

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 3491

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DATE	D-PG	OFFICIAL STATUS
03/15/2018	6527	Introduction and first reading Referred to Commerce and Consumer Protection Finance and Policy
03/22/2018	6884a	Comm report: To pass as amended
	6919	Second reading
05/15/2018	8965	Rule 45-amend, subst. General Orders HF3799

1.1 A bill for an act
 1.2 relating to commerce; regulating fraternal benefit societies; amending Minnesota
 1.3 Statutes 2016, sections 60B.03, subdivision 15; 64B.19, subdivision 4a; 64B.43;
 1.4 proposing coding for new law in Minnesota Statutes, chapter 64B.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2016, section 60B.03, subdivision 15, is amended to read:

1.7 Subd. 15. **Insolvency or insolvent.** "Insolvency" or "insolvent" means:

1.8 (a) For an insurer organized under sections 67A.01 to 67A.26, the inability to pay any
 1.9 uncontested debt as it becomes due.

1.10 (b) For purposes of a liquidation under section 64B.435, subdivision 3, a fraternal
 1.11 authorized control level event under circumstances the commissioner determines will not
 1.12 be promptly remedied pursuant to the plan submitted under section 64B.435, subdivision
 1.13 2, a society's inability to pay its debts or meet its obligations as they mature, or that a society's
 1.14 assets do not exceed its liabilities plus the greater of any surplus required by law to be
 1.15 constantly maintained.

1.16 ~~(b)~~ (c) For any other insurer, that it is unable to pay its debts or meet its obligations as
 1.17 they mature or that its assets do not exceed its liabilities plus the greater of (1) any capital
 1.18 and surplus required by law to be constantly maintained, or (2) its authorized and issued
 1.19 capital stock. For purposes of this subdivision, "assets" includes one-half of the maximum
 1.20 total assessment liability of the policyholders of the insurer, and "liabilities" includes reserves
 1.21 required by law. For policies issued on the basis of unlimited assessment liability, the
 1.22 maximum total liability, for purposes of determining solvency only, shall be deemed to be

2.1 that amount that could be obtained if there were 100 percent collection of an assessment at
 2.2 the rate of ten mills per dollar of insurance written by it and in force.

2.3 Sec. 2. Minnesota Statutes 2016, section 64B.19, subdivision 4a, is amended to read:

2.4 Subd. 4a. **Notice of extra assessments.** In the event that a society intends to make extra
 2.5 assessments, as provided in subdivision 4, it shall provide notice of the assessments it plans
 2.6 to make to the commissioner, and to the ~~commissioner~~ insurance regulator of its state of
 2.7 domicile if it is a foreign society, at least 90 days before the effective date of the assessments.
 2.8 Within 60 days of filing, the commissioner may disapprove the assessment of a domestic
 2.9 society if the assessment was not duly adopted, is not in the best interests of the benefit
 2.10 members, or does not materially improve the long-term viability of the society. The
 2.11 commissioner may approve an earlier effective date for the assessment.

2.12 Sec. 3. Minnesota Statutes 2016, section 64B.43, is amended to read:

2.13 **64B.43 FRATERNAL AUTHORIZED CONTROL LEVEL EVENT; FOREIGN**
 2.14 **SOCIETIES.**

2.15 Subdivision 1. ~~Definition~~ **Definitions.** For purposes of this section, the terms in this
 2.16 subdivision have the meanings given.

2.17 (a) "Fraternal authorized control level event" means any of the following events:

2.18 (1) the filing of a risk-based capital report by the society that indicates that the society's
 2.19 total adjusted capital is less than its fraternal authorized control level risk-based capital;

2.20 (2) the notification by the commissioner to the society of an adjusted risk-based capital
 2.21 report that indicates the event in clause (1), provided the society does not challenge the
 2.22 adjusted risk-based capital report under section 64B.44;

2.23 (3) if, pursuant to section 64B.44, the society challenges an adjusted risk-based capital
 2.24 report that indicates the event in clause (1), notification by the commissioner to the society
 2.25 that the commissioner has, after a hearing, rejected the society's challenge;

2.26 (4) the failure of the society to respond, in a manner satisfactory to the commissioner,
 2.27 to a corrective order, provided the society has not challenged the corrective order under
 2.28 section 64B.44;

