

**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		Comm report: To pass as amended
		Second reading

1.1 A bill for an act

1.2 relating to commerce; regulating fraternal benefit societies; amending Minnesota

1.3 Statutes 2016, sections 64B.19, subdivision 4a; 64B.43.

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

1.5 Section 1. Minnesota Statutes 2016, section 64B.19, subdivision 4a, is amended to read:

1.6 Subd. 4a. **Notice of extra assessments.** In the event that a society intends to make extra

1.7 assessments, as provided in subdivision 4, it shall provide notice of the assessments it plans

1.8 to make to the commissioner, and to the commissioner of its state of domicile if it is a foreign

1.9 society, at least 90 days before the effective date of the assessments. Within 60 days after

1.10 filing, the commissioner may disapprove the assessment of a domestic society if the

1.11 assessment was not duly adopted, is not in the best interests of the benefit members, or does

1.12 not materially improve the long-term viability of the domestic society. The commissioner

1.13 may approve an earlier effective date for the assessment.

1.14 Sec. 2. Minnesota Statutes 2016, section 64B.43, is amended to read:

1.15 **64B.43 FRATERNAL AUTHORIZED CONTROL LEVEL EVENT.**

1.16 Subdivision 1. ~~Definition~~ **Definitions.** (a) For purposes of this section, the following

1.17 terms have the meanings given.

1.18 (b) "Domestic society" means a fraternal society organized under the laws of this state,

1.19 unless otherwise indicated.

1.20 (c) "Fraternal authorized control level event" means any of the following events:

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

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

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

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

2.14 (5) if the domestic society has challenged a corrective order under section 64B.44 and
2.15 the commissioner has, after a hearing, rejected the challenge or modified the corrective
2.16 order, the failure of the domestic society to respond, in a manner satisfactory to the
2.17 commissioner, to the corrective order subsequent to rejection or modification by the
2.18 commissioner;

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

2.21 (7) notification by the commissioner to the domestic society that:

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

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

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

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

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

3.4 (d) "Qualifying society" means a fraternal benefit society, whether foreign or domestic,
3.5 that has the financial strength and administrative capacity to accept a transfer of certificates
3.6 under subdivision 2 and is domiciled in a state accredited by the National Association of
3.7 Insurance Commissioners.

3.8 Subd. 1a. **Plan to transfer members.** (a) Within 60 days of a fraternal authorized control
3.9 level event with respect to a domestic society, the domestic society shall present to the
3.10 commissioner a plan to protect the interests of its members. The plan shall include
3.11 transferring all members, certificates, policies, and related assets and liabilities of the
3.12 domestic society, together with any other assets and liabilities the domestic society desires
3.13 to transfer, to another firm, corporation, or organization through merger, consolidation,
3.14 assumption, or other means. Any transfer shall constitute a novation of the transferring
3.15 domestic society's certificates effective upon the date of transfer.

3.16 (b) The transfer shall be:

3.17 (1) concluded within the time frame established by the commissioner and subject to
3.18 approval by the commissioner;

3.19 (2) approved by the domestic society upon majority vote of its board of directors; and

3.20 (3) effective notwithstanding the provisions of section 64B.14, or any other requirement
3.21 of law, or the laws of the domestic society requiring another form of notice to or approval
3.22 by members. Any notice to or approval of a transfer required by the laws of the domestic
3.23 society shall be suspended by this subdivision.

3.24 (c) In the event of a transfer under this subdivision to a firm, corporation, or organization
3.25 that does not have a certificate of authority to transact insurance in this state, the
3.26 commissioner may grant a limited certificate of authority, upon request, if the firm,
3.27 corporation, or organization does not apply for and obtain a certificate of authority to transact
3.28 insurance in this state. A limited license may be granted to a firm, corporation, or organization
3.29 if the firm, corporation, or organization is licensed to transact insurance and is domiciled
3.30 in a state accredited by the National Association of Insurance Commissioners. The
3.31 commissioner shall grant a limited license within 30 days of a request if the commissioner
3.32 believes the transfer is in the best interest of the domestic society's members. The limited
3.33 certificate of authority authorizes the firm, corporation, or organization to service the

4.1 certificates and policies resulting from a transfer and to fulfill all obligations owed to
 4.2 certificate and policy holders but not to otherwise transact insurance business in this state.

4.3 (d) Upon the effective date of a transfer to a firm, corporation, or organization that is
 4.4 not a domestic or foreign society and in consideration for that transfer, each member of the
 4.5 domestic society shall be deemed to agree that any terms of a certificate subjecting the
 4.6 certificate to the laws of the domestic society or providing for the maintenance of the
 4.7 domestic society's solvency, except to the extent of any outstanding lien not released by the
 4.8 terms of the transfer, shall be null and void and the assuming firm, corporation, or
 4.9 organization shall endorse the certificates accordingly.

4.10 (e) The board of directors of a domestic society may suspend or modify its qualifications
 4.11 for membership as necessary or appropriate to facilitate a transfer under this subdivision,
 4.12 notwithstanding the laws of the domestic society or any statute or rule to the contrary.

