

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1153
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Economic Development
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Committee Report (Substituted)

DIGEST

Currently, Chapter 10, Insurance Code, governs fraternal benefit societies. Thirty fraternal benefit societies are licensed in Texas, six of which have their main offices in this state. More than \$16 billion in life insurance issued by fraternal benefit societies provides coverage for more than 575,000 fraternal members in this state. Most fraternal benefit societies in the United States are members of the National Fraternal Congress of America (NFCA), which is the national trade association for fraternal benefit societies. The NFCA recently promulgated the Model Fraternal Code to reflect changes in the insurance industry and federal tax law; 40 states have enacted this code. The law regulating fraternal benefit societies in Texas has not been substantially revised since 1951. C.S.S.B. 1153 would set forth provisions regulating fraternal benefit societies.

PURPOSE

As proposed, C.S.S.B. 1153 sets forth provisions regulating fraternal benefit societies.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of insurance in SECTION 9 (Article 10.15(b), Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 10.01(b), Government Code, to provide that “control” has the meaning assigned by Section 2(d), rather than Section 2(c), Article 21.49-1, of this code.

SECTION 2. Amends Article 10.03, Insurance Code, to set forth certain conditions of a fraternal benefit society (society) which has a representative form of government. Deletes existing text regarding conditions in which a society has a representative form of government.

SECTION 3. Amends Chapter 10, Insurance Code, by adding Article 10.03A, as follows:

Art. 10.03A. ASSEMBLY AS FORM OF SUPREME GOVERNING BODY; BOARD OF DIRECTORS. Sets forth certain conditions of a supreme governing body which results in it being considered an assembly. Authorizes a society to provide for election of delegates by mail. Requires the elected delegates to an assembly to constitute a majority of the assembly in number; and be entitled to the greater of two-thirds of the votes in the assembly or the number of votes required to amend the society’s laws. Sets forth certain requirements of the assembly. Authorizes a vacancy on the board of directors that occurs between elections to be filled as prescribed by the society’s laws.

SECTION 4. Amends Chapter 10, Insurance Code, by adding Article 10.03B, as follows:

Art. 10.03B. BOARD AS FORM OF SUPREME GOVERNING BODY. Sets forth certain conditions of a supreme governing body which results in it being considered a board. Authorizes a society to provide for election of the board by mail. Requires the persons elected to the board to constitute a majority of the assembly in number; and have at least the number of votes required to amend the society’s laws, other than the laws of the society, if any, that must be amended by direct vote of the members. Provides that a board member’s term may not exceed four years. Authorizes a board vacancy that occurs between elections to be filled in the manner prescribed by the society’s laws. Provides that a person filling the unexpired term of an elected board member

is considered to be an elected member. Requires a board to meet at least once each year to conduct the business of society.

SECTION 5. Amends Chapter 10, Insurance Code, by adding Article 10.03-1, as follows:

Art. 10.03-1. DEFINITIONS. Defines “benefit contract,” “benefit member,” “certificate,” “laws,” “lodge,” “premiums,” and “rules.”

SECTION 6. Amends Article 10.05, Insurance Code, to authorize a society authorized to do business in this state to provide for the payment of monument or tombstone benefits to the memory of deceased members; funeral; and any other benefit that may be provided by a life, accident, or health insurance company, provided that the benefit is offered in compliance with Chapter 3 of this code; and consistent with this chapter. Requires a society to specify in its laws or rules, those persons to whom a certificate may be issued or who may be covered by benefits; and make the provision of those benefits consistent with the provision of benefits to members and their beneficiaries. Authorizes a society to appoint an agent licensed by the Texas Department of Insurance (department) under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Insurance Code), to sell benefits listed under Subsection (a) of this article to society members. Delete text authorizing such benefits to be provided on the lives of members, members’ families, and spouses.

SECTION 7. Amends Article 10.07(a), Insurance Code, to require fraternal benefit societies to establish reserves for the types of coverage specified in Articles 10.05(a) (4) and (5), rather than Articles 10.05(1) (d) and (e) of this code.

