§ 1201. Incorporation of stock or mutual insurance companies. (a) A corporation may be organized and licensed to do an insurance business in this state by taking the following successive steps, subject to applicable requirements of this chapter:

(1) The proposed incorporators, comprising at least nine natural persons (except as provided in section six thousand four hundred two of this chapter), shall submit to the superintendent, in writing, the corporation's proposed name, the county in which its principal office will be located, and the name and address of a public newspaper of general circulation in such county.

(2) If the superintendent approves the proposed name and newspaper, each as conforming to the requirements of law, he shall so notify the proposed incorporators, or their representative, in writing. Such approval shall become void if within six months from its date the declaration and charter referred to in paragraphs four and five hereof are not filed pursuant to paragraph six hereof.

(3) The proposed incorporators shall publish in such newspaper, twice a week for three successive weeks or once a week for six successive weeks, a notice of intention to form such a corporation, stating its proposed name, the kinds of insurance business to be transacted, the names and city and state of residence of the proposed incorporators, the location of its principal office in this state, and, if a stock corporation, the amount of its proposed initial capital.

(4) The proposed incorporators shall submit to the superintendent:

(A) proof of such publication by the affidavit of the publisher or of his foreman or clerk; and

(B) a declaration, signed by each incorporator and duly acknowledged before a notary public or other officer authorized to take acknowledgments of conveyances of real property within this state.

(5) (A) Such declaration shall be in the English language, shall state the proposed incorporators' intention to form a corporation to do one or more kinds of insurance business authorized by section one thousand one hundred thirteen of this chapter, shall specify the paragraphs defining such kinds of insurance business and shall set forth a copy of the corporation's proposed charter.

(B) The corporation's proposed charter shall contain:

(i) the corporation's name, which shall include a distinctive word or

words, and, if a mutual corporation, shall contain the word "mutual";

(ii) the place where its principal office is to be located;

(iii) the kinds of insurance to be transacted, specified as above required;

(iv) the manner in which corporate powers are to be exercised;

(v) the number of directors, or that it shall be not less than a stated minimum nor more than a stated maximum. Except as provided in section six thousand four hundred two of this chapter the number of directors shall not be less than seven. As used in this item, "number of directors" means the total number of directors which the corporation would have if there were no vacancies;

(vi) the times and manner of electing directors and officers, the manner of filling vacancies, and provision that each director shall be at least eighteen years of age and that at all times a majority shall be citizens and residents of the United States, and that not less than one shall be a resident of this state;

(vii) the names and city and state of residence of the directors, who shall serve until the first annual meeting of such corporation;

(viii) the duration of its corporate existence, which shall be not less than thirty years;

(ix) the amount of its capital, if a stock corporation; and

(x) any other particulars necessary to explain the corporation's objects, purposes, management and control.

(C) The corporation's proposed charter may authorize the use in a foreign country where it does or proposes to do business of a specified translation of its name in any language commonly used in such country.

(D) The superintendent may, by regulation, prescribe additional information to be required, pursuant to this paragraph, of all companies or of any kind of company.

(6) The superintendent shall transmit such proof of publication, declaration, and charter to the attorney general. If approved by the attorney general, as conforming to the requirements of law, the superintendent shall thereupon file them in his office and issue a certified copy thereof to the proposed incorporators. If requested by such proposed incorporators, the superintendent shall also issue to them a certificate of incorporation executed by him in the name of the people of the state and thereupon such incorporators shall become a body

corporate and have the powers enumerated in paragraph seven hereof, but such corporation shall not be authorized to do the business of insurance until it obtains a license therefor.

(7) Every stock corporation, upon compliance with this chapter and the business corporation law, may create and issue the number of shares of capital stock stated in its charter which may be of one or more classes. If the charter authorizes shares which are entitled to preference in the distribution of dividends or assets it shall provide that:

(A) their dividend yield shall not exceed a rate equal to the maximum rate of interest provided in section 5-501 of the general obligations law, in effect at the time such shares are offered for sale; and

(B) the dividends may not be cumulative for more than three years.

(8)(A) A stock corporation shall have power to:

(i) open books to receive subscriptions to its capital shares,

(ii) keep them open until all such shares, or so many as may be necessary to satisfy the minimum capital requirements, are subscribed for,

(iii) receive payment for such subscriptions,

(iv) invest the monies as prescribed in this chapter, and

(v) expend money or incur liabilities necessary or proper as organization expenses, to be paid out of the proceeds of such subscriptions, such expenses not to exceed the maximum amount prescribed in its permit to solicit such subscriptions.

(B) The corporation shall not solicit subscriptions to its shares until it receives a permit therefor from the superintendent which shall be issued after the corporation submits to him an estimate of the total amount to be expended for organization expenses, and he approves the estimate. Such estimate shall be recited in the permit, which shall fix the maximum amount, to be prescribed by the superintendent, which may be expended for organization expenses.

(C) Such corporation shall not employ, as agents or brokers to sell its securities to the public, any persons who have not complied with the requirements of section one thousand two hundred four of this article.

(9) (A) A mutual corporation shall have power to:

(i) receive monies necessary to comply with the requirements of this chapter relative to its initial surplus fund;

(ii) borrow such monies in accordance with the provisions of section

one thousand three hundred seven of this chapter;

(iii) open books to receive applications for insurance from persons desiring and eligible to become members;

(iv) keep them open until the minimum number and amount of applications, and the premium payments thereon, as required by this chapter are received;

(v) invest the monies as prescribed in this chapter for the investment of the minimum surplus of a mutual insurance company; and

(vi) expend money or incur liabilities necessary or proper as organization expenses, such expenses not to exceed the maximum amount prescribed in its permit to solicit such applications.

(B) The corporation shall not solicit applications for insurance or receive premium payments thereon until it receives a permit therefor from the superintendent. The permit shall be issued after:

(i) the superintendent is satisfied, by such evidence as he may require or by such examination as he may deem expedient, that the corporation holds in trust for prospective policyholders and creditors a fund, in cash or securities acceptable to him, at least equal to the amount required as its initial surplus fund, such trust to terminate when a license to do an insurance business of the kinds provided in the corporate charter has been obtained, and

(ii) the corporation submits to the superintendent an estimate of the total amount to be expended for organization expenses, and he approves the estimate. Such estimate shall be recited in the permit, which shall fix the maximum amount, to be prescribed by the superintendent, which may be expended for organization expenses.

(10) The directors and incorporators of any stock or mutual corporation shall be jointly and severally liable for all its debts and liabilities until it is licensed to do an insurance business of the kind or kinds proposed.

(b) This section shall not apply to co-operative fire insurance companies, fraternal benefit societies, or corporations organized under article forty-three or sixty-seven of this chapter.