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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 5. MOTOR CLUBS [12140 - 12311] (*Part 5 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 2. Certificate of Authority [12160 - 12170] (*Chapter 2 repealed and added by Stats. 1969, Ch. 858.*)

12160. (a) A person shall not render or agree to render motor club service in this state without first obtaining from the commissioner a certificate of authority to act as a motor club.

(b) The issuance, sale, or offer for sale in this state of securities of its own issue by any motor club shall be subject to the provisions of Article 8 (commencing with Section 820) of Chapter 1 of Part 2 of Division 1 of this code the same as if motor clubs were included in Section 826 thereof, and any such club shall not be subject to the Corporate Securities Law in the Corporations Code.

(*Added by Stats. 1969, Ch. 858.*)

12161. Application for a certificate of authority shall be made on a form prescribed by the commissioner, accompanied by a filing fee of four thousand nine hundred thirty-nine dollars (\$4,939). That certificate shall not be granted until the applicant conforms to the requirements of this part and the laws of this state prerequisite to its issue. After the issuance, the holder shall continue to comply with the requirements of this part and the laws of this state.

(*Amended by Stats. 2017, Ch. 534, Sec. 74. (AB 1699) Effective January 1, 2018.*)

12162. The commissioner shall not issue a certificate of authority to any motor club until:

(a) It files with him or her the following:

(1) A formal application for the certificate in that form and detail as the commissioner requires, executed under oath by its president or other principal officer.

(2) A certified copy of its charter or articles of incorporation and its bylaws, if any.

(3) A copy of its latest financial statement, or report of independent audit as the commissioner may require; or, in the event neither is available, its most recent operating statement and balance sheet. Any financial statement, audit, operating and balance sheet shall be verified by the person compiling or making the same and by an executive officer of the applicant.

(4) If it is a foreign corporation, a certificate from its domiciliary state regulatory authority executed not more than 30 days before the filing of its application that it is duly authorized to do a motor club business in that state.

(5) An explanation of its plan of doing business, and copies of the following: its application for membership; the proposed membership certificate or identification card; any proposed addendum thereto; any individual insurance policy and any group master policy and individual certificates thereunder to be offered; any service contract to be issued.

(6) Other information as the commissioner may find necessary in order to determine the applicant's qualifications.

(b) It first deposits security with the commissioner in one of the following forms:

(1) Securities of the kinds prescribed by this code for capital fund investments by stock insurers and approved by the commissioner, in the amount of one hundred thousand dollars (\$100,000) based on par value or market value, whichever is less. The making, maintenance and withdrawal of those deposits and the substitution of securities therein shall be governed by Article 11 (commencing with Section 939) of Chapter 1 of Part 2 of Division 1.

(2) A surety bond on a form prescribed by the Attorney General of this state, executed by an admitted surety insurer in the penal sum of one hundred thousand dollars (\$100,000).

(c) It pays to the commissioner an annual license fee of four hundred twenty-four dollars (\$424).

(d) Its name is approved by the commissioner under Section 881, which applies to motor clubs.

(e) It proves by affidavits of its officers, directors, managers, and individual owners of more than 10 percent on a form prescribed by the commissioner that it is not disqualified under Section 704.5.

(f) It satisfies the commissioner it is qualified as respects each of the subjects enumerated in subdivisions (b), (c), (e), (f), (h), (i), and (j) of Section 717, when those subjects are read in the sense of protection to its members instead of policyholders.

(g) It is a separate legal entity capable of being examined by the commissioner as provided in this part.

(Amended by Stats. 2017, Ch. 534, Sec. 75. (AB 1699) Effective January 1, 2018.)

12162.5. All motor clubs applying for a certificate of authority to act as a motor club in this state shall demonstrate to the satisfaction of the commissioner that such club has a net worth of not less than two hundred fifty thousand dollars (\$250,000). For the purposes of Sections 12162.5 and 12162.6, net worth is defined as the excess of total assets over total liabilities. Such net worth shall be maintained at all times as a condition for the continuance of its certificate of authority to act as a motor club in this state.