SECTION 8. Amends Article 10.12, Insurance Code, to set forth a society’s required specifications to be included in its laws and rules. Authorizes a society to admit social members. Prohibits a social member from voting in the management of the insurance affairs of the society. Provides that membership rights in the society are personal to the member. Prohibits a member from assigning membership rights. Authorizes a society to provide for grievance or complaint procedures for members in its laws or rules. Requires nothing in this chapter to be construed to affect or apply to societies which admit to membership only persons engaged in one or more hazardous occupations, in the same or similar lines of business. Deletes existing Subsection (e).

SECTION 9. Amends Chapter 10, Insurance Code, by adding Article 10.12-1, as follows:

Art. 10.12-1. BENEFICIARIES. Authorizes an owner of a benefit contract to change the beneficiary at any time in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. Authorizes a society to, through its laws or rules, limit the scope of beneficiary designations and shall provide that a person whose designation as beneficiary is revocable may not have or obtain a vested interest in the proceeds. Requires an amount of a benefit under a benefit contract to be paid to certain persons, if, at the death of the deceased insured, a lawful beneficiary to whom the proceeds of the benefit contract are payable does not exist under the benefit contract. Provides that Subsection (b) of this article does not apply to the extent funeral benefits may be paid under the benefit contract.

SECTION 10. Amends Article 10.15, Insurance Code, to prohibit a certificate from being delivered or issued for delivery in this state unless the form of the certificate has been filed with the department under Article 3.42 of this code. Requires a life, accident, health, or disability insurance certificate or annuity certificate issued by a society to meet the requirements applicable to similar policies issued by an insurer in this state that are not inconsistent with this chapter as determined by rule of the commissioner of insurance (commissioner). Requires a society to include in the terms of a certificate a grace period of one month for payment of premiums. Requires each certificate to state the amount of premiums that are payable under the certificate. Requires a certificate to provide that a member who is expelled or suspended may maintain the certificate in force by continuing payment of the required premium, unless the expulsion or suspension is for a certain reason or occurs within a certain time, if the laws of the society provide for expulsion or suspension of a member. Authorizes a life insurance benefit contract issued on the life of a person who is younger than the society’s minimum age for adult membership to provide for transfer of control or ownership to the insured at an age specified in the certificate. Authorizes a society to require approval of an application for membership in order to effect the transfer and may provide in all other respects for the regulation, government, and control of certificates and rights, obligations, and liabilities

incident and connected to the certificate. Requires ownership rights under the certificate before a transfer to be specified in the certificate. Authorizes a society to specify the terms and conditions for the assignment of a benefit contract.

SECTION 11. Amends Article 10.18, Insurance Code, by adding Subsection (c), to authorize a society, pursuant to a resolution of its supreme governing body, to establish and operate one or more separate accounts and issue benefit contracts on a variable basis, subject to the provisions of law regulating a life insurance company that establishes those types of accounts and issues those types of contracts. Authorizes a society to take certain actions in order to comply with applicable federal or state laws or rules.

SECTION 12. Amends Article 10.19, Insurance Code, to provide that hereafter, only such corporation, society, order of voluntary association qualify as a Fraternal Benefit Society as defined in Article 10.01 for the purpose of providing for the payment of benefits as provided in Article 10.05, by the Texas Department of Insurance, rather than the State Board of Insurance, duly certified articles of incorporation or association. Requires such articles to set out that any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised. Authorizes these purposes to be carried out directly by the society or indirectly through subsidiary corporations or affiliated organizations. Requires such articles of incorporation or association and duly certified copies of the Constitution and laws, rules, and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of not less than three hundred thousand dollars and not more than one million, five hundred thousand dollars, as required by the commissioner. Prohibits any such society from incurring any liability other than for such advanced payments, from issuing any benefit certificate, and from paying or allowing, or offering or promising to pay or allow, to any person, any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least two thousand dollars, rather than one thousand dollars, each; nor until it shall be shown to the department by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity affected, which payments in the aggregate shall amount to at least one hundred fifty thousand dollars, rather than twenty-five hundred dollars. Makes conforming changes.