2.29 (5) if the society has challenged a corrective order under section 64B.44 and the
 2.30 commissioner has, after a hearing, rejected the challenge or modified the corrective order,

3.1 the failure of the society to respond, in a manner satisfactory to the commissioner, to the
 3.2 corrective order subsequent to rejection or modification by the commissioner;

3.3 (6) the failure of the society to submit a risk-based capital plan to the commissioner
 3.4 within the time period in section 64B.42;

3.5 (7) notification by the commissioner to the society that:

3.6 (i) the risk-based capital plan or revised risk-based capital plan submitted by the society
 3.7 is, in the judgment of the commissioner, unsatisfactory; and

3.8 (ii) the society has not challenged the determination under section 64B.44;

3.9 (8) if, pursuant to section 64B.44, the society challenges a determination by the
 3.10 commissioner under the notification by the commissioner to the society that the commissioner
 3.11 has, after a hearing, rejected the challenge;

3.12 (9) notification by the commissioner to the society that the society has failed to adhere
 3.13 to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a
 3.14 substantial adverse effect on the ability of the society to eliminate the fraternal action level
 3.15 event according to its risk-based capital plan or revised risk-based capital plan and the
 3.16 commissioner has so stated in the notification, provided the society has not challenged the
 3.17 determination under section 64B.44; or

3.18 (10) if, pursuant to section 64B.44, the society challenges a determination by the
 3.19 commissioner under clause (9), the notification by the commissioner to the society that the
 3.20 commissioner has, after a hearing, rejected the challenge.

3.21 (b) "Society" means a foreign fraternal benefit society not organized or operated under
 3.22 the laws of this state.

3.23 Subd. 2. **Commissioner's duties.** In the event of a fraternal authorized control level
 3.24 event with respect to a society, the commissioner shall:

3.25 (1) take the actions required under section 64B.42 regarding a society with respect to
 3.26 which a fraternal action level event has occurred; or

3.27 (2) if the commissioner considers it to be in the best interests of the certificate holders
 3.28 of the society, require the society to take one or more of the following actions:

3.29 (i) merge or otherwise consolidate with another willing authorized society;

3.30 (ii) cede any individual risk or risks, in whole or in part, to a willing society or life
 3.31 insurer;

4.1 (iii) suspend the issuance of new business; and

4.2 (iv) discontinue its insurance operations; or

4.3 (3) take the actions necessary to cause the society to be placed under regulatory control
 4.4 under chapter 60B. In the event the commissioner takes these actions, the fraternal authorized
 4.5 control level event is considered sufficient grounds for the commissioner to take action
 4.6 under chapter 60B, and the commissioner has the rights, powers, and duties with respect to
 4.7 the society set forth in chapter 60B. In the event the commissioner takes actions under this
 4.8 clause pursuant to an adjusted risk-based capital report, the society is entitled to the
 4.9 protections afforded to societies under section 60B.11 pertaining to summary proceedings.

4.10 **Sec. 4. [64B.435] FRATERNAL AUTHORIZED CONTROL LEVEL EVENT;**
 4.11 **DOMESTIC SOCIETIES.**

4.12 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
 4.13 the meanings given.

4.14 (b) "Fraternal authorized control level event" means any of the following events:

4.15 (1) the filing of a risk-based capital report by the society that indicates that the society's
 4.16 total adjusted capital is less than its fraternal authorized control level risk-based capital;

4.17 (2) the notification by the commissioner to the society of an adjusted risk-based capital
 4.18 report that indicates the event in clause (1), provided the society does not challenge the
 4.19 adjusted risk-based capital report under section 64B.44;

4.20 (3) if, pursuant to section 64B.44, the society challenges an adjusted risk-based capital
 4.21 report that indicates the event in clause (1), notification by the commissioner to the society
 4.22 that the commissioner has, after a hearing, rejected the society's challenge;

4.23 (4) the failure of the society to respond, in a manner satisfactory to the commissioner,
 4.24 to a corrective order, provided the society has not challenged the corrective order under
 4.25 section 64B.44;

