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SENATE BILL 6289

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State of Washington

54th Legislature

1996 Regular Session

By Senators Prentice, Fraser, Quigley and Pelz; by request of Insurance Commissioner

Read first time 01/10/96. Referred to Committee on Financial Institutions & Housing.

1 AN ACT Relating to fraternal benefit societies; amending RCW  
2 48.36A.100, 48.36A.290, and 48.36A.310; adding new sections to chapter  
3 48.36A RCW; and repealing RCW 48.36A.300.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 48.36A.100 and 1987 c 366 s 10 are each amended to  
6 read as follows:

7 A domestic society organized on or after January 1, 1988, shall be  
8 formed as follows, but not until it has and continues to maintain  
9 unimpaired surplus in the minimum amount of total capital and surplus  
10 required by RCW 48.05.340:

11 (1) Seven or more citizens of the United States, a majority of whom  
12 are citizens of this state, who desire to form a fraternal benefit  
13 society, may make, sign, and acknowledge before some officer competent  
14 to take acknowledgment of deeds, articles of incorporation, in which  
15 shall be stated:

16 (a) The proposed corporate name of the society, which shall not so  
17 closely resemble the name of any society or insurance company as to be  
18 misleading or confusing;

1 (b) The purposes for which it is being formed and the mode in which  
2 its corporate powers are to be exercised. The purposes shall not  
3 include more liberal powers than are granted by this chapter;

4 (c) The names and residences of the incorporators and the names,  
5 residences, and official titles of all the officers, trustees,  
6 directors, or other persons who are to have and exercise the general  
7 control of the management of the affairs and funds of the society for  
8 the first year or until the ensuing election at which all the officers  
9 shall be elected by the supreme governing body, which election shall be  
10 held not later than one year from the date of issuance of the permanent  
11 certificate of authority.

12 (2) The articles of incorporation, duly certified copies of the  
13 society's bylaws and rules, copies of all proposed forms of  
14 certificates, applications therefor, and circulars to be issued by the  
15 society, and a bond conditioned upon the return to applicants of the  
16 advanced payments if the organization is not completed within one year  
17 shall be filed with the commissioner, who may require further  
18 information as the commissioner deems necessary. The bond with  
19 sureties approved by the commissioner shall be in an amount, not less  
20 than three hundred thousand dollars nor more than one million five  
21 hundred thousand dollars as required by the commissioner. All  
22 documents filed are to be in the English language. If the purposes of  
23 the society conform to the requirements of this chapter and all  
24 provisions of the law have been complied with, the commissioner shall  
25 so certify, retain, and file the articles of incorporation and furnish  
26 the incorporators a preliminary certificate of authority authorizing  
27 the society to solicit members as hereinafter provided.

28 (3) No preliminary certificate of authority granted under the  
29 provisions of this section shall be valid after one year from its date  
30 or after a further period, not exceeding one year, as may be authorized  
31 by the commissioner upon cause shown, unless the five hundred  
32 applicants required by subsection (4) of this section have been secured  
33 and the organization has been completed under this chapter. The  
34 articles of incorporation and all other proceedings thereunder shall  
35 become null and void in one year from the date of the preliminary  
36 certificate of authority, or at the expiration of the extended period,  
37 unless the society shall have completed its organization and received  
38 a certificate of authority to do business under this chapter.

1 (4) Upon receipt of a preliminary certificate of authority from the  
2 commissioner, the society may solicit members for the purpose of  
3 completing its organization, shall collect from each applicant the  
4 amount of not less than one regular monthly premium in accordance with  
5 its table of rates, and shall issue to each applicant a receipt for the  
6 amount collected. No society shall incur any liability other than for  
7 the return of the advance premium, nor issue any certificate, nor pay,  
8 allow, or offer or promise to pay or allow, any benefit to any person  
9 until:

10 (a) Actual bona fide applications for benefits have been secured on  
11 not less than five hundred applicants, and any necessary evidence of  
12 insurability has been furnished to and approved by the society;

13 (b) At least ten subordinate lodges have been established into  
14 which the five hundred applicants have been admitted;

