

BILL ANALYSIS

Senate Research Center
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S.B. 1958
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1958 enhances solvency regulation for fraternal benefit societies in the state of Texas. Fraternal benefit societies (fraternals) are not-for-profit membership organizations that help secure their members' financial futures by providing them a variety of life insurance and retirement income products, and use the proceeds from their financial service operations to help their members improve the quality of life in the communities where they live and work by facilitating volunteerism and providing direct financial assistance to programs and projects that reflect their members' shared values.

Fraternal's financial service operations are governed by Chapter 823 of the Insurance Code. A fraternal operates through a lodge system and exists solely for the benefit of its members. It has no capitol stock nor shareholders. Fraternal's are authorized to offer a limited variety of insurance products to members, primarily life and annuity products.

As a result of an increasingly competitive insurance marketplace and an increasingly more complex regulatory environment, smaller fraternals may face significant financial challenges as a result of shrinking membership and limited access to capital to invest in the modern technology needed to remain relevant to younger consumers. In fact, one of the oldest and most notable fraternals (and a fraternal whose members are close friends of mine), the Grand Court Order of Calanthe, was just placed into Receivership this last year. Had S.B. 1958 been in place, state regulators would have been able to intervene earlier and better protect the members of the Grand Court Order of Calanthe from the financial burden and legal complexities of the receivership and liquidation process, or motivate the leadership of the organization to negotiate a more favorable merger with another fraternal.

It protects consumers who purchase life insurance and annuity products from fraternals from the potential loss in the value of those policies that would result from an insolvency, and strengthens the entire fraternal community, allowing them to better fulfill their financial and community services mission in Texas and across the country.

As proposed, S.B. 1958 amends current law relating to financially impaired fraternal benefit societies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 885.311, Insurance Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

- (a) Prohibits the aggregate assessment for the impaired reserves from exceeding the total amount required to comply with Section 885.408 (Reserves For Accident and Health Insurance).

(d) Requires the fraternal benefit society to, not later than the 90th day before the proposed effective date of an assessment under Subsection (a), file with the Texas Department of Insurance (TDI) an application for approval of the assessment and a statement sworn to by the president and secretary or corresponding officers of the society. Requires the statement to:

(1) include:

(A) the terms of the assessment, including the proposed effective date; and

(B) the financial condition of the fraternal benefit society; and

(2) state that the assessment:

(A) received approval by a majority vote of the supreme governing body or board of directors of the society; and

(B) complies with the requirements of this section.

(e) Requires the commissioner of insurance (commissioner) to approve or disapprove an application under this section not later than the 60th day after the date TDI receives the application. Provides that if the commissioner does not approve or disapprove the application before the expiration of the 60-day period, the application is considered approved. 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 certificate holders.

SECTION 2. Amends Section 885.407, Insurance Code, as follows:

Sec. 885.407. SOLVENCY. (a) 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 28 T.A.C. Section 7.402 and the commissioner reasonably believes the impaired society's financial condition will not be promptly remedied without intervention by TDI, to order the impaired society to promptly seek and negotiate an agreement to transfer in accordance with this section all benefit members, benefit certificates, assets, and liabilities of the impaired society to another fraternal benefit society. Provides that a transfer under this section:

(1) is authorized to be by merger, consolidation, assumption, or otherwise;

(2) constitutes an entire novation of each benefit certificate transferred by the impaired society, and the receiving society is legally and contractually responsible for each transferred certificate;

(3) is required to conclude before the deadline set by the commissioner;

(4) is authorized to approved by a vote of the majority of the supreme governing body or board of directors of the impaired society, notwithstanding Section 885.063 (Merger or Transfer of Membership Funds) or any provision of the impaired society's laws to the contrary; and

(5) is subject to approval by the commissioner.

(b) Requires the impaired society transferring the certificates, not later than the 30th day after the date the commissioner approves a transfer under Subsection (a), to notify the certificate holders of the transfer.

(c) Authorizes the supreme governing body or board of directors of a fraternal benefit society receiving benefit certificates pursuant to a transfer under an

agreement described by Subsection (a) 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 impaired society under the agreement, notwithstanding any provision of the receiving society's laws to the contrary.

(d) Authorizes the commissioner to grant to a fraternal benefit society that is not authorized to engage in the business of insurance in this state the authority to service benefit certificates transferred pursuant to Subsection (a) and fulfill all obligations to the holders of the certificates. Provides that commissioner action under this subsection does not authorize the fraternal benefit society to otherwise engage in the business of insurance in this state.

(e) Authorizes a transfer under Subsection (a) 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 this state. Provides that a holder of a certificate subject to a transfer as authorized by this subsection is deemed to agree that any term in 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, is void on transfer of the certificate. Requires the receiving insurer to endorse each benefit certificate received by a transfer made under this section to reflect any terms of the certificate voided by this subsection. Provides that a certificate holder's obligation to pay an outstanding assessment under Section 885.311 (Deficiency Payments) that is not released under the transfer agreement is not released or voided by this subsection.

(f) Authorizes the commissioner to request the Texas attorney general bring an action under Section 885.502 (Initiation of Proceedings For Termination of Domestic Fraternal Benefit Society) to terminate a fraternal benefit society that fails to comply with an order under this section or fails to remedy the financial condition that gave rise to the order.

(g) Provides that the powers and authority of the commissioner under this section are cumulative and in addition to all other powers and authority to remediate the financial condition of a fraternal benefit society available to the commissioner, including the powers and authority under 28 T.A.C. Section 7.402. Deletes existing text providing that a fraternal benefit society is considered solvent if its admissible assets are equal to or greater than its liabilities.

SECTION 3. Makes application of this Act prospective to January 1, 2020.

SECTION 4. Effective date: September 1, 2019.