

## CHAPTER 559

S.B. No. 954

## AN ACT

relating to the operation and regulation of fraternal benefit societies.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Articles 10.01 and 10.02, Insurance Code, are amended to read as follows:

Art. 10.01. **FRATERNAL BENEFIT SOCIETY.** (a) Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government, and which shall make provision for the payment of benefits in accordance with Article 10.05 is hereby declared to be a fraternal benefit society. Fees collected by the board under this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to fees collected under this article.

(b) *A characteristic of a fraternal benefit society as defined by Section (a) of this article is that control must be ultimately vested in the membership as provided by this article, Articles 10.02 and 10.03 of this code, and other provisions of this chapter, and that control of the fraternal benefit society may be exercised by lodges and a supreme legislative or governing body elected in the manner provided by Article 10.03 of this code. The methods provided by this section for exercising control over a fraternal benefit society are exclusive. In this section, "control" has the meaning assigned by Section 2(c), Article 21.49-1, of this code.*

Art. 10.02. **LODGE SYSTEM DEFINED.** Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known into which members shall be admitted in accordance with its constitution, laws, ritual, rules and regulations, and which shall be required by the laws of such society to hold periodical meetings, shall be deemed to be operating on the lodge system. *The laws of the society must require subordinate lodges to hold regular meetings at least once in each calendar quarter in furtherance of the purposes of the society.*

SECTION 2. Chapter 10, Insurance Code, is amended by adding Articles 10.05-1 and 10.05-2 to read as follows:

Art. 10.05-1. **PROVISIONS FOR LIFE INSURANCE BENEFITS.** (a) *No life insurance certificate as specified in Article 10.05 of this code shall be issued or delivered in this state unless the same shall contain provisions substantially as follows:*

(1) *For a grace period of at least one month, for the payment of every premium after the first, which may be subject to an interest charge, during which month the insurance shall continue in force. The terms of such certificate may stipulate that if the insured shall die during the period of grace the overdue premium will be deducted in any settlement under the certificate.*

(2) *That the certificate shall be incontestable after it has been in force during the lifetime of the insured for two years from its date, except for nonpayment of premiums, and which provisions may, at the option of the society, contain an*

exception for violation of the conditions of the certificate relating to naval and military service in time of war.

(3) That all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties.

(4) That if the age of the insured has been understated, the amount payable under the certificate shall be such as the premium paid would have purchased at the correct age.

(5) That, in event of default in premium payments, the certificate may be reinstated in accordance with the provisions of the certificate and the constitution and bylaws of the society.

(6) That when a certificate shall become a claim by the death of the insured, settlement shall be made upon receipt of or not later than two months after due proof of death and the right of the claimant to the proceeds.

(7) In all family group-type life insurance certificates there shall be clearly stated the maximum amount which is payable to the payee in the certificate in the case of the death of any insured person or persons.

(b) No life insurance certificate shall be issued or delivered in this state if it contains any of the following provisions:

(1) A provision limiting the time within which any action at law or in equity may be commenced to less than two years after the cause of action shall accrue.

(2) A provision by which the certificate shall purport to be issued or to take effect more than six months before the original application for the insurance was made, if thereby the insured would rate at any age younger than his age at date when the application was made, according to his age at nearest birthday, except that any fraternal benefit society, with the consent of the certificate holder, may exchange, alter, or convert any certificate of life or endowment insurance or annuity issued by it for or into a certificate of another plan of insurance or annuity as of a date not prior to the effective date of the original certificate or annuity being exchanged, altered, or converted. If such newly written certificate or annuity is issued as of a date prior to the date of application for exchange, alteration, or conversion, the amount of insurance or annuity thereunder shall not exceed, on the succeeding plan, whichever is the greater of the following two amounts:

(i) the amount that the premium paid for the original certificate or annuity would have purchased at the age of the insured on the effective date of said original certificate or annuity, on the plan of the newly written certificate or annuity; or

(ii) the amount of the original certificate or annuity.