4.26 (5) if the society has challenged a corrective order under section 64B.44 and the
 4.27 commissioner has, after a hearing, rejected the challenge or modified the corrective order,
 4.28 the failure of the society to respond, in a manner satisfactory to the commissioner, to the
 4.29 corrective order subsequent to rejection or modification by the commissioner;

4.30 (6) the failure of the society to submit a risk-based capital plan to the commissioner
 4.31 within the time period in section 64B.42;

4.32 (7) notification by the commissioner to the society that:

5.1 (i) the risk-based capital plan or revised risk-based capital plan submitted by the society
5.2 is, in the judgment of the commissioner, unsatisfactory; and

5.3 (ii) the society has not challenged the determination under section 64B.44;

5.4 (8) if, pursuant to section 64B.44, the society challenges a determination by the
5.5 commissioner under the notification by the commissioner to the society that the commissioner
5.6 has, after a hearing, rejected the challenge;

5.7 (9) notification by the commissioner to the society that the society has failed to adhere
5.8 to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a
5.9 substantial adverse effect on the ability of the society to eliminate the fraternal authorized
5.10 control level event according to its risk-based capital plan or revised risk-based capital plan
5.11 and the commissioner has so stated in the notification, provided the society has not challenged
5.12 the determination under section 64B.44; or

5.13 (10) if, pursuant to section 64B.44, the society challenges a determination by the
5.14 commissioner under clause (9), the notification by the commissioner to the society that the
5.15 commissioner has, after a hearing, rejected the challenge.

5.16 (c) "Qualifying society" means a fraternal benefit society, whether foreign or domestic,
5.17 that has the financial strength and administrative capability to accept a transfer of certificates
5.18 under the provisions of subdivision 2 and is domiciled in a state accredited by the NAIC.

5.19 (d) "Society" means a domestic fraternal benefit society organized and operated under
5.20 the laws of this state.

5.21 Subd. 2. **Plan to transfer members.** (a) Within 60 days of a fraternal authorized control
5.22 level event with respect to a society, the society shall present to the commissioner a plan to
5.23 protect the interests of its members. The plan shall include transferring all members,
5.24 certificates, policies, and related assets and liabilities of the society, together with any other
5.25 assets and liabilities the society desires to transfer, to another firm, corporation, or
5.26 organization through merger, consolidation, assumption, or other means. Any transfer shall
5.27 constitute a novation of the transferring society's certificates or policies effective upon the
5.28 date of transfer. The commissioner shall review the plan within 30 days of its submission
5.29 and may approve the plan within that time frame if the plan provides sound financial security
5.30 for the payment of obligations arising under the certificates and policies of the society and
5.31 is otherwise in the best interest of the members.

5.32 (b) The transfer shall be:

6.1 (1) concluded within the time frame established by the commissioner, which shall not
6.2 exceed 90 days;

6.3 (2) approved by the society upon majority vote of its board of directors prior to the
6.4 submission of the plan to the commissioner; and

6.5 (3) effective notwithstanding the provisions of section 64B.14 or any other requirement
6.6 of statute or rule or the laws of the society requiring another form of notice to members or
6.7 approval by the supreme governing body. Any notice to or approval of a transfer required
6.8 by the laws of the society or statute or rule shall be suspended by this subdivision.

6.9 (c) In the event of a transfer under this subdivision to a firm, corporation, or organization
6.10 that does not have a certificate of authority to transact insurance in this state, a limited
6.11 certificate of authority may be issued upon application to the commissioner if the firm,
6.12 corporation, or organization is authorized to transact insurance by and is domiciled in a
6.13 state accredited by the National Association of Insurance Commissioners. Within 30 days
6.14 of application, a limited certificate of authority may be issued if the commissioner determines
6.15 that the applicant has sufficient financial strength and servicing capabilities to satisfy the
6.16 obligations arising under the transferring society's certificates and policies. The limited
6.17 certificate of authority shall authorize the firm, corporation, or organization to service the
6.18 certificates and policies resulting from a transfer, including issuing any amendments or
6.19 revisions requested by the holder of the policy and certificate and to fulfill all obligations
6.20 arising under the policy or certificate, but not to otherwise transact insurance in this state.

