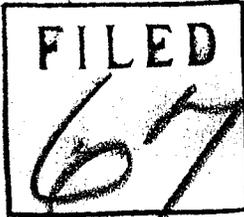


INSURANCE:  
FARMERS' MUTUALS:

Farmer's mutual insurance companies organized under, or accepting, the provisions of H.B. 249, 67th General Assembly are permitted to write "miscellaneous" coverage referred to in subparagraph 4, Section 4 of the Act only if a guaranty fund or policyholders' surplus of not less than \$400,000.00 is maintained.



January 5, 1955

Honorable William Harrison Norton  
Member, Missouri House of Representatives  
406 Armour Road  
North Kansas City, Missouri

Dear Mr. Norton:

This formal opinion is in reply to your original request of October 19, 1954 for a ruling touching certain provisions of House Bill #249, passed by the Sixty-Seventh General Assembly of Missouri. We extract from the fourth paragraph of your letter of October 19, 1954 the direct question you posed in the following language:

"The question that I am interested in is a company that plans to write business under Section 4, Subdivision 4, required to have a safety fund, as defined in the act, in the amounts set out in this bill or are they required to maintain a surplus as used in this general sense in the amount set out in the bill."

House Bill No. 249, passed by the Sixty-Seventh General Assembly of Missouri, is found in Laws of Missouri, 1953, pp. 252-263. The Act pertains to the formation of farmers' mutual insurance companies, and to the acceptance of such law by previously organized farmers' mutual insurance companies and county mutual insurance companies. Section 1 of House Bill No. 249 is a statute containing definitions, and insofar as it refers to "safety fund" provides:

"As used in this act unless the context clearly indicates otherwise:

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\* \* \*

"(5) 'Safety fund' means accumulated assets in excess of accrued losses and expenses."

Section 4 of the Act specifies and describes three specific classes of property insurance which may be written, and in subparagraph (4) of Section 4 we find authority for writing insurance other than that described in the three previous subparagraphs. Such authority is found in the following language:

"(4) Miscellaneous. Insurance against any other insurance risk specified in the articles of incorporation which is not by law prohibited to fire insurance companies doing business under the general insurance laws of this state and for which specific provision is not made in this act."

The question to which this opinion is addressed discloses that we are dealing with a company which contemplates writing business generally described as "miscellaneous" in subparagraph (4) of Section 4 of the Act, quoted above.

Section 6 of the Act sets forth requirements to be met by companies desiring to write any one of the four different, and separately described classes of risks set forth in Section 4 of the Act. Subparagraph 4 of Section 6 of the Act has particular application to the "miscellaneous" coverage described in Section 4 of the Act and provides as follows:

"To make the kinds of insurance described in section 4, subdivision (4) a company shall have at least one hundred million dollars net insurance at risk under one or more of other subdivisions of section 4, and a safety fund of at least two hundred thousand dollars. With respect only to such kinds of insurance described in section 4, subdivision (4) a company shall maintain such liabilities, reserves and amount of surplus or safety fund as are required of fire insurance companies writing such kinds of insurance under the general insurance laws of this state,

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and shall observe the same provisions regarding insolvency of the insured, notice by the insured and the operation by other persons of an insured motor vehicle, as apply to motor vehicle liability policies issued by fire insurance companies operating under the general insurance laws of this state."  
(Underscoring supplied.)

The underscoring portion of subsection 4 of Section 6 of the Act clearly states the minimum requirements as to reserves, surpluses or safety funds to be maintained by companies which are to engage in writing "miscellaneous" insurance as defined in subparagraph 4 of Section 4 of the Act, and it is of special interest to note that such reserves, surpluses and safety funds are not described in definite amounts of money, but the language of the Act refers us directly to the law governing fire insurance companies writing such "miscellaneous" insurance under the general insurance laws of Missouri. And when we turn again to the definition of the term "safety fund" found in Section 1 of the Act we cannot help but discover that the stated definition of "safety fund" is to be applied throughout the Act "unless the context clearly indicates otherwise." The context of the Act as discovered at subparagraph 4 of Section 6, clearly discloses that the term "safety fund" is not to be accorded the narrow meaning it has when referred to in the stated requirements to be met by companies writing the types of insurance defined in subparagraphs 1, 2 and 3 of Section 4 of the Act.

The general insurance law applicable to fire insurance companies, and which is directly referred to in subparagraph 4 of Section 6 of the Act is Chapter 379 RSMo 1949, and the particular statute in such law which prescribes for a guaranty fund or policyholders' surplus, when a mutual fire insurance company desires to write the "miscellaneous" risks referred to in subparagraph 4 of Section 4 of the Act being construed, is Section 379.010 RSMo 1949 which provides that the mutual company must have a guaranty fund or policyholders' surplus of four hundred thousand dollars.

If additional argument is required to support the conclusion hereinafter stated, we need only refer to subparagraph 5 of Section 6 of the Act which provides:

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"To make more than one of the kinds of insurance described in section 4 a company shall meet the total combined requirements as set out in this section relating to the making of such different kinds of insurance, or in lieu of these requirements shall have a safety fund of at least two hundred fifty thousand dollars, shall be operating under this act, and with respect to the kinds of insurance described in section 4, subdivision 4 shall comply with the requirements of subsection 4 of this section." (Underscoring supplied.)

The above quoted subparagraph 5 of Section 6 of the Act, while giving companies which write one or more of the first three defined classes of risks set forth in subparagraph 4 of Section 4 of the Act the option of meeting combined safety fund requirements applicable to two or three of the defined risks being written, or of establishing a safety fund of two hundred fifty thousand dollars, does make provision for companies writing "miscellaneous" coverage to be subject to the requirements set forth in the preceding subparagraph 4 of Section 6 of the Act.

#### CONCLUSION

It is the opinion of this office that farmers' mutual insurance companies organized under, or accepting, the provisions of House Bill No. 249, passed by the Sixty-Seventh General Assembly, may qualify to write "miscellaneous" coverage referred to in subparagraph 4 of Section 4 of the Act only in the event that such companies maintain a guaranty fund or policyholders' surplus of not less than four hundred thousand dollars.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton  
Attorney General

JEO'M:vlw