

THE INSURANCE COMPANY LAW OF 1921 - SOLVENCY, BENEFIT CONTRACT
AND INJUNCTION, LIQUIDATION AND RECEIVERSHIP OF DOMESTIC SOCIETY
Act of Nov. 27, 2019, P.L. 685, No. 98 Cl. 40
Session of 2019
No. 2019-98

HB 1016

AN ACT

Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An act relating to insurance; amending, revising, and consolidating the law providing for the incorporation of insurance companies, and the regulation, supervision, and protection of home and foreign insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and fire insurance rating bureaus, and the regulation and supervision of insurance carried by such companies, associations, and exchanges, including insurance carried by the State Workmen's Insurance Fund; providing penalties; and repealing existing laws," in fraternal benefit societies, providing for solvency and further providing for benefit contract and for injunction, liquidation and receivership of domestic society.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, is amended by adding a section to read:

Section 2428. Solvency.

(a) **Hazardous condition.--**If a domestic society has an authorized control level event, under circumstances the commissioner determines will not be promptly remedied, the commissioner may, in addition to all other actions required or permitted by this act and other applicable law, issue an order declaring the domestic society to be in hazardous condition and ordering that all steps be taken to remedy the condition in accordance with this section.

(b) **Transfer of assets and liabilities.--**

(1) Upon the commissioner's order, a domestic society may negotiate an agreement to transfer all members, certificates and other assets and liabilities of the domestic society to another fraternal benefit society or other insurer through merger, consolidation, assumption or other means.

The following apply:

(i) The transfer shall be concluded within the time frame agreed to by the commissioner and subject to approval by the commissioner.

(ii) The transfer agreement shall be deemed fully approved by the domestic society upon majority vote of its board of directors, notwithstanding the provisions of section 2405, any other law or regulation or the laws of the domestic society requiring notice to members or approval by two-thirds majority vote of the supreme governing body, which shall be suspended by this section.

(iii) The domestic society shall provide notice to its members of the transaction not later than 30 days after approval by the commissioner.

(2) The board of directors of a domestic society may suspend or modify the qualifications for membership in the domestic society as necessary to facilitate a transfer under this section, notwithstanding the laws of the domestic society or any law or regulation to the contrary.

(3) Upon the effective date of a transfer to an organization that is not a fraternal benefit society and in consideration for that transfer, each member of the society shall be deemed to agree that any terms of a certificate subjecting the certificate to the laws of the society or providing for the maintenance of the society's solvency, except to the extent of any outstanding assessment not released by the terms of the transfer, shall be null and void, and the assuming organization shall endorse the certificates accordingly.

(4) Each domestic society shall amend its laws to permit the transactions contemplated by this section, including suspending any provisions requiring notice to members or approval of the supreme governing body with respect to the transfer of its certificates if the society has an authorized control level event and the transfer is approved by the commissioner.

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Authorized control level event." As defined in section 501-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

Section 2. Section 2434(d) of the act is amended to read: Section 2434. Benefit contract.

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(d) Payment of deficiencies.--A society shall provide in its laws that, if its reserves as to all or any class of certificates become impaired, its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of such deficiency as ascertained by its board, and if the payment is not made:

(1) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or

(2) in lieu of or in combination with paragraph (1), the owner may accept a proportionate reduction in benefits under the certificate.

The society may specify the manner of the election and which alternative is to be presumed if no election is made. **No assessment under this subsection shall take effect prior to 90 days from notification of the commissioner, but the commissioner may approve an earlier effective date. The commissioner may disapprove the assessment if the commissioner finds that the assessment was not duly adopted in conformity with the provisions of this article, is contrary to the interests of the benefit members of the society or does not materially improve the long-term viability of the society.**

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Section 3. Section 2456(a) of the act is amended and the section is amended by adding a subsection to read:

Section 2456. Injunction, liquidation and receivership of domestic society.

(a) Notice of deficiencies and sanctions.--When the commissioner upon investigation finds that a domestic society:

(1) has exceeded its powers;

- (2) has failed to comply with any provision of this article;
- (3) is not fulfilling its contracts in good faith;
- (4) has a membership of less than 400 after an existence of one year or more;
- (5) is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business; [or]
- (6) has become impaired;
- (7) has failed to comply with an order of the commissioner under section 2428; or**
- (8) has failed to remedy the hazardous condition as determined by the commissioner within the time frames established by the commissioner in accordance with section 2428;**

the commissioner shall notify the society of the deficiency or deficiencies and state in writing the reasons for his dissatisfaction. The commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After this notice the society shall have a 30-day period in which to comply with the commissioner's request for correction, and, if the society fails to comply, the commissioner shall notify the society of the findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected or why an action in quo warranto should not be commenced against the society.

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(g) Liquidation proceedings.--Liquidation proceedings for a domestic society shall be conducted consistent with the purposes of section 501 of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, in a manner designed to conserve assets, limit liquidation expenses and avoid an assessment. The following apply:

(1) The liquidator may attempt to transfer policies or certificates of the liquidating fraternal benefit society by way of assignment, assumption or other means to another qualified fraternal benefit society, whether domestic or foreign, or, if no qualified fraternal benefit society will accept the transfer, to another insurer. The following apply:

(i) In determining whether a fraternal benefit society is qualified, the liquidator shall consider, among other things, the solvency of the society.

(ii) A fraternal benefit society shall not be obligated in any circumstance to accept the transfer.

(iii) Upon the effective date of a transfer to an insurer that is not a fraternal benefit society and in consideration for that transfer, each member of the society and owner of a policy or certificate shall be deemed to agree that any terms of an insurance policy or certificate providing for the maintenance of the society's solvency or subjecting the policy or certificate to the bylaws of the society shall be null and void. Other changes determined by the liquidator to be necessary to effectuate the transfer shall be made, and the assuming insurer shall endorse the policy or certificate accordingly.

(2) Notwithstanding section 2434(d), an assessment may not be imposed against a certificate by a domestic society after a petition for liquidation is filed, except as determined by the commissioner to be necessary to satisfy

**claims as described in section 544(a) and (b) of The
Insurance Department Act of 1921.**

Section 4. This act shall take effect in 60 days.

APPROVED--The 27th day of November, A.D. 2019.

TOM WOLF