SECTION 13. Amends Article 10.26, Insurance Code, as follows:

Art. 10.26. New heading: **NO PERSONAL LIABILITY; INDEMNIFICATION OR REIMBURSEMENT.** Provides that officers and members of the supreme, grand, or any subordinate body of an incorporated society are not, rather than shall be, individually liable for the payment of any disability or death benefit provided for in the law and agreements of the society, rather than such society. Provides that those payments are, rather than the same shall be, payable only out of the funds of the society and in the manner provided by its law. Authorizes a society to indemnify and reimburse a person for expenses reasonably incurred by, and liabilities imposed on, that person in connection with or arising out of an action, suit, or other proceeding, whether civil, criminal, administrative, or investigative, in which the person involved, or in connection with or arising out of a threat of a proceeding against that person, because of the person is or was a director, officer, employee, or agent of certain entities. Prohibits a person, except as provided by Subsection (d) of this article, from being indemnified or reimbursed in relation to certain matters or agreements. Authorizes a society to indemnify or reimburse a person in relation to a matter described by Subsection (c) of this article only if the supreme governing body, the board of directors, or a court of competent jurisdiction makes certain determinations. Requires a determination by a supreme governing body or board of directors under Subsection (d) of this article to be made by majority vote of a quorum consisting of persons who were not parties to the action, suit, or other proceeding under review. Provides that a termination of an action or other proceeding by judgment, order, settlement, or conviction or on a plea of no contest does not create a conclusive presumption that a person does not meet the standard conduct required in order to justify indemnification and reimbursement. Provides that the right of indemnification and reimbursement under this article is not exclusive of other rights to which a person may be entitled as a matter of law and inures to the benefit of the person's devisees, legatees, heirs, and estate. Authorizes a society to purchase on behalf of a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of another firm, corporation, or organization against a liability asserted against that person or incurred by that person in any capacity or arising out of that person's status as a

director, officer, employee, or agent of the society or the other firm, corporation, or organization. Authorizes a society to purchase and maintain insurance under this subsection regardless of whether the society has the power to indemnify or reimburse the person with respect to the covered liability under this article. Provides that a director, officer, employee, member, or volunteer of a society serving without compensation is not personally liable for damages resulting from an act or omission in the exercise of judgment or discretion in connection with the duties of that person for the society unless the act or omission involved wilful or wanton misconduct. Provides that this subsection does not limit a society's direct or indirect liability.

SECTION 14. Amends Article 10.30, Insurance Code, to authorize the laws of such society to provide that, upon the written application or consent of the member, the certificate, rather than his certificate, may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding the rate specified for certificate loans under the certificate, rather than five per centum per annum. Requires an assessment to be levied against an owner, if the owner of a certificate is not a member. Makes conforming and nonsubstantive changes.

SECTION 15. Amends Chapter 10, Insurance Code, by adding Article 10.31, as follows:

Art. 10.31. NONFORFEITURE BENEFITS, CASH SURRENDER VALUES, CERTIFICATE LOANS, AND OTHER OPTIONS. Requires, for a certificate issued before January 1, 2001, the value of the paid-up nonforfeiture benefit and the amount of a cash surrender value, loan, or other option granted under the certificate to comply with the law applicable to the certificate immediately before that date. Provides that for a certificate issued on or after January 1, 2001, the value of the paid-up nonforfeiture benefit and the amount of a cash surrender value, loan, or other option granted under the certificate is computed as provided under the provisions of Articles 3.44a and 3.44b of this code applicable to life insurance companies issuing policies containing similar benefits and under the applicable tables established under those articles.

SECTION 16. Amends Article 10.33(a), Insurance Code, to provide that each domestic society is subject to Articles 1.15, 1.15A, and 1.16 of this code.

SECTION 17. Amends Chapter 10, Insurance Code, by adding Article 10.37-3, as follows:

Art. 10.37-3. LICENSING OF AGENTS. Prohibits a person from soliciting or procuring insurance contracts for a society unless the person is licensed as an agent under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code). Provides that an agent, representative, or member of a fraternal benefit society who devotes less than 50 percent of the person's time to the solicitation and procurement of insurance contracts for that society is exempt from the requirements of Subsection (a) of this article. Provides that for the purposes of Subsection (b), a person is presumed for a calendar year to have devoted at least 50 percent of the person's time to the solicitation or procurement of insurance contracts if, in the preceding year, the person solicited or procured on behalf of a society certain insurance contracts.

SECTION 18. Amends Section 1(b), Chapter 213, Article 21.07-1, V.T.C.S., to redefine "agent."