(3) A provision for any mode of settlement at maturity of less value than the amounts insured on the face of the certificate, plus premium refund additions, if any, less any indebtedness to the society on the certificate, and less any premium that may by the terms of the certificate be deducted; provided, however, that any society may issue a certificate promising a benefit less than the full benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations, or in the event the death of the insured should result from aviation activities under the conditions specified in the certificate, to be approved by the State Board of Insurance. This provision shall not apply to purely accident and health certificates.

(c) Any life insurance benefit which does not provide cash surrender values shall provide that after the coverage has been in effect for at least three years, there shall be a grace period of at least three months for the payment of every premium, which may be subject to an interest charge, during which time the insurance shall continue in force. The terms of such certificate may stipulate that if the insured shall die during the period of grace, the overdue premium will be deducted in any settlement under the certificate. This section is applicable only to certificates for which a cash surrender value would be required if the certificate were issued by a company organized under Chapter 3 of this code.

(d) This article shall not be construed to enlarge the powers of a fraternal benefit society. In the event of any conflict between this article and Article 10.15 of this code, this article controls.

(e) This article is applicable to certificates issued on or after September 1, 1991.

Art. 10.05-2. ACCIDENT AND HEALTH INSURANCE CERTIFICATES. (a) Except for Sections 2(A)(7), (F), and (G), 3(A)(1), 10, and 11 of Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-1 et seq., Vernon's Texas Civil Statutes), health, accident, sickness, and hospitalization certificates shall be issued in accordance with that chapter and rules adopted under that chapter.

(b) A provision of Sections 1 through 11, Chapter 397, Acts of the 54th Legislature, 1955 (Articles 3.70-1 through 3.70-11, Vernon's Texas Insurance Code), that applies to group insurance policies only does not apply to fraternal benefit societies. Fraternal benefit societies may not issue group insurance policies.

(c) Article 21.52 of this code applies to fraternal benefit societies.

(d) This article applies only to certificates issued on or after September 1, 1991, except the requirement or prohibition of certain coverages or benefits specified by Sections 1 and 2(C), (D), and (E), Chapter 397, Acts of the 54th Legislature, 1955 (Article 3.70-1 et seq., Vernon's Texas Insurance Code), and Article 21.52 of this code, and rules adopted under those laws apply to certificates issued on or after September 1, 1988.

(e) This article may not be construed to enlarge the powers of a fraternal benefit society. If there is a conflict between this article and Article 10.15 of this code, this article controls.

SECTION 3. Articles 10.07, 10.08, 10.16, 10.21, 10.30, 10.33, and 10.36, Insurance Code, are amended to read as follows:

Art. 10.07. RESERVES FOR ACCIDENT AND HEALTH INSURANCE. (a) Fraternal benefit societies shall establish reserves for the types of coverage specified in Article 10.05(1)(d) and (e) of this code in the same manner and to the same extent as required for companies organized under Chapter 3 of this code except:

(1) for certificates issued during the calendar year 1988, only one-third of the unearned premium reserve is required to be maintained during the first policy year; and

(2) for certificates issued during the calendar year 1989, only two-thirds of the unearned premium reserve is required to be maintained during the first policy year.

(b) Article 3.39 of this code applies to reserve investments for fraternal benefit societies organized under the laws of this state.

(c) This article may not be construed to prevent, or in any way limit, any action by or remedy available to the State Board of Insurance or the State of Texas under Article 21.28 or 21.28-A of this code or other applicable law [CONTRIBUTIONS ON CERTIFICATES; HOW BASED. The contributions to be made upon such certificate shall be based upon the "Standard Industrial Mortality Table Three and One-half Per Cent," or the "English Life Table Number Six," or upon such other mortality and interest standards permitted by the Standard Valuation Law and authorized by the laws of this state for use by life insurance companies for a similar type of contract or benefit issued in the same calendar year or such other mortality table as may be approved by the State Board of Insurance].

Art. 10.08. SOLVENCY. The reserves required by this chapter shall be reflected as a liability in the annual reports of a fraternal benefit society. A society is considered solvent as long as its admissible assets are equal to or greater than its liabilities [RESERVE. Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the mortality and interest standards adopted by the society for computing contributions, the same to be first approved by the State Board of Insurance].

