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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Cutrona

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SUMMARY

- Requires a domestic fraternal benefit society to present and execute a plan for the transfer of members to another society or other insurer if the society's capital falls below the authorized control level for risk-based capital or if the society fails to maintain its legally required surplus.
- Prohibits a court or society from imposing an assessment after a liquidation petition is filed unless the assessment is for satisfying Class 1 claims (the costs and expenses of administering the liquidation) and 2 claims (losses under policies).
- Requires liquidation proceedings to be conducted in a manner to protect insureds, claimants, creditors, and the public, and be conducted in a manner designed to conserve assets, limit expenses, and avoid assessments.
- Requires a liquidator to attempt to transfer policies or certificates of the liquidating society to another society or other insurer.
- Increases the time by which a society must notify the Superintendent of Insurance of its plan to impose an assessment from 30 days prior to the assessment to 90 days.
- Allows a society to impose an assessment following the notice period only if the assessment has been duly adopted by the society's board of directors and has not been disapproved by the Superintendent.
- Permits the Superintendent to allow an assessment to be imposed at an earlier date than the date identified in the notice.

DETAILED ANALYSIS

Capital shortage

Under the bill, if either of the following occurs, a domestic fraternal benefit society must present to the Superintendent of Insurance a plan to protect the interests of the society members not later than 45 days following the occurrence:

- The society has an authorized control level RBC. “RBC” stands for “risk-based capital,” which is a method of measuring the minimum amount of capital an insurance company needs to support its business operations. Under continuing law, “authorized control level RBC” occurs if an insurer’s capital falls below a certain amount. In that case, the insurer must take certain actions to increase its capital and the Superintendent may place the insurer under regulatory control if the Superintendent considers it to be in the best interests of the policyholders and creditors of the insurer and of the public.
- The society fails to maintain the surplus required by Ohio law.

The plan must provide for the transfer of all members, certificates (written evidence of an agreement under which the society agrees to pay a benefit), and other assets and liabilities of the society to another fraternal benefit society or other insurer through merger, consolidation, assumption, or any other means. The plan must designate a period of time in which the transfer must be completed. Any transfer is subject to approval by the Superintendent.

The transfer constitutes a novation (substitution of a new party for an old one) of the transferring society’s certificates effective on the date of transfer. The society must ensure that the transfer is concluded within the time period approved by the Superintendent.

A transfer is considered fully approved by the society upon a majority vote of its board of directors, notwithstanding any other law or regulation that requires notice to or approval by the society’s members or supreme governing body. The bill requires the society to make any necessary amendments to its laws (articles of incorporation, charter, constitution, and bylaws) to recognize this authority not later than the next meeting of the society’s supreme governing body. The transferring society must notify its members of the transfer by mail or in the society’s official publication not later than 30 days after the Superintendent approves the transfer.

Notwithstanding any law or regulation to the contrary and any law of the society, a society’s board of directors may, with the Superintendent’s approval, suspend or modify the qualifications for membership as necessary to facilitate a transfer.

Upon the effective date of a transfer to an organization that is not a fraternal benefit society and in consideration for the transfer, each member of the society is considered to agree that any terms of a certificate subjecting the certificate to the laws of the society or providing for the maintenance of the society’s solvency, except to the extent of any outstanding lien not

released by the terms of the transfer, are void. The bill requires the assuming organization to endorse the certificate accordingly.¹

Liquidation

Notwithstanding provisions of continuing law that provide for the payment of assessments by members to a society in the event of a deficiency or impairment, the bill prohibits a court or a society from imposing an assessment after a liquidation petition is filed, unless the court or Superintendent determines that the assessment is for the purpose of satisfying Class 1 and 2 claims. Such an assessment may not be imposed for the purpose of satisfying any other obligation of the domestic fraternal benefit society, including Class 3 through 10 claims. Class 1 claims for an insurer's estate are claims for the costs and expenses of administering the liquidation, including costs of preserving assets, filing fees, and other similar costs. Class 2 claims are claims for losses under policies. Class 3 through 10 claims are other claims including those of a government, general creditors, premium refunds, shareholder claims, and others.

The bill requires liquidation proceedings to be conducted consistent with the stated purpose of insurer liquidation proceedings, which under continuing law is the protection of the interests of insureds, claimants, creditors, and the public generally, with minimum interference with the normal prerogatives of the owners and managers of insurers. The proceedings must also be conducted in a manner designed to conserve assets, limit liquidation expenses, and avoid any assessment of shares of a deficiency.

Under the bill, the liquidator must attempt to transfer policies or certificates of the liquidating fraternal benefit society by way of assignment, assumption, or other means to another society, whether domestic or foreign. But, no society is obligated to accept a transfer from a liquidating society. If no society will accept such a transfer, the liquidator must attempt to transfer the policies or certificates to another type of insurer.

Upon the effective date of a transfer to an insurer that is not a fraternal benefit society and in consideration for the transfer, each member of the society and owner of a policy or certificate are deemed to agree to both of the following, and the assuming insurer must endorse the policy or certificate accordingly:

- That any terms of an insurance policy or certificate providing for the maintenance of the society's solvency or subjecting the policy or certificate to the bylaws of the society are void;
- Such other changes determined by the liquidator to be necessary to effectuate the transfer.

¹ R.C. 3921.102; R.C. 3903.81, 3921.01, and 3921.101, not in the bill; and [Novation](#), which is available at the Legal Information Institute's website: law.cornell.edu.

Any transfer constitutes a novation of the liquidating fraternal benefit society's certificates effective upon the date of transfer.²

Assessments

Under continuing law, a society must provide in its laws that, if its reserves as to any class of certificates become impaired, the board of directors may require the certificate owners pay to the society an assessment in the amount of the owner's equitable proportion of the deficiency.

The bill makes three changes to these provisions. First, it changes the time by which the society must notify the Superintendent of its plan to impose an assessment from 30 days prior to the assessment to 90 days prior. Second, it allows the society to impose the assessment following the notice period only if the assessment has been duly adopted by the board in accordance with the law governing assessments and has not been disapproved by the Superintendent. The Superintendent may allow the assessment to be imposed at an earlier date than the date identified in the notice. And third, it replaces the current term "indebtedness" with the phrase "assessment of shares of a deficiency."³

HISTORY

Action	Date
Introduced	02-16-22

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² R.C. 3921.32 and 3921.19(D); R.C. 3903.02, 3903.31, and 3903.42.

³ R.C. 3921.19(D) and (E).