

BILL ANALYSIS

C.S.H.B. 1251
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that certain fraternal benefit societies may face significant financial challenges as a result of an increasingly competitive insurance marketplace, shrinking membership, and limited access to capital to invest in the modern technology needed to remain relevant to younger consumers. C.S.H.B. 1251 seeks to address these concerns by establishing procedures for fraternal benefit societies in a hazardous financial condition relating to assessments and solvency, including procedures for the transfer of benefit certificates to another society or insurer under certain circumstances.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1251 amends the Insurance Code to prohibit the aggregate assessment paid by a fraternal benefit society's certificate holders for the impaired reserves for any class of the society's benefit certificates from exceeding the total amount required to comply with statutory provisions relating to reserves for certain accident and health insurance. The bill requires a fraternal benefit society, not later than the 90th day before the proposed effective date of an assessment for impaired reserves, to file with the Texas Department of Insurance (TDI) an application for approval of the assessment and a statement sworn to by the society's president and secretary or corresponding officers. The bill provides for the required content of the statement and authorizes the commissioner of insurance to approve or disapprove an application after TDI receives the completed application. The application is considered approved if the commissioner does not approve or disapprove the application before the 60th day after the date TDI receives the application. The bill authorizes the commissioner to impose an effective date earlier than the date requested in the application if the earlier effective date is in the best interests of the society certificate holders. These provisions apply only to an impaired reserves assessment by a fraternal benefit society with an effective date on or after January 1, 2020.

C.S.H.B. 1251 authorizes the commissioner, if a fraternal benefit society reports a ratio of total adjusted capital to authorized control level risk-based capital that triggers an authorized control level as determined by the commissioner in accordance with specified rules and the commissioner reasonably believes the society's hazardous financial condition will not be promptly remedied without TDI intervention, to order the society to promptly seek and negotiate an agreement to transfer all benefit members, benefit certificates, assets, and liabilities of the

society to another fraternal benefit society. The bill sets out provisions relating to the method, approval, and conclusion of such a transfer and establishes that such a transfer constitutes an entire novation of each benefit certificate transferred by the society in a hazardous financial condition and that the receiving society is legally and contractually responsible for each transferred certificate.

C.S.H.B. 1251 requires the supreme governing body or board of directors of a society, not later than the seventh day before the date the applicable entity votes on a proposed transfer, to provide the society's certificate holders written notice of and opportunity to comment on the proposed transfer. The bill requires the governing body or board that approves the transfer to provide the certificate holders' comments to the commissioner. The bill requires the governing body or board of a society that is ordered to agree to a transfer to suspend or modify the society's laws, including laws requiring notice to certificate holders or the governing body's approval of a transfer of the society's certificates, as necessary to facilitate a transfer approved by the commissioner. The bill authorizes the governing body or board of a society receiving benefit certificates pursuant to such a transfer to suspend or modify qualifications for membership in the receiving society to the extent necessary to permit the society to accept the certificate holders of the society transferring certificates under the agreement. The bill authorizes the commissioner to grant to a fraternal benefit society that is not authorized to engage in the business of insurance in Texas the authority to service transferred benefit certificates and fulfill all obligations to the certificate holders and establishes that such an action by the commissioner does not authorize the fraternal benefit society to otherwise engage in the business of insurance in Texas.

C.S.H.B. 1251 authorizes a transfer to be made to an insurer that is not a fraternal benefit society if the insurer is authorized to engage in the business of insurance in Texas and establishes that a holder of a certificate subject to such a transfer is deemed to agree that any term in the certificate is void on transfer of the certificate, including a term that makes the certificate subject to the transferring society's laws or that provides for maintenance of the transferring society's solvency that is inconsistent with transfer to an insurer that is not a fraternal benefit society. The bill requires the receiving insurer to endorse on a form approved by the commissioner each benefit certificate received by such a transfer to reflect any voided terms of the certificate. The bill establishes that a certificate holder's obligation to pay an outstanding impaired reserves assessment that is not released under the transfer agreement is not voided or released by these bill provisions.

C.S.H.B. 1251 authorizes the commissioner to request that the attorney general bring an action to terminate a fraternal benefit society that fails to comply with an order to promptly seek and negotiate a transfer agreement or fails to remedy the financial condition that gave rise to the order. The bill establishes that the powers and authority of the commissioner are cumulative and in addition to all other powers and authority available to the commissioner to remediate the financial condition of a fraternal benefit society, including the powers and authority under rules relating to risk-based capital and surplus requirements for insurers and health maintenance organizations. The bill removes the statutory provision establishing that a fraternal benefit society is considered solvent if its admissible assets are equal to or greater than its liabilities.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1251 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a requirement for a fraternal benefits society transferring a certificate to notify the certificate holders of the transfer but includes requirements for a society's supreme governing body or board of directors to provide the certificate holders written notice of and an opportunity to comment on the proposed transfer and to provide those comments to the commissioner if the transfer is approved. The substitute requires a governing body or board of a society ordered to agree to a transfer to suspend or modify the society's laws as necessary to facilitate a commissioner-approved transfer.

The substitute replaces references in the bill's solvency provisions to an impaired society with references to a society in a hazardous financial condition.

The substitute specifies that a receiving insurer's required endorsement of a transferred benefit certificate to reflect voided certificate terms is to be made on a form approved by the commissioner.