Art. 10.16. FUNDS. Any society may create, maintain, invest, disburse and apply an emergency surplus or other similar fund in accordance with its laws. Unless otherwise

provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment of the surrender of any part thereof, except as provided in Article 10.05 of this chapter. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. No society, domestic or foreign, shall ~~hereafter be incorporated or admitted to~~ transact business in this State which does not provide for stated periodical contributions sufficient to provide for meeting the ~~mortuary~~ obligations contracted, when valued *in accordance with the reserving standards specified in this chapter* ~~[upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard with interest assumption not more than four (4%) per cent per annum, or any mortality tables and interest assumptions authorized presently or in the future which would be permitted by the Standard Valuation Law for use by life insurance companies for a similar type of contract or benefit issued in the same calendar year, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with interest assumptions authorized presently or in the future which would be permitted by the Standard Valuation Law for use by life insurance companies, for a similar type of disability benefit issued in the same calendar year. Provided, however, that any society may value its certificates in accordance with valuation standards otherwise authorized by the laws of this state for the valuation of similar policies issued by life insurance companies].~~ Deferred payments or installments of claims shall be considered as fixed liabilities on the happenings of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

Art. 10.21. MERGERS AND TRANSFERS. No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the State Board of Insurance ~~[Commissioners]~~, together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds (2/3) of the members of the supreme legislative or governing body of each of said societies. *A merger or transfer may not be made other than to another fraternal benefit society.*

Upon the submission of said contract, financial statements and certificates, said Board shall examine the same, and if it shall find *that such statements are* ~~[to be]~~ correct and the said contract to be in conformity with the provisions of this article, ~~[and]~~ that such merger or transfer is just and equitable to the members of each of said societies, *and that the new or surviving society complies with all of the requirements of a fraternal benefit society as set forth in this chapter*, the Board shall approve said merger or transfer, issue its certificate to that effect, and thereupon the said contract or merger or transfer shall be of full force and effect.

*Article 21.49-1 of this code applies to fraternal benefit societies. There may be no change in control of a fraternal benefit society that is inconsistent with the nature of a fraternal benefit society as specified in Article 10.01, 10.02, or 10.03 of this code and other applicable provisions of law* ~~[In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by said Board].~~

Art. 10.30. ANNUAL REPORTS. Every society transacting business in this State shall annually, on or before the first day of March, file with the State Board of Insurance in such form as the Board may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and its transactions for the year ending on that date, and shall furnish such other information as said Board may deem necessary to a proper exhibit of

its business and plan of working. The Board may at other times require any further statement it may deem necessary to be made relating to such society.

*Each [In addition to such annual report, each] society shall include in its annual [annually] report to said Board a valuation of its certificates in force on December 31st last preceding[, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses]. Such report of valuation shall show as contingent liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under the certificates subject to valuation; and as contingent assets the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation including valuation of certificates shall be certified by an [a competent accountant or] actuary, or, at the request and expense of the society, verified by the actuary of the Department of Insurance of the home State of the society[, and shall be filed with the State Board of Insurance within ninety (90) days after the submission of the last preceding annual report]. The legal minimum standard of valuation for all certificates, except for accident and health [disability] benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society, any table producing reserves in the aggregate at least as great as the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899; at the option of the society, the Commissioners 1941 Standard Ordinary Mortality Table; or at the option of the society, the Commissioners 1958 Standard Ordinary Mortality Table, except that for any category of such certificates issued on female risks, all modified net premiums and present values referred to in Article 3.28 of this code may be calculated according to an age not more than six (6) years younger than the actual age of the insured. The interest assumption to be used with any of the preceding mortality tables may not be more than four and one-half (4-1/2%) per centum per annum. As an alternative, the society [higher table; or, at its option, it] may use a table based upon the society's own experience of at least twenty (20) years, and covering not less than one hundred thousand (100,000) lives with interest assumption not more than four (4%) per centum per annum, provided, however, that any society may value its certificates in accordance with valuation standards otherwise authorized by the laws of this state for the valuation of similar policies issued by life insurance companies provided that no society may use a table based on its own experience for certificates issued on or after January 1, 1989. Each such valuation report shall set forth clearly and fully the mortality and interest bases and the method of valuation. The annual report required by this article shall also include a valuation of certificates in accordance with Article 10.07 of this code.*

Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences, and in such cases a separation of the funds shall not be required.