6.21 (d) Upon the effective date of a transfer to a firm, corporation, or organization that is
6.22 not a domestic or foreign society and in consideration for that transfer, each member of the
6.23 society shall be deemed to agree that any terms of a certificate subjecting the certificate to
6.24 the laws of the society or providing rights or obligations of membership, except to the extent
6.25 of any outstanding lien not released by the terms of the transfer, shall be null and void and
6.26 the assuming firm, corporation, or organization shall endorse the certificates accordingly.

6.27 (e) The board of directors of a society may suspend or modify its qualifications for
6.28 membership as necessary or appropriate to facilitate a transfer under this subdivision,
6.29 notwithstanding the laws of the society or any statute or rule to the contrary. Notwithstanding
6.30 any statute or rule to the contrary, no notice to members or approval by the supreme
6.31 governing body shall be required if a society has a fraternal authorized control level event
6.32 and a transfer is approved by the commissioner pursuant to this subdivision. Each society
6.33 shall amend their laws to permit the transactions contemplated by this subdivision, including
6.34 suspending any provisions requiring any notice to members or approval of the supreme

7.1 governing body with respect to the transfer of its certificates and policies, if the society has
7.2 a fraternal authorized control level event and the transfer is approved by the commissioner

7.3 Subd. 3. **Liquidation.** (a) In the event of a fraternal authorized control level event under
7.4 circumstances the commissioner determines will not be promptly remedied pursuant to the
7.5 authorization provided in subdivision 2, or in the event that there are any grounds under
7.6 section 60B.20 to commence a liquidation, the commissioner may issue an order declaring
7.7 the society to be in hazardous financial condition and initiate proceedings pursuant to this
7.8 subdivision. For purposes of a proceeding commenced pursuant to this subdivision,
7.9 rehabilitation under section 60B.15 shall be presumed to be futile and serve no useful
7.10 purpose, unless the society can establish by clear and convincing evidence or the
7.11 commissioner reasonably believes that rehabilitation has a high probability of returning the
7.12 society to long-term viability.

7.13 (b) A liquidation proceeding under this subdivision shall be governed by chapter 60B,
7.14 except to the extent the provisions of chapter 60B are in conflict or inconsistent with any
7.15 provisions in this chapter. Notwithstanding the application of chapter 60B, the following
7.16 sections shall not apply to the liquidation of a society: 60B.04, subdivision 2; 60B.39,
7.17 subdivision 6; 60B.40; and 60B.46, subdivisions 3 and 4, clauses (3), (4), and (5), and
7.18 subdivisions 5 and 6, unless the commissioner determines to proceed with rehabilitation
7.19 under paragraph (a). Section 60B.18 shall apply to any proceeding under this subdivision
7.20 and shall vest the authority of the rehabilitator in the liquidator, unless the commissioner
7.21 determines to proceed with rehabilitation under paragraph (a).

7.22 (c) Notwithstanding section 60B.35, no assessment levied under section 64B.19 is
7.23 permissible after a petition for liquidation is filed for the benefit of any creditor other than
7.24 those creditors described in section 60B.44, subdivisions 2 and 4.

7.25 (d) Pursuant to section 60B.25, clause (8), the commissioner shall attempt to transfer
7.26 by way of assignment, assumption, or other means the certificates of the liquidating society
7.27 to another qualified society, whether domestic or foreign, or, if no qualified society will
7.28 accept such a transfer, to a firm, corporation, or organization authorized to transact life
7.29 insurance in this state. No society shall be obligated to accept such a transfer. Upon the
7.30 effective date of a transfer to a firm, corporation, or organization that is not a fraternal
7.31 benefit society and in consideration of that transfer, each member of the society shall be
7.32 deemed to agree that any terms of a certificate subjecting the certificate to the laws of the
7.33 society or rights or obligations of membership shall be null and void except to the extent
7.34 of any outstanding lien that has not been terminated in the liquidation. The assuming firm,
7.35 corporation, or organization shall endorse the certificate accordingly. Any transfer pursuant

8.1 to this clause shall constitute a novation of the transferring society's certificates effective
8.2 upon the date of transfer.

8.3 (e) Liquidation proceedings for a society shall be conducted consistent with the purposes
8.4 of section 60B.01, subdivision 4, paragraph (c), in a manner designed to conserve assets
8.5 and to limit expenses of the liquidation under section 60B.44, subdivision 2.