SECTION 19. Amends Section 5(a), Chapter 213, Article 21.07-1, V.T.C.S., to require each prospective applicant for a license to act as an agent within the state to submit a personal written examination administered in the English or Spanish language, as prescribed by the Texas Department of Insurance (department). Prohibits a written examination to be required of an applicant for the renewal of a license issued under Article 21.07, rather than by the department pursuant to Article 21.07, Insurance Code, rather than Texas Insurance Code, 1951; or an applicant for a license under this section who is authorized to solicit or procure insurance for a fraternal benefit society on September 1, 1999, provided that the applicant solicits or does not solicit insurance at certain times, in certain amounts, on behalf of certain entities, or from certain persons. Makes conforming changes.

SECTION 20. Amends Section 16, Chapter 213, Article 21.07-1, V.T.C.S., by adding Subsection (d-1) to provide that a written examination is not required of an applicant for a license under this section who is authorized for a fraternal benefit society or September 1, 1999, provided that the applicant solicits or does not solicit insurance at certain times, in certain amounts, on behalf of certain entities, or from certain persons.

SECTION 21. Repealer: Articles 10.05-1 and 10.05-2, Insurance Code (Provisions for Life Insurance Benefits and Accident and Health Insurance Certificates, respectively).

SECTION 22. Effective date: January 1, 2000, except SECTION 21 of this Act which takes effect January 1, 2001. Makes application of this Act prospective.

SECTION 23. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Article 10.01(b), Government Code, to provide that “control” has the meaning assigned by Section 2(d), rather than Section 2(c), Article 21.49-1, of this code.

SECTIONS 2-3.

Redesignated from proposed SECTION S 1-2.

SECTIONS 4-5.

Redesignated from proposed SECTIONS 3-4.

SECTION 6.

Redesignated from proposed SECTION 5. Amends Article 10.05, Insurance Code, to authorize a society to appoint an agent, rather than a legal reserve life insurance agent, licensed by the Texas Department of Insurance (department) under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Insurance Code), to sell benefits listed under Subsection (a) of this article to society members.

SECTIONS 7-9.

Redesignated from proposed SECTIONS 6-8.

SECTION 10.

Redesignated from proposed SECTION 9. Amends Article 10.15, Insurance Code, to require, rather than authorize, a society to include in the terms of a certificate a grace period of one month for payment of premiums. Requires each certificate to state the amount of premiums that are payable under the certificate. Deletes text requiring each certificate to state or summarize the society’s laws or rules in force at the time of issuance of the certificate that, if violated, will result in the termination or reduction of benefits payable under the certificate. Authorizes a life insurance benefit contract issued on the life of a person who is younger than the society’s minimum age for adult membership to provide for transfer of control or ownership to the insured at an age specified in the certificate.

SECTIONS 11-15.

Redesignated from proposed SECTIONS 10-14.

SECTION 16.

Amends Article 10.33(a), Insurance Code, to provide that each domestic society is subject to Articles 1.15, 1.15A, and 1.16 of this code.

SECTION 17.

Amends Chapter 10, Insurance Code, by adding Article 10.37-3, regarding licensing of agents.

SECTION 18.

Amends Section 1(b), Chapter 213, Article 21.07-1, V.T.C.S., to redefine “agent.”

SECTION 19.

Amends Section 5(a), Chapter 213, Article 21.07-1, V.T.C.S., to require each prospective applicant for a license to act as an agent within the state to submit a personal written examination administered in the English or Spanish language, as prescribed by the Texas Department of Insurance (department). Prohibits a written examination to be required of an applicant for the renewal of a license issued under Article 21.07, rather than by the department pursuant to Article 21.07, Insurance Code, rather than Texas Insurance Code, 1951; or an applicant for a license under this section who is authorized to solicit or procure insurance for a fraternal benefit society on September 1, 1999, provided that the applicant solicits or does not solicit insurance at certain times, in certain amounts, on behalf of certain entities, or from certain persons. Makes conforming changes.

SECTION 20.

Amends Section 16, Chapter 213, Article 21.07-1, V.T.C.S., by adding Subsection (d-1) to provide that a written examination is not required of an applicant for a license under this section who is authorized for a fraternal benefit society or September 1, 1999, provided that the applicant solicits or does not solicit insurance at certain times, in certain amounts, on behalf of certain entities, or from certain persons.

SECTIONS 21-23.

Redesignated from proposed SECTIONS 15-17.