15 (c) There has been submitted to the commissioner, under oath of the  
16 president or secretary, or corresponding officer of the society, a list  
17 of the applicants, giving their names, addresses, date each was  
18 admitted, name and number of the subordinate lodge of which each  
19 applicant is a member, amount of benefits to be granted, and premiums  
20 therefor; and

21 (d) It has been shown to the commissioner, by sworn statement of  
22 the treasurer, or corresponding officer of the society, that at least  
23 five hundred applicants have each paid in cash at least one regular  
24 monthly premium and the total amount of collected premiums equals at  
25 least one hundred fifty thousand dollars. The advance premiums shall  
26 be held in trust during the period of organization and if the society  
27 has not qualified for a certificate of authority within one year, the  
28 premiums shall be returned to the applicants.

29 (5) The commissioner may make such examination and require such  
30 further information as the commissioner deems advisable. Upon  
31 presentation of satisfactory evidence that the society has complied  
32 with all the provisions of this chapter, the commissioner shall issue  
33 to the society a certificate of authority to that effect and that the  
34 society is authorized to transact business pursuant to the provisions  
35 of this chapter. The certificate of authority shall be prima facie  
36 evidence of the existence of the society at the date of the  
37 certificate. The commissioner shall cause a record of the certificate  
38 of authority to be made. A certified copy of the record may be given  
39 in evidence with like effect as the original certificate of authority.

1 (6) Any incorporated society authorized to transact business in  
2 this state at the time this chapter becomes effective shall not be  
3 required to reincorporate.

4 (7) The commissioner may, by rule, require domestic fraternal  
5 societies to have and maintain a larger amount of surplus than the  
6 minimum amount of capital and surplus prescribed under RCW 48.05.340,  
7 based upon the type, volume, and nature of insurance business  
8 transacted, consistent with the principles of risk-based capital  
9 modified to recognize the special characteristics of fraternal benefit  
10 societies.

11 **Sec. 2.** RCW 48.36A.290 and 1987 c 366 s 29 are each amended to  
12 read as follows:

13 (1) No foreign or alien society shall transact business in this  
14 state without a license issued by the commissioner. Any society  
15 desiring admission to this state shall comply substantially with the  
16 requirements and limitations of this chapter applicable to domestic  
17 societies and must have and continue to maintain unimpaired surplus in  
18 the minimum amount of total capital and surplus required by RCW  
19 48.05.340. A society may be licensed to transact business in this  
20 state upon filing with the commissioner:

21 ~~((1))~~ (a) A duly certified copy of its articles of incorporation;

22 ~~((2))~~ (b) A copy of its bylaws, certified by its secretary or  
23 corresponding officer;

24 ~~((3))~~ (c) A power of attorney to the commissioner as prescribed  
25 in RCW 48.36A.410;

26 ~~((4))~~ (d) A statement of its business under oath by its president  
27 and secretary, or corresponding officers, in a form prescribed by the  
28 commissioner, verified by an examination made by the supervising  
29 insurance official of its home state or other state, territory,  
30 province, or country, satisfactory to the commissioner;

31 ~~((5))~~ (e) Certification from the proper official of its home  
32 state, territory, province, or country that the society is legally  
33 incorporated and licensed to transact business;

34 ~~((6))~~ (f) Copies of its certificate forms; and

35 ~~((7))~~ (g) Such other information as the commissioner may deem  
36 necessary; and upon a showing that its assets are invested in  
37 accordance with the provisions of this chapter.

1       (2) After June 30, 1997, a foreign or alien society which does not  
2 have unimpaired surplus in the minimum amount of total capital and  
3 surplus required by RCW 48.05.340 may not issue any new policies or  
4 certificates until the society has unimpaired surplus in the minimum  
5 amount of total capital and surplus required by RCW 48.05.340. Once  
6 such a foreign or alien society obtains unimpaired surplus in the  
7 minimum amount of total capital and surplus required by RCW 48.05.340,  
8 the society must continue to maintain unimpaired surplus in the minimum  
9 amount of total capital and surplus required by RCW 48.05.340;

