

By: Thompson of Harris

H.B. No. 1251

Substitute the following for H.B. No. 1251:

By: Lucio III

C.S.H.B. No. 1251

A BILL TO BE ENTITLED

1 AN ACT

2 relating to fraternal benefit societies in a hazardous financial
3 condition.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section [885.311](#), Insurance Code, is amended by
6 amending Subsection (a) and adding Subsections (d) and (e) to read
7 as follows:

8 (a) A fraternal benefit society shall provide in the
9 fraternal benefit society's laws that if the society's reserves for
10 any class of the society's benefit certificates become impaired,
11 the society's supreme governing body or board of directors may
12 require the certificate holders to pay the society an equitable
13 proportion of the deficiency as determined by the governing body or
14 board. The aggregate assessment for the impaired reserves may not
15 exceed the total amount required to comply with Section [885.408](#).

16 (d) Not later than the 90th day before the proposed
17 effective date of an assessment under Subsection (a), the fraternal
18 benefit society shall file with the department an application for
19 approval of the assessment and a statement sworn to by the president
20 and secretary or corresponding officers of the society. The
21 statement must:

22 (1) include:

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

1 (B) a narrative statement of the financial
2 condition of the fraternal benefit society; and

3 (2) state that the assessment:

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

6 (B) complies with the requirements of this
7 section.

8 (e) After the department receives a completed application,
9 the commissioner may approve or disapprove the application. If the
10 commissioner does not approve or disapprove the application before
11 the 60th day after the date the department receives the completed
12 application, the application is considered approved. The
13 commissioner may impose an effective date earlier than the date
14 requested in the application if the earlier effective date is in the
15 best interests of the certificate holders.

16 SECTION 2. Section 885.407, Insurance Code, is amended to
17 read as follows:

18 Sec. 885.407. SOLVENCY. (a) If a fraternal benefit society
19 reports a ratio of total adjusted capital to authorized control
20 level risk-based capital that triggers an authorized control level
21 as determined by the commissioner in accordance with 28 T.A.C.
22 Section 7.402 and the commissioner reasonably believes the
23 society's hazardous financial condition will not be promptly
24 remedied without intervention by the department, the commissioner
25 may order the society to promptly seek and negotiate an agreement to
26 transfer in accordance with this section all benefit members,
27 benefit certificates, assets, and liabilities of the society to

1 another fraternal benefit society. A transfer under this section:

2 (1) may be by merger, consolidation, assumption, or
3 otherwise;

4 (2) constitutes an entire novation of each benefit
5 certificate transferred by the society in a hazardous financial
6 condition, and the receiving society is legally and contractually
7 responsible for each transferred certificate;

8 (3) must conclude before the deadline set by the
9 commissioner;

10 (4) may be approved by a vote of the majority of the
11 supreme governing body or board of directors of the society in a
12 hazardous financial condition, notwithstanding Section
13 885.063(a)(2)(C) or any provision of the society's laws to the
14 contrary; and

15 (5) is subject to approval by the commissioner.

16 (b) Not later than the seventh day before the date the
17 supreme governing body or board of directors of a fraternal benefit
18 society votes on a transfer proposed under Subsection (a), the
19 governing body or board shall provide the society's certificate
20 holders written notice of and an opportunity to comment on the
21 proposed transfer. If the governing body or board approves the
22 transfer, the governing body or board shall provide the certificate
23 holders' comments to the commissioner.

24 (c) Notwithstanding any other law or provision of the
25 society's laws to the contrary, the supreme governing body or board
26 of directors of a fraternal benefit society that is ordered to agree
27 to a transfer under Subsection (a) shall suspend or modify the

1 society's laws, including laws requiring notice to certificate
2 holders or the approval of the governing body of the society of a
3 transfer of the society's certificates, as necessary to facilitate
4 a transfer approved by the commissioner under that subsection.

5 (d) The supreme governing body or board of directors of a
6 fraternal benefit society receiving benefit certificates pursuant
7 to a transfer under an agreement described by Subsection (a) may
8 suspend or modify qualifications for membership in the receiving
9 society to the extent necessary to permit the society to accept the
10 certificate holders of the society transferring certificates under
11 the agreement, notwithstanding any provision of the receiving
12 society's laws to the contrary.

13 (e) The commissioner may grant to a fraternal benefit
14 society that is not authorized to engage in the business of
15 insurance in this state the authority to service benefit
16 certificates transferred pursuant to Subsection (a) and fulfill all
17 obligations to the holders of the certificates. Commissioner
18 action under this subsection does not authorize the fraternal
19 benefit society to otherwise engage in the business of insurance in
20 this state.

21 (f) A transfer under Subsection (a) may be made to an
22 insurer that is not a fraternal benefit society if the insurer is
23 authorized to engage in the business of insurance in this state. A
24 holder of a certificate subject to a transfer as authorized by this
25 subsection is deemed to agree that any term in the certificate,
26 including a term that makes the certificate subject to the
27 transferring society's laws or that provides for maintenance of the

1 transferring society's solvency that is inconsistent with transfer
2 to an insurer that is not a fraternal benefit society, is void on
3 transfer of the certificate. The receiving insurer shall endorse
4 on a form approved by the commissioner each benefit certificate
5 received by a transfer made under this section to reflect any terms
6 of the certificate voided by this subsection. A certificate
7 holder's obligation to pay an outstanding assessment under Section
8 885.311 that is not released under the transfer agreement is not
9 released or voided by this subsection.

10 (g) The commissioner may request the attorney general bring
11 an action under Section 885.502 to terminate a fraternal benefit
12 society that fails to comply with an order under this section or
13 fails to remedy the financial condition that gave rise to the order.

14 (h) The powers and authority of the commissioner under this
15 section are cumulative and in addition to all other powers and
16 authority to remediate the financial condition of a fraternal
17 benefit society available to the commissioner, including the powers
18 and authority under 28 T.A.C. Section 7.402. [~~A fraternal benefit~~
19 ~~society is considered solvent if its admissible assets are equal to~~
20 ~~or greater than its liabilities.]~~

21 SECTION 3. The changes in law made by this Act to Section
22 885.311, Insurance Code, apply only to an assessment by a fraternal
23 benefit society with an effective date on or after January 1, 2020.
24 An assessment by a fraternal benefit society with an effective date
25 before January 1, 2020, is governed by the law as it existed
26 immediately before the effective date of this Act, and that law is
27 continued in effect for that purpose.

1 SECTION 4. This Act takes effect September 1, 2019.