

## **BILL ANALYSIS**

Senate Research Center  
86R17486 JES-F

H.B. 1251  
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Administration  
5/7/2019  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 1251 amends current law relating to fraternal benefit societies in a hazardous financial condition.

### **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, for purposes of authorizing actions of the governing board of a fraternal society in certain circumstances, from exceeding the total amount required to comply with Section 885.408 (Reserves For Accident and Health Insurance).

(d) Requires the fraternal benefit society, not later than the 90th day before the proposed effective date of an assessment under Subsection (a), to 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) 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 (Deficiency Payments).

(e) Authorizes the commissioner of insurance (commissioner), after TDI receives a completed application, to approve or disapprove the application. Provides that, if the commissioner does not approve or disapprove the application before the 60th day after the date TDI receives the completed application, 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 (Risk-Based Capital and Surplus Requirements For Insurers and HMOs) and the commissioner reasonably believes the society's hazardous financial condition will not be promptly remedied without intervention by TDI, to 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. 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 society in a hazardous financial condition, 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 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 885.063(a)(2)(C) (relating to prohibiting a domestic fraternal benefit society from merging with or accepting a transfer of the membership or funds of another fraternal benefit society unless the societies file with TDI a certificate of those officers, verified under oath, that the merger or transfer has been approved by a vote of two-thirds of the members of the supreme governing body of each society) or any provision of the society's laws to the contrary; and

(5) is subject to approval by the commissioner.

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

(c) Requires the supreme governing body or board of directors of a fraternal benefit society that is ordered to agree to a transfer under Subsection (a), notwithstanding any other law or provision of the society's laws to the contrary, to 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) 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 society transferring certificates under the agreement, notwithstanding any provision of the receiving society's laws to the contrary.

(e) 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.

(f) 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 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. Provides that 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) 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.

(h) 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 Section 885.311, Insurance Code, as amended by this Act, prospective to January 1, 2020.

SECTION 4. Effective date: September 1, 2019.