

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1016 Session of 2019

INTRODUCED BY DeLUCA, PICKETT, MILLARD, ROTHMAN, MATZIE, TOEPEL, READSHAW, WARREN, GOODMAN, COMITTA, KORTZ, EVERETT, SIMMONS, MARKOSEK, TOPPER, PASHINSKI, A. DAVIS, HARKINS, DRISCOLL, SCHWEYER, KIM, BIZZARRO, ECKER, ISAACSON, FREEMAN, FLYNN, DAWKINS, T. DAVIS AND NESBIT, APRIL 2, 2019

REFERRED TO COMMITTEE ON INSURANCE, APRIL 2, 2019

AN ACT

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

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

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

20 Section 2428. Solvency.

21 (a) Hazardous condition.--If a domestic society has an
 22 authorized control level event, under circumstances the

1 commissioner determines will not be promptly remedied, the
2 commissioner may, in addition to all other actions required or
3 permitted by this act and other applicable law, issue an order
4 declaring the domestic society to be in hazardous condition and
5 ordering that all steps be taken to remedy the condition in
6 accordance with this section.

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

8 (1) Upon the commissioner's order, a domestic society
9 may negotiate an agreement to transfer all members,
10 certificates and other assets and liabilities of the domestic
11 society to another fraternal benefit society or other insurer
12 through merger, consolidation, assumption or other means. The
13 following apply:

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

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

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

27 (2) The board of directors of a domestic society may
28 suspend or modify the qualifications for membership in the
29 domestic society as necessary to facilitate a transfer under
30 this section, notwithstanding the laws of the domestic

1 society or any law or regulation to the contrary.

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

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

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

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

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

27 * * *

28 (d) Payment of deficiencies.--A society shall provide in its
29 laws that, if its reserves as to all or any class of
30 certificates become impaired, its board of directors or

1 corresponding body may require that there shall be paid by the
2 owner to the society the amount of the owner's equitable
3 proportion of such deficiency as ascertained by its board, and
4 if the payment is not made:

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

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

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

21 * * *

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

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

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

28 (1) has exceeded its powers;

29 (2) has failed to comply with any provision of this
30 article;

1 (3) is not fulfilling its contracts in good faith;

2 (4) has a membership of less than 400 after an existence
3 of one year or more;

4 (5) is conducting business fraudulently or in a manner
5 hazardous to its members, creditors, the public or the
6 business; [or]

7 (6) has become impaired;

8 (7) has failed to comply with an order of the
9 commissioner under section 2428; or

10 (8) has failed to remedy the hazardous condition as
11 determined by the commissioner within the time frames
12 established by the commissioner in accordance with section
13 2428;

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

27 * * *

28 (g) Liquidation proceedings.--Liquidation proceedings for a
29 domestic society shall be conducted consistent with the purposes
30 of section 501 of the act of May 17, 1921 (P.L.789, No.285),

1 known as The Insurance Department Act of 1921, in a manner
2 designed to conserve assets, limit liquidation expenses and
3 avoid an assessment. The following apply:

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

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

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

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

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

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

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