(Amended by Stats. 1992, Ch. 15, Sec. 1. Effective January 1, 1993.)

12162.6. (a) A motor club holding a certificate of authority to act as a motor club granted prior to January 1, 1992, may continue to retain the certificate until July 1, 1996, without complying with the increased minimum net worth requirement of Section 12162.5.

(b) A motor club shall be deemed to be insolvent and subject to Section 12164 proceedings whenever its net worth is less than two hundred fifty thousand dollars (\$250,000) and it fails to comply with one of these two conditions:

(1) An audit by an independent certified public accountant with an audit report prepared by the certified public accountant and filed with the commissioner no later than June 30 of the year following the year covered by the audit.

(2) A demonstration to the satisfaction of the commissioner, on a quarterly basis, of an amount of liquid assets sufficient to satisfy its current liabilities to members.

(Amended by Stats. 1992, Ch. 15, Sec. 2. Effective January 1, 1993.)

12162.7. For purposes of this article, "liquid assets" means cash, cash equivalents, and marketable securities readily convertible into cash. Liquid assets also include bonds, stocks, certificates of deposit, negotiable short-term instruments, service members' dues receivable not over 90 days, receivables due from affiliates not over 90 days, acquisition costs deferred not over 90 days, federal income tax recoverables, and interest and dividends due and accrued.

(Added by Stats. 1992, Ch. 15, Sec. 3. Effective January 1, 1993.)

12162.8. If any portion of the audit report required by paragraph (1) of subdivision (b) of Section 12162.6 includes a qualified opinion as to the financial condition of the motor club or its ability to exist as a going concern, the motor club shall be considered materially deficient under Section 717, and subject to Section 12164. Similarly, if a motor club qualifying under paragraph (2) of subdivision (b) of Section 12162.6 fails to demonstrate to the commissioner an amount of liquid assets sufficient to satisfy its current liabilities to members, it shall be considered materially deficient under Section 717 and subject to Section 12164.

(Added by Stats. 1992, Ch. 15, Sec. 4. Effective January 1, 1993.)

12163. (a) The security required by subdivision (b) of Section 12162 shall thereafter be continuously maintained by a motor club in one of the forms prescribed. Failure of a motor club so to maintain the same shall be cause for revoking its certificate of authority.

(b) Such security shall be for the protection, use, and benefit of all persons whose applications for membership in a motor club have been accepted by such club or its representative and of this state as respects fees, fines, penalties, and taxes. Such security shall be subject to the following conditions, and, if a bond, shall be expressly so conditioned:

1. The club shall faithfully furnish and render to all persons whose applications for membership have been accepted any and all of the motor club benefits and services sold or offered for sale by it.

2. The club will faithfully conform to all provisions of law of the state pertaining to the sale and rendering of "motor club service" as defined and provided in Part 5 (commencing with Section 12140) of Division 2 of this code.

3. The club will promptly pay all fees, fines, penalties, and taxes which may be levied against it under authority of law.

4. If the club ceases to do business in this state as a motor club, it shall comply with the appropriate withdrawal procedure.

(c) Any person defrauded or injured by any wrongful act, misrepresentation, or failure on the part of the club with respect to the selling or rendering of any of its benefits or services may bring suit on the bond, if the security be a bond, in his own name. The commissioner may bring suit on such bond. If the security be a deposit of securities, any such a person or the commissioner may levy upon the same in execution of a judgment.

(Added by Stats. 1969, Ch. 858.)

12164. (a) The commissioner may revoke or suspend the certificate of authority of a motor club whenever, after a hearing in accordance with the procedure provided in Section 701, he finds that any of the following circumstances exist:

1. The club has violated any provision of this part.
2. It or its officers refuse to submit to an examination, as provided for in Section 12169.
3. It is transacting business fraudulently.
4. It is no longer able to qualify for issuance to it of a certificate of authority as a motor club.