10       (3) After June 30, 1997, a foreign or alien society which had  
11 unimpaired surplus in the minimum amount of total capital and surplus  
12 required by RCW 48.05.340 on December 31, 1996, must continue to  
13 maintain unimpaired surplus in the minimum amount of total capital and  
14 surplus required by RCW 48.05.340; and

15       (4) The commissioner may, by rule, require foreign or alien  
16 fraternal societies to have and maintain a larger amount of surplus  
17 than the minimum amount of capital and surplus prescribed under RCW  
18 48.05.340, based upon the type, volume, and nature of insurance  
19 business transacted, consistent with the principles of risk-based  
20 capital modified to recognize the special characteristics of fraternal  
21 benefit societies.

22       **Sec. 3.** RCW 48.36A.310 and 1987 c 366 s 31 are each amended to  
23 read as follows:

24       ~~((When the commissioner, upon investigation, finds that a~~  
25 ~~foreign or alien society transacting or applying to transact business~~  
26 ~~in this state)) The commissioner may refuse, suspend, or revoke a~~  
27 ~~fraternal benefit society's license, if the society:~~

28       (a) Has exceeded its powers;

29       (b) Has failed to comply with any of the provisions of this  
30 chapter;

31       (c) Is not fulfilling its contracts in good faith; ~~((or))~~

32       ~~(d) Is conducting its business fraudulently ((or in a manner~~  
33 ~~hazardous to its members or creditors or the public;~~

34 ~~the commissioner shall notify the society of the deficiency or~~  
35 ~~deficiencies and state in writing the reasons for the commissioner's~~  
36 ~~dissatisfaction. The commissioner shall immediately issue a written~~  
37 ~~notice to the society requiring that the deficiency or deficiencies~~  
38 ~~which exist be corrected. After the notice the society shall have~~

1 ~~thirty days in which to comply with the commissioner's request for~~  
2 ~~correction. If the society fails to comply, the commissioner shall~~  
3 ~~notify the society of such findings of noncompliance and require the~~  
4 ~~society to show cause on a date named why its license should not be~~  
5 ~~suspended, revoked, or refused. If on such date the society does not~~  
6 ~~present good and sufficient reasons why its authority to do business in~~  
7 ~~this state should not be suspended, revoked, or refused, the~~  
8 ~~commissioner may suspend or refuse the license of the society to do~~  
9 ~~business in this state until satisfactory evidence is furnished to the~~  
10 ~~commissioner that the suspension or refusal should be withdrawn or the~~  
11 ~~commissioner may revoke the authority of the society to do business in~~  
12 ~~this state))~~ (e) Has a membership of less than four hundred after an  
13 existence of one year or more;

14 (f) Is found by the commissioner to be in such a condition that its  
15 further transaction of insurance in this state would be hazardous to  
16 certificate holders and the people in this state;

17 (g) Refuses to remove or discharge a trustee, director, or officer  
18 who has been convicted of any crime involving fraud, dishonesty, or  
19 like moral turpitude;

20 (h) Refuses to be examined, or if its trustees, directors,  
21 officers, employees, or representatives refuse to submit to examination  
22 or to produce its accounts, records, and files for examination by the  
23 commissioner when required, or refuse to perform any legal obligation  
24 relative to the examination;

25 (i) Fails to pay any final judgment rendered against it in this  
26 state upon any certificate, or undertaking issued by it, within thirty  
27 days after the judgment became final or within thirty days after time  
28 for taking an appeal has expired, or within thirty days after dismissal  
29 of an appeal before final determination, whichever date is the later;

30 (j) Is found by the commissioner, after investigation or upon  
31 receipt of reliable information, to be managed by persons, whether by  
32 its trustees, directors, officers, or by any other means, who are  
33 incompetent or untrustworthy or so lacking in fraternal benefit society  
34 managerial experience as to make a proposed operation hazardous to its  
35 members; or that there is good reason to believe it is affiliated  
36 directly or indirectly through ownership, control, or business  
37 relations, with any person or persons whose business operations are or  
38 have been found to be in violation of any law or rule, to the detriment  
39 of the members of the society or of the public, by bad faith or by

1 manipulation of the assets, or of accounts, or of reinsurance of the  
2 society; or

3 (k) Does business through agents or other representatives in this  
4 state or in any other state who are not properly licensed under  
5 applicable laws and rules.

