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CHAPTER 38.

 FRATERNAL BENEFIT SOCIETIES

ARTICLE 1.

 STRUCTURE AND PURPOSE

**SECTION 38‑38‑10.** Fraternal benefit society defined.

Any incorporated society, order, or supreme lodge, without capital stock, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter, is a fraternal benefit society.

**SECTION 38‑38‑20.** Lodge system operating requirements; lodges for children.

(A) A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its bylaws, rules, and ritual. Subordinate lodges must be required by the bylaws of the society to hold regular meetings at least once in each month in furtherance of the purposes of the society.

(B) A society may, at its option, organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges may not be required of these children, nor shall these children have a voice or vote in the management of the society.

**SECTION 38‑38‑30.** Representative form of government requirements.

A society has a representative form of government when:

(1) it has a supreme governing body constituted in one of the following ways:

(a) the supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society’s bylaws. A society may provide for election of delegates by mail. The elected delegates constitute a majority in number and may not have less than two‑thirds of the votes and not less than the number of votes required to amend the society’s bylaws. The assembly must be elected and shall meet at least once every four years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society’s bylaws; or

(b) the supreme governing body is a board composed of persons elected by the members, either directly or by the representatives in intermediate assemblies, and other persons prescribed in the society’s bylaws. A society may provide for election of the board by mail. Each term of a board member may not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the society’s bylaws. Those persons elected to the board shall constitute a majority in number and not less than the number of votes required to amend the society’s bylaws. A person filling the unexpired term of an elected board member is considered an elected member. The board shall meet at least quarterly to conduct the business of the society.

(2) the officers of the society are elected either by the supreme governing body or by the board of directors;

(3) only benefit members are eligible for election to the supreme governing body and the board of directors; and

(4) each voting member has one vote; a vote may not be cast by proxy.

**SECTION 38‑38‑40.** Definitions.

Whenever used in this chapter:

(1) “Benefit contract” means the agreement for provision of benefits authorized by this chapter, as that agreement is described in this chapter.

(2) “Benefit member” means an adult member who is designated by the bylaws or rules of the society to be a benefit member under a benefit contract.

(3) “Certificate” means the document issued as written evidence of the benefit contract.

(4) “Director” means the Director of the Department of Insurance of this State.

(5) “Bylaws” means the society’s articles of incorporation, constitution, and bylaws, however designated.

(6) “Lodge” means subordinate member units of the society, known as camps, courts, councils, branches, or by any other designation.

(7) “Premiums” means premiums, rates, dues, or other required contributions, by whatever name known, which are payable under the certificate.

(8) “Rules” means all rules, regulations, or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.

(9) “Society” means fraternal benefit society, unless otherwise indicated.

**SECTION 38‑38‑50.** Operation for benefit of members; power to adopt bylaws and rules.

(A) A society shall operate for the benefit of members and their beneficiaries by:

(1) providing benefits as specified in Section 38‑38‑310; and

(2) operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members, which also may be extended to others.

These purposes may be carried out directly by the society or indirectly through subsidiary corporations or affiliated organizations.

(B) Every society has the power to adopt bylaws and rules for the government of the society, the admission of its members, and the management of its affairs. It has the power to change, alter, add to, or amend the bylaws and rules and has other powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

ARTICLE 3.

 MEMBERSHIP

**SECTION 38‑38‑110.** Membership provisions in bylaws or rules.

(A) A society shall specify in its bylaws or rules:

(1) eligibility standards for each and every class of membership, provided that if benefits are provided on the lives of children, the minimum age for adult membership must be set at not less than age fifteen and not greater than age twenty‑one;

(2) the process for admission to membership for each membership class; and

(3) the rights and privileges of each membership class, provided that only benefit members have the right to vote on the management of the insurance affairs of the society.

(B) A society also may admit social members who shall have no voice or vote in the management of the insurance affairs of the society.

(C) Membership rights in the society are personal to the member and are not assignable.

**SECTION 38‑38‑120.** Principal place of business; publication of required notice; annual statement of condition; grievance procedure.

(A) The principal place of business and primary executive, administrative, and home offices and all original books and records of a domestic society must be located and maintained in this State. The meetings of its supreme governing body may be held in a state, district, province, or territory in which the society has at least one subordinate lodge, or in another location as determined by the supreme governing body, and all business transacted at these meetings is as valid in all respects as if these meetings were held in this State. The minutes of the proceedings of the supreme governing body and of the board of directors must be in the English language.

(B)(1) A society may provide in its bylaws for an official publication in which a notice, report, or statement required by law to be given to members, including notice of election, may be published. These required reports, notices, and statements must be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member must be deemed to be mailed to all members at the same address, unless a member requests a separate copy.

(2) Not later than June first of each year, a synopsis of the society’s annual statement providing an explanation of the facts concerning the condition of the society must be printed and mailed to each benefit member of the society, or the synopsis may be published in the society’s official publication.

(C) A society may provide in its bylaws or rules for grievance or complaint procedures for members.

