

CERTIFICATION OF ENROLLMENT

SENATE BILL 6289

54th Legislature
1996 Regular Session

Passed by the Senate March 2, 1996
YEAS 47 NAYS 0

President of the Senate

Passed by the House February 29, 1996
YEAS 96 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6289** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6289

AS AMENDED BY THE HOUSE

Passed Legislature - 1996 Regular Session

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; however,
6 a foreign or alien society may continue to issue new policies or
7 certificates to members of the society who have an existing policy or
8 certificate in force with the society on June 30, 1997. Once such a
9 foreign or alien society obtains unimpaired surplus in the minimum
10 amount of total capital and surplus required by RCW 48.05.340, the
11 society must continue to maintain unimpaired surplus in the minimum
12 amount of total capital and surplus required by RCW 48.05.340;

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

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

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

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

31 (a) Has exceeded its powers;

32 (b) Has failed to comply with any of the provisions of this
33 chapter;

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

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

37 ~~the commissioner shall notify the society of the deficiency or~~
38 ~~deficiencies and state in writing the reasons for the commissioner's~~

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

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

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

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

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

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

1 relations, with any person or persons whose business operations are or
2 have been found to be in violation of any law or rule, to the detriment
3 of the members of the society or of the public, by bad faith or by
4 manipulation of the assets, or of accounts, or of reinsurance of the
5 society; or

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

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

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

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

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

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

31 NEW SECTION. Sec. 8. The following standards may be considered by
32 the commissioner to determine whether the continued operation of any
33 society transacting an insurance business in this state might be deemed

1 to be hazardous to the certificate holders or creditors. The
2 commissioner may consider:

3 (1) Adverse findings reported in either a financial condition or
4 market conduct examination report, or both, of a state insurance
5 department that could lead to impairment of surplus;

6 (2) The national association of insurance commissioners insurance
7 regulatory information system and its related reports;

8 (3) The ratios of commission expense, general insurance expense,
9 policy benefits, and reserve increases as to annual premium and net
10 investment income that could lead to an impairment of surplus;

11 (4) The society's asset portfolio when viewed in light of current
12 economic conditions is not of sufficient value, liquidity, or diversity
13 to assure the society's ability to meet its outstanding obligations as
14 they mature;

15 (5) The ability of an assuming reinsurer to perform and whether the
16 society's reinsurance program provides sufficient protection for the
17 society's remaining surplus after taking into account the society's
18 cash flow and the classes of business written as well as the financial
19 condition of the assuming reinsurer;

20 (6) The society's operating loss in the last twelve-month period or
21 any shorter period of time, including but not limited to net capital
22 gain or loss, change in nonadmitted assets, and cash refunds paid to
23 members, is greater than fifty percent of the society's remaining
24 surplus as regards certificate holders in excess of the minimum
25 required;

26 (7) Whether any affiliate, subsidiary, or reinsurer is insolvent,
27 threatened with insolvency, or delinquent in payment of its monetary or
28 other obligation;

29 (8) Contingent liabilities, pledges, or guaranties which either
30 individually or collectively involve a total amount that in the opinion
31 of the commissioner may affect the solvency of the society;

32 (9) The age and collectibility of receivables;

33 (10) Whether the management of a society, including officers,
34 trustees, directors, or any other person who directly or indirectly
35 controls the operation of the society, fails to possess and demonstrate
36 the competence, fitness, and reputation deemed necessary to serve the
37 society in such a position;

1 (11) Whether management of a society has failed to respond to
2 inquiries relative to the condition of the society or has furnished
3 misleading information concerning an inquiry;

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

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

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

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

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

20 (b) Make appropriate adjustments to asset values attributable to
21 investments in or transactions with parents, subsidiaries, or
22 affiliates;

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

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

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

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

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

1 (c) Reduce general insurance and commission expenses by specified
2 methods;

3 (d) Increase the society's surplus;

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

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

8 (g) Limit or withdraw from certain investments or discontinue
9 certain investment practices to the extent the commissioner deems
10 necessary;

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

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

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

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

30 (a) Is insolvent; or

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

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

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

1 (2) The priority of the distribution of claims from a domestic
2 fraternal benefit society's estate shall be as set forth in RCW
3 48.31.280.

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

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

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