

House Bill 1251
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

(1) include:

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

(B) a narrative statement of 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) After the department receives a completed application, the commissioner may approve or disapprove the application. If the commissioner does not approve or disapprove the application before the 60th day after the date the department receives the completed application, the

SENATE VERSION (CS)

SECTION 1. Same as House version.

CONFERENCE

House Bill 1251
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

application is considered approved. The commissioner may 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. Section 885.407, Insurance Code, is amended to read as follows:

Sec. 885.407. SOLVENCY. (a) 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 society's hazardous financial condition will not be promptly remedied without intervention by the department, the commissioner may order the 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 society to another fraternal benefit society. A transfer under this section:

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

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

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

(4) may be approved by a vote of the majority of the supreme governing body or board of directors of the society in a hazardous financial condition, notwithstanding Section

SENATE VERSION (CS)

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

Sec. 885.407. SOLVENCY. (a) If a fraternal benefit society reports admissible assets greater than the society's liabilities in an amount that authorizes the commissioner to place the society under regulatory control and the commissioner reasonably believes the society's hazardous financial condition will not be promptly remedied without intervention by the department,

the commissioner may order the 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 society to another fraternal benefit society. A transfer under this section:

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

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

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

(4) may be approved by a vote of the majority of the supreme governing body or board of directors of the society in a hazardous financial condition, notwithstanding Section

CONFERENCE

House Bill 1251
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

885.063(a)(2)(C) or any provision of the society's laws to the contrary; and

(5) is subject to approval by the commissioner.

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

(c) Notwithstanding any other law or provision of the society's laws to the contrary, the supreme governing body or board of directors of a fraternal benefit society that is ordered to agree to a transfer under Subsection (a) shall suspend or modify the society's laws, including laws requiring notice to certificate holders or the approval of the governing body of the society of a transfer of the society's certificates, as necessary to facilitate a transfer approved by the commissioner under that subsection.

(d) 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) may 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, notwithstanding any provision of the receiving society's laws to the contrary.

(e) The commissioner may grant to a fraternal benefit society that is not authorized to engage in the business of

SENATE VERSION (CS)

885.063(a)(2)(C) or any provision of the society's laws to the contrary; and

(5) is subject to approval by the commissioner.

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

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CONFERENCE

House Bill 1251
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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. Commissioner action under this subsection does not authorize the fraternal benefit society to otherwise engage in the business of insurance in this state.

(f) A transfer under Subsection (a) may 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. 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. The receiving insurer shall endorse on a form approved by the commissioner each benefit certificate received by a transfer made under this section to reflect any terms of the certificate voided by this subsection. A certificate holder's obligation to pay an outstanding assessment under Section 885.311 that is not released under the transfer agreement is not released or voided by this subsection.

(g) The commissioner may request the attorney general bring an action under Section 885.502 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.

(h) 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

SENATE VERSION (CS)

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. Commissioner action under this subsection does not authorize the fraternal benefit society to otherwise engage in the business of insurance in this state.

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(f) The commissioner may request the attorney general bring an action under Section 885.502 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) 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. [~~A fraternal~~

CONFERENCE

House Bill 1251
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~powers and authority under 28 T.A.C. Section 7.402. [A fraternal benefit society is considered solvent if its admissible assets are equal to or greater than its liabilities.]~~

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

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

SENATE VERSION (CS)

~~benefit society is considered solvent if its admissible assets are equal to or greater than its liabilities.]~~

SECTION 3. Same as House version.

SECTION 4. Same as House version.

CONFERENCE