(b) The commissioner may give notice of such revocation or suspension to the public in such manner as he deems proper.

(c) All of the provisions of Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1 of this code not inconsistent with this part shall apply to motor clubs.

For the purpose of this part, "insolvency" means that a club's assets are less than its liabilities.

(Added by Stats. 1969, Ch. 858.)

12165. Subject to the annual fee provisions herein, every certificate of authority issued or held under this part shall be for an indefinite term and, unless sooner revoked by the commissioner, shall terminate upon occurrence of any of the following:

(a) Upon the holder's ceasing to exist as a separate entity.

(b) Upon the winding up, or dissolution, or expiration, or forfeiture of the holder's corporate existence.

(c) Upon completion of the withdrawal procedure prescribed by Article 15 (commencing with Section 1070) of Chapter 1 of Part 2 of Division 1 of this code and surrender by the holder of its certificate of authority and cancellation of the same by the commissioner. All provisions of such article not inconsistent with this part shall apply.

(d) Upon the entry of a final court order in a proceeding under said Article 14 (commencing with Section 1010), Chapter 1 of Part 2 of Division 1 of this code.

(Added by Stats. 1969, Ch. 858.)

12166. Notwithstanding the preceding provisions for a certificate of authority of indefinite term, each holder of a certificate of authority under this chapter shall owe and pay in advance to the commissioner an annual fee of two hundred five dollars (\$205) on account of that certificate of authority until its final termination or revocation. That fee shall be for annual periods commencing on July 1 of each year and ending on June 30 of each year and shall be due on each March 1 and shall be delinquent on and after each April 1.

(Amended by Stats. 2017, Ch. 534, Sec. 76. (AB 1699) Effective January 1, 2018.)

12167. Qualification of a motor club for a certificate of authority under this part does not require prior qualification with the Secretary of State under the Corporations Code for an intrastate business, but the issuance to it of a certificate of authority under this part does not relieve such foreign applicant of any duty to qualify with the Secretary of State pursuant to the Corporations Code before transacting intrastate business in this state.

(Added by Stats. 1969, Ch. 858.)

12168. Annually on or before March 1 of each year, copies of any instruments making any changes in articles of incorporation, bylaws, and membership certificate or identification card or service contract required by this part to be filed with the application for admission shall be filed with the commissioner. In the case of articles of incorporation, an amendment or certificate of amendment shall be certified by the official custodian of the original as a true copy of the same on file in his or her office. Amended bylaws or other papers shall be certified by the corporation secretary over the corporate seal to be true copies of the same currently adopted. The commissioner shall require the payment of fifty dollars (\$50) for each annual filing of amended documents or papers pursuant to this article.

(Amended by Stats. 2017, Ch. 534, Sec. 77. (AB 1699) Effective January 1, 2018.)

12169. (a) Whenever the commissioner has reasonable cause to believe that a motor club is insolvent or is transacting its business in a fraudulent manner, he may demand from the club a statement under oath setting forth its assets and liabilities. He may, for the

purpose of verifying the correctness of such statement, examine the books and affairs of the club.

(b) If such statement is not furnished within 20 days from the time of such demand by the commissioner, or if, upon the examination of such records, the statement furnished or any record examined is found to contain any willful misstatement of fact, the expense of the examination shall be paid by the motor club.

(c) Whenever any foreign motor club applies for admission, the commissioner may make, or cause to be made by the motor club regulatory authority of its domiciliary state, an examination of the applicant's motor club business and affairs. Whenever such an examination is made, all of the provisions of Article 4 (commencing with Section 730) Chapter 1 of Part 2 of Division 1 of this code not inconsistent with this part shall be applicable.

(Added by Stats. 1969, Ch. 858.)

12170. Motor clubs certificated on the effective date of this chapter shall not be required to be recertificated, but thereafter shall be subject to the provisions of this chapter and shall be issued continuous certificates of authority subject to the conditions provided in this chapter.

(Added by Stats. 1969, Ch. 858.)