6 (2) Nothing in this section shall prevent a society from  
7 continuing, in good faith, all contracts made in this state during the  
8 time the society was legally authorized to transact business herein.

9 NEW SECTION. Sec. 4. The commissioner shall give a society notice  
10 of his or her intention to suspend, revoke, or refuse to renew its  
11 license not less than ten days before the effective date of the order  
12 of suspension, revocation or refusal, except that advance notice of  
13 intention is not required where the order results from a domestic  
14 society's failure to make good a deficiency of assets as required by  
15 the commissioner.

16 NEW SECTION. Sec. 5. The commissioner shall not suspend a  
17 society's license for a period in excess of one year, and shall state  
18 in his or her order of suspension the period during which the order is  
19 effective.

20 NEW SECTION. Sec. 6. A society whose license has been suspended,  
21 revoked, or refused may not subsequently be authorized unless the  
22 grounds for the suspension, revocation, or refusal no longer exist and  
23 the society is otherwise fully qualified.

24 NEW SECTION. Sec. 7. Upon the suspension, revocation, or refusal  
25 of a society's license, the commissioner shall give notice to the  
26 society and shall suspend, revoke, or refuse the authority of its  
27 agents to represent it in this state and give notice to the agents.

28 NEW SECTION. Sec. 8. The following standards may be considered by  
29 the commissioner to determine whether the continued operation of any  
30 society transacting an insurance business in this state might be deemed  
31 to be hazardous to the certificate holders or creditors. The  
32 commissioner may consider:

- 1 (1) Adverse findings reported in either a financial condition or  
2 market conduct examination report, or both, of a state insurance  
3 department that could lead to impairment of surplus;
- 4 (2) The national association of insurance commissioners insurance  
5 regulatory information system and its related reports;
- 6 (3) The ratios of commission expense, general insurance expense,  
7 policy benefits, and reserve increases as to annual premium and net  
8 investment income that could lead to an impairment of surplus;
- 9 (4) The society's asset portfolio when viewed in light of current  
10 economic conditions is not of sufficient value, liquidity, or diversity  
11 to assure the society's ability to meet its outstanding obligations as  
12 they mature;
- 13 (5) The ability of an assuming reinsurer to perform and whether the  
14 society's reinsurance program provides sufficient protection for the  
15 society's remaining surplus after taking into account the society's  
16 cash flow and the classes of business written as well as the financial  
17 condition of the assuming reinsurer;
- 18 (6) The society's operating loss in the last twelve-month period or  
19 any shorter period of time, including but not limited to net capital  
20 gain or loss, change in nonadmitted assets, and cash refunds paid to  
21 members, is greater than fifty percent of the society's remaining  
22 surplus as regards certificate holders in excess of the minimum  
23 required;
- 24 (7) Whether any affiliate, subsidiary, or reinsurer is insolvent,  
25 threatened with insolvency, or delinquent in payment of its monetary or  
26 other obligation;
- 27 (8) Contingent liabilities, pledges, or guaranties which either  
28 individually or collectively involve a total amount that in the opinion  
29 of the commissioner may affect the solvency of the society;
- 30 (9) The age and collectibility of receivables;
- 31 (10) Whether the management of a society, including officers,  
32 trustees, directors, or any other person who directly or indirectly  
33 controls the operation of the society, fails to possess and demonstrate  
34 the competence, fitness, and reputation deemed necessary to serve the  
35 society in such a position;
- 36 (11) Whether management of a society has failed to respond to  
37 inquiries relative to the condition of the society or has furnished  
38 misleading information concerning an inquiry;

1 (12) Whether management of a society either has filed any false or  
2 misleading sworn financial statement, or has released a false or  
3 misleading financial statement to lending institutions or to the  
4 general public, or has made a false or misleading entry, or has omitted  
5 an entry of material amount in the books of the society;

6 (13) Whether the society has grown so rapidly and to such an extent  
7 that it lacks adequate financial and administrative capacity to meet  
8 its obligations in a timely manner; and

9 (14) Whether the society has experienced or will experience in the  
10 foreseeable future, either cash flow problems or liquidity problems, or  
11 both.