**SECTION 38‑38‑130.** Liability of officers for benefit payments; civil action expense indemnification; liability insurance coverage for officers; cause of action against officers.

(A) The officers and members of the supreme governing body or a subordinate body of a society are not personally liable for the payment of any benefits provided by a society. The payment is payable only out of the funds of the society and in a manner provided by its constitution and bylaws.

(B) A person may be indemnified and reimbursed by a society for expenses reasonably incurred by, and liabilities imposed upon, that person in connection with or arising out of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat of them, in which the person may be involved by reason of the fact that he is or was a director, officer, employee, or agent of the society or of a firm, corporation, or an organization which he served in a capacity at the request of the society. A person may not be indemnified or reimbursed (1) in relation to any matter in the action, suit, or proceeding as to which he is finally adjudged to be or to have been guilty of breach of a duty as a director, officer, employee, or agent of the society, or (2) in relation to any matter in the action, suit, or proceeding, or threat of them, which has been made the subject of a compromise settlement unless, in either (1) or (2) of this subsection, the person acted in good faith for a purpose the person reasonably believed to be in, or not opposed to, the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that his conduct was unlawful. The determination whether the conduct of the person meets the standard required in order to justify indemnification and reimbursement in relation to any matter described in (1) or (2) of this subsection may be made only by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of no contest, as to that person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The right of indemnification and reimbursement is not exclusive of other rights to which the person may be entitled as a matter of law and inures to the benefit of his heirs, executors, and administrators.

(C) A society is empowered to purchase and maintain insurance 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 any liability asserted against the person and incurred by him in that capacity or arising out of his status as such, whether or not the society would have the power to indemnify the person against liability under this section.

(D) A director, an officer, employee, a member, or volunteer of a society serving without compensation is not liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of that person for the society, unless the act or omission involved wilful or wanton misconduct.

**SECTION 38‑38‑140.** Waiver of bylaw provisions.

The bylaws of the society may provide that no subordinate body or any of its subordinate officers or members has the power or authority to waive any of the provisions of the bylaws of the society. This provision is binding on the society and every member and beneficiary of a member.

ARTICLE 5.

 GOVERNANCE

**SECTION 38‑38‑210.** Requirements for formation of domestic society.

A domestic society organized on or after the effective date of this chapter must be formed as follows:

(1) Seven or more citizens of the United States, a majority of whom are citizens of this State, who desire to form a fraternal benefit society may make, sign, and acknowledge articles of incorporation before an officer competent to take acknowledgment of deeds. The articles of incorporation shall state:

(a) the proposed corporate name of the society, which may not so closely resemble the name of a society or an insurance company as to be misleading or confusing;

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

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

(2) The articles of incorporation, certified copies of the society’s bylaws and rules, copies of all proposed forms of certificates, applications, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year must be filed with the director or his designee, who may require further information he considers necessary. The bond with sureties approved by the director or his designee must be in an amount of not less than three hundred thousand dollars nor more than one million five hundred thousand dollars, as required by the director or his designee. All documents filed must be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the director or his designee shall certify, retain, and file the articles of incorporation, and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as provided in this chapter.

(3) A preliminary certificate of authority granted under the provisions of this section is not valid after one year from its date or after any further period, not exceeding one year, as may be authorized by the director or his designee upon cause shown, unless the five hundred applicants required have been secured and the organization has been completed as provided in this chapter. The charter and all other proceedings under the charter become null and void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society has completed its organization and received a certificate of authority to do business as provided in this chapter.

(4) Upon receipt of a preliminary certificate of authority from the director or his designee, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount collected. A society shall not incur liability other than for the return of the advance premium, issue a certificate, or pay or allow, or offer or promise to pay or allow, a benefit to a person until:

(a) actual bonafide applications for benefits have been secured on not less than five hundred applicants, and any necessary evidence of insurability has been furnished to and approved by the society;

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

(c) there has been submitted to the director or his designee, under oath of the president or secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted, and premiums; and

(d) it has been shown to the director or his designee by sworn statement of the treasurer, or corresponding officer of the society, that at least five hundred applicants have each paid in cash at least one regular monthly premium as provided in this chapter, which premiums in the aggregate must equal at least one hundred fifty thousand dollars. The advance premiums must be held in trust during the period of organization, and if the society has not qualified for a certificate of authority within one year, the premiums must be returned to the applicants.

(5) The director or his designee may make any examination and require any further information as he considers advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the director or his designee shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to Section 38‑38‑550 and other applicable provisions of this chapter. The certificate of authority is prima facie evidence of the existence of the society as of the date of the certificate. The director or his designee shall cause a record of the certificate of authority to be made. A certified copy of this record may be given in evidence with like effect as the original certificate of authority.

(6) An incorporated society authorized to transact business in this State at the time this chapter becomes effective is not required to reincorporate.

**SECTION 38‑38‑220.** Amendment of bylaws; notice to director.

(A) A domestic society may amend its bylaws, in accordance with the provisions of its bylaws, by action