The annual report [valuation] herein provided for *may be used by the State Board of Insurance or the State of Texas in determining [shall not be considered or regarded as a test of] the financial solvency of the society[, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities]. A statement [report] of the [such] valuation provided by this article and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June 1st of each year; or in lieu thereof, such statement [report] of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society.*

The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contributions shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five (5%) per centum per annum. *The existence of the right to assess members as provided by this article does not affect the test for financial solvency of the society.*

*This chapter may not be construed to prevent or in any way limit any action by or remedy available to the State Board of Insurance or the State of Texas under Article 21.28 or 21.28-A of this code or other applicable law.*

Art. 10.33. EXAMINATION OF DOMESTIC SOCIETIES. The Board of Insurance Commissioners or any person it may appoint, shall have the power of visitation and examination into the affairs of any domestic society. It may employ assistants for the purpose of such examination, and it, or any person it may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and conditions of the society. The expense of such examination shall be paid by the society examined, upon statement furnished by the Board of Insurance Commissioners, and the examination shall be made at least once in three (3) years. Whenever after examination the Board is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one (1) year or more, shall have a membership of less than four hundred (400), or shall determine to discontinue business, said Board may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and if it shall then appear upon the trial that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto. ~~[No such proceeding shall be commenced by the Attorney General against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date named in said notice, to show cause why such proceedings should not be commenced.]~~

Art. 10.36. NO ADVERSE PUBLICATIONS. Pending, during or after an examination or investigation of any such society, either domestic or foreign, the Board of Insurance Commissioners shall make public no financial statement, report or finding, nor shall it permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement or report or finding, and to make such showing in connection therewith as it may desire. *This article does not apply to proceedings involving a fraternal benefit society instituted by the State Board of Insurance or the State of Texas including administrative hearings, proceedings under Article 21.28 or 21.28-A of this code, and court proceedings.*

SECTION 4. Chapter 10, Insurance Code, is amended by adding Article 10.37-1 to read as follows:

*Art. 10.37-1. DISCIPLINARY PROCEEDINGS. In addition to any other provision of law relating to disciplinary action respecting fraternal benefit societies, Subsection 7, Article 1.10, of this code applies to fraternal benefit societies.*

SECTION 5. Subsection (C), Section 1, Chapter 397, Acts of the 54th Legislature, 1955 (Article 3.70-1, Vernon's Texas Insurance Code), is amended to read as follows:

(C) Scope of Act. This Act shall apply to and govern individual accident and sickness insurance policies delivered, or issued for delivery, in the State of Texas by life, health and accident companies, mutual life insurance companies, mutual assessment life insurance companies, mutual insurance companies, local mutual aid associations, mutual or natural premium life or casualty insurance companies, general casualty companies, Lloyds, reciprocal or inter-insurance exchanges, nonprofit hospital, medical, or dental service corporations including but not limited to companies subject to Chapter 20 of this code, as amended, stipulated premium insurance companies, or any other insurer which by law is required to be licensed by the Board; provided, however, this Act shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the Board and which are entitled by statute to an exemption certificate from the Board in evidence of their exempt status~~[, nor to fraternal benefit societies]~~; nor to credit accident and sickness insurance policies written under Article 3.53 of this code, as amended; provided further, that this Act shall not be construed to enlarge the powers of any of the enumerated companies. Conversion policies issued pursuant to a contractual conversion privilege under a group accident and sickness insurance policy shall not be subject to Subsections (D) through (H) of this article.

SECTION 6. Section (c) of Article 10.18, Article 10.31, and Article 10.32, Insurance Code, are repealed.

SECTION 7. This Act takes effect September 1, 1987.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 6, 1987, by a viva-voce vote. Passed the House on May 29, 1987, by a non-record vote.

Approved June 18, 1987.

Effective Sept. 1, 1987.