4.13 Subd. 2. **Commissioner's duties.** In the event of a fraternal authorized control level
 4.14 event with respect to a domestic society under circumstances the commissioner determines
 4.15 will not be promptly remedied pursuant to the plan submitted under subdivision 1a, the
 4.16 commissioner shall:

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

4.19 (2) commence a liquidation proceeding pursuant to subdivision 3;

4.20 ~~(2)~~ (3) if the commissioner considers it to be in the best interests of the certificate holders
 4.21 of the domestic society, require the domestic society to take one or more of the following
 4.22 actions:

4.23 ~~(i) merge or otherwise consolidate with another willing authorized society transfer its~~
 4.24 members, certificates, and other assets and liabilities to another firm, corporation, or
 4.25 organization pursuant to subdivision 1a;

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

4.28 ~~(iii)~~ (ii) suspend the issuance of new business; and

4.29 ~~(iv)~~ (iii) discontinue its insurance operations; or

4.30 ~~(3)~~ (4) take the actions necessary to cause the domestic society to be placed under
 4.31 regulatory control under chapter 60B. In the event the commissioner takes these actions,
 4.32 the fraternal authorized control level event is considered sufficient grounds for the

5.1 commissioner to take action under chapter 60B, and the commissioner has the rights, powers,
5.2 and duties with respect to the domestic society set forth in chapter 60B. In the event the
5.3 commissioner takes actions under this clause pursuant to an adjusted risk-based capital
5.4 report, the domestic society is entitled to the protections afforded to societies under section
5.5 60B.11 pertaining to summary proceedings.

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

5.16 (b) A liquidation proceeding under this subdivision shall be governed by chapter 60B,
5.17 except to the extent the provisions of chapter 60B are in conflict or inconsistent with any
5.18 provisions in this chapter. Notwithstanding the application of chapter 60B, the following
5.19 sections shall not apply to the liquidation of a domestic society: sections 60B.04, subdivision
5.20 2; 60B.39, subdivision 6; 60B.40; and 60B.46, subdivisions 3, 4, clauses (3), (4), and (5),
5.21 5, and 6. Section 60B.18 shall apply to any proceeding under this subdivision and shall vest
5.22 the authority of the rehabilitator in the liquidator.

5.23 (c) Notwithstanding the provisions of section 60B.35, no assessment levied under section
5.24 64B.35 is permissible after a petition for liquidation is filed for the benefit of any creditor
5.25 other than those described in section 60B.44, subdivisions 2 and 4. Any assessment levied
5.26 under section 64B.35, which exceeds funds necessary to satisfy claims under section 60B.44,
5.27 subdivisions 2 and 4, shall be returned to the owner of the policy or certificate.

5.28 (d) The owner of an in-force certificate that has been assessed or encumbered pursuant
5.29 to section 64B.19, subdivision 4, prior to the filing of a petition for liquidation may pursue
5.30 a claim for the amount of the assessment or to remove the encumbrance as a claim under
5.31 section 60B.44, subdivision 6.

5.32 (e) Pursuant to section 60B.25, clause (8), the commissioner shall attempt to transfer by
5.33 way of assignment, assumption, or other means the certificates of the liquidating domestic
5.34 society to another qualified society, whether domestic or foreign, or, if no qualified society

6.1 will accept such a transfer, to a firm, corporation, or organization authorized to transact life
6.2 insurance in this state. No society shall be obligated to accept such a transfer. Upon the
6.3 effective date of a transfer to a firm, corporation, or organization that is not a fraternal
6.4 benefit society and in consideration for that transfer, each member of the domestic society
6.5 shall be deemed to agree that any terms of a certificate subjecting the certificate to the
6.6 bylaws of the domestic society or providing for the maintenance of the domestic society's
6.7 solvency shall be null and void except to the extent of any outstanding lien that has not been
6.8 terminated in the liquidation, and the assuming firm, corporation, or organization shall
6.9 endorse the certificate accordingly. Any transfer pursuant to this paragraph shall constitute
6.10 a novation of the transferring domestic society's certificates effective upon the date of
6.11 transfer.

6.12 (f) Liquidation proceedings for a domestic society shall be conducted consistent with
6.13 the purposes of section 60B.01, subdivision 4, paragraph (c), in a manner designed to
6.14 conserve assets and to limit expenses of the liquidation under section 60B.44, subdivision
6.15 2.

6.16 **Sec. 3. DOMESTIC FRATERNAL BENEFIT SOCIETIES.**

6.17 By July 1, 2019, each domestic society, as defined under Minnesota Statutes, section
6.18 64B.43, subdivision 1, shall amend its laws to provide that any notice to or approval of the
6.19 members that is required by law or the domestic society's laws relating to the transfer of
6.20 their certificate will be suspended if the domestic society has a fraternal authorized control
6.21 level event and the transfer is approved by the commissioner of commerce. A domestic
6.22 society that does not amend its bylaws as of July 1, 2019, as required shall be deemed
6.23 amended.