12 NEW SECTION. **Sec. 9.** (1) For the purpose of making a  
13 determination of a society's financial condition, the commissioner may:

14 (a) Disregard any credit or amount receivable resulting from  
15 transactions with a reinsurer that is insolvent, impaired, or otherwise  
16 subject to a delinquency proceeding;

17 (b) Make appropriate adjustments to asset values attributable to  
18 investments in or transactions with parents, subsidiaries, or  
19 affiliates;

20 (c) Refuse to recognize the stated value of accounts receivable if  
21 the ability to collect receivables is highly speculative in view of the  
22 age of the account or the financial condition of the debtor; or

23 (d) Increase the society's liability in an amount equal to any  
24 contingent liability, pledge, or guarantee not otherwise included if  
25 there is a substantial risk that the society will be called upon to  
26 meet the obligation undertaken within the next twelve-month period.

27 (2) If the commissioner determines that the continued operation of  
28 the society authorized to transact business in this state may be  
29 hazardous to the certificate holders, then the commissioner may, in  
30 conjunction with or in lieu of a notice required or permitted by  
31 section 4 of this act, issue an order requiring the society to:

32 (a) Reduce the total amount of present and potential liability for  
33 policy benefits by reinsurance;

34 (b) Reduce, suspend, or limit the volume of business being accepted  
35 or renewed;

36 (c) Reduce general insurance and commission expenses by specified  
37 methods;

38 (d) Increase the society's surplus;

1 (e) Suspend or limit the declaration and payment of refunds by a  
2 society to its members;

3 (f) File reports in a form acceptable to the commissioner  
4 concerning the market value of a society's assets;

5 (g) Limit or withdraw from certain investments or discontinue  
6 certain investment practices to the extent the commissioner deems  
7 necessary;

8 (h) Document the adequacy of premium rates in relation to the risks  
9 insured; or

10 (i) File, in addition to regular annual statements, interim  
11 financial reports on the form adopted by the national association of  
12 insurance commissioners or on a format promulgated by the commissioner.

13 (3) Any society subject to an order under subsection (2) of this  
14 section may make a written demand for a hearing, subject to the  
15 requirements of RCW 48.04.010, by specifying in what respects it is  
16 aggrieved and the grounds to be relied upon as basis for the relief to  
17 be demanded at the hearing.

18 NEW SECTION. **Sec. 10.** (1) Any rehabilitation, liquidation, or  
19 conservation of a domestic fraternal benefit society is the same as the  
20 rehabilitation, liquidation, or conservation of an insurance company  
21 and shall be conducted under the supervision of the commissioner  
22 pursuant to the law governing the rehabilitation, liquidation, or  
23 conservation of insurance companies. The commissioner may apply for an  
24 order directing the commissioner to rehabilitate, liquidate, or  
25 conserve a domestic fraternal benefit society upon any one or more of  
26 the following grounds: That the domestic fraternal benefit society:

27 (a) Is insolvent; or

28 (b) Has ceased transacting insurance business for a period of one  
29 year; or

30 (c) Is insolvent and has commenced voluntary liquidation or  
31 dissolution, or attempts to commence or prosecute any action or  
32 proceeding to liquidate its business or affairs, or to dissolve its  
33 corporate charter, or to procure the appointment of a receiver,  
34 trustee, custodian, or sequestrator under any law except this code; or

35 (d) Any of the matters set forth in RCW 48.36A.310.

36 (2) The priority of the distribution of claims from a domestic  
37 fraternal benefit society's estate shall be as set forth in RCW  
38 48.31.280.

1        NEW SECTION.   **Sec. 11.**   RCW 48.36A.300 and 1987 c 366 s 30 are each  
2 repealed.

3        NEW SECTION.   **Sec. 12.**   Sections 4 through 10 of this act are each  
4 added to chapter 48.36A RCW.

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