney general; fee.

Sec. 5020. (1) Before such articles of incorporation shall be effective for any purpose the same shall be submitted to the attorney general for his examination, and if found by him to be in compliance with this code he shall so certify to the commissioner.

(2) Each and every insurer hereafter incorporated, where its articles of incorporation are required to be approved by the attorney general, shall pay to the attorney general for the use and benefit of the state of Michigan, the examination fee provided for in section 240 (2). It shall be unlawful for the attorney general to approve any articles of incorporation for mutual insurers until such examination fee is paid to him.

History: 1956, Act 218, Eff. Jan. 1, 1957.

Popular name: Act 218

500.5024 Securing subscribers, stockholders, or members of insurance company; sale of capital stock; required acts of incorporators; authority of commissioner.

Sec. 5024. (1) Before securing subscribers, stockholders, or members of an insurance company, or taking subscriptions for, or negotiating for, the sale of any of the capital stock of the company or subscriptions for membership in the company, the incorporators shall do all of the following:

(a) Deliver to the commissioner such bond, deposit, or security for the protection of subscribers as the commissioner may require.

(b) Prepare and file with the commissioner duplicate copies of the articles of incorporation with the certificate of the attorney general attached, a statement showing in full detail the plan upon which the company proposes to transact business, a copy of all contracts, stocks or other instruments that it proposes to make with, or sell to, its stockholders or members, together with a copy of its prospectus and the proposed advertisements to be used in the solicitation of members or stockholders. The statement shall also show the name and location and main office of the company, the name, home and business address of each of the incorporators, the amount subscribed and paid in by each of them, and the manner in which future payments shall be made, together with 4 references as to the character and financial standing of each of the incorporators with the business address of each of the references.

(2) The commissioner shall examine the statements and documents presented and shall have power to conduct any investigation that the commissioner considers necessary and to hear the incorporators and to examine under oath any persons interested or connected with the proposed insurance company. If in the opinion of the commissioner the sale of capital stock in the proposed insurance company or soliciting of membership therein would work a fraud upon the persons subscribing to the capital stock or to such membership the commissioner may refuse to license the persons so associating to proceed in the organization and promotion of the insurance company. If, upon examination of the articles of incorporation, the documents, and instruments above mentioned and any further investigation as the commissioner may make, the commissioner is satisfied that the sale of the capital stock of the proposed insurance company or the subscription to membership therein would not work a fraud upon the persons solicited to become purchasers of such capital stock, or members of the insurance company, the commissioner shall return to the incorporators 1 copy of the articles of incorporation certified by the commissioner for the records of the

company and shall retain 1 copy for the insurance bureau files. The commissioner shall then issue a certificate authorizing the incorporators to proceed with the organization of the insurance company through the sale of stock or taking of memberships.

(3) The commissioner shall have authority at any time to revoke any certificate, order, or consent made by him or her to such company to procure applications for stock or membership upon being satisfied that the further solicitation of stockholders, or members, in the corporation will work a fraud upon the persons so solicited and the commissioner may make any investigation from time to time as he or she considers best and to grant hearings to the incorporators concerning the revocation.

(4) The action of the commissioner provided for in this section shall not be in place of any action provided by law to be taken by the corporations and securities bureau of the state of Michigan in relation to the sale, taking subscriptions for, or offering for sale any stocks or securities within this state.

History: 1956, Act 218, Eff. Jan. 1, 1955;—Am. 1994, Act 226, Imd. Eff. June 27, 1994.

Popular name: Act 218

500.5028 Completion of organization; issuance of stock certificates; mutual corporation.

Sec. 5028. (1) The incorporators shall, after the filing and approval of the required articles, proceed to the completion of organization of the proposed insurer.

(2) A stock corporation shall at once open its books of subscription to the capital stock, and a certificate of authority shall not be issued by the commissioner to the corporation until it has issued stock certificates representing the minimum capitalization under its articles of incorporation and has collected in cash both its minimum capital and any premium for surplus requirements. If capital stock is not subscribed and paid for as provided in this subsection within 1 year from the opening of the books, the corporation may only sell stock on petition to and consent by the commissioner. The commissioner, if public policy warrants, may extend this 1-year period for a period of 3 months and, after petition, for a second period of 3 months. If at the expiration of 18 months the corporation has not met the requirements of this subsection, the commissioner shall proceed to liquidate the corporation through receivership proceedings as prescribed by chapter 81.

(3) A mutual corporation shall at once open books to receive propositions and enter into agreements as specified in the chapter under which it intends to operate. The acquisition of members shall proceed for the length of time, and be subject to periods of time extension and liquidation proceedings, as provided in subsection (2).

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 2001, Act 182, Imd. Eff. Dec. 21, 2001.

Popular name: Act 218

500.5036 Liability of directors for debts during organization.

Sec. 5036. The directors and incorporators of any stock company organized under this chapter, to transact property, marine, inland navigation and transportation, or automobile insurance (limited), all as defined in chapter 6, shall be jointly and severally liable for all debts or responsibilities of such company, until the whole amount of the capital of such company shall have been paid in and a certificate thereof recorded, as hereinbefore provided.

History: 1956, Act 218, Eff. Jan. 1, 1957.

Popular name: Act 218

500.5040 Examination; certificate of authority.

Sec. 5040. Upon the petition of the incorporators of such company, the commissioner shall cause an examination to be made in respect to the capital stock and shall see that the requirements as to the same have been fully complied with; and if the company is organized to do business on the mutual or cooperative assessment plan, the commissioner shall similarly determine that the company is in the actual possession of the applications for insurance required of it, and the amount of premiums, assessments, reserve, surplus, or other resources required of it, as the case may be, and that it was shown to him by the affidavit of the president and secretary of the company that any required applications have been taken in good faith and not merely colorably. The commissioner may perform such examination by deputy or by any examiner in his office, or by the appointment of a special examiner, who shall certify to the facts as found. Upon being satisfied that all requirements of this code precedent to commencing business have been fully complied with, applicable to such company, the commissioner shall deliver to such company a certificate of authority to commence business and issue policies.

History: 1956, Act 218, Eff. Jan. 1, 1957.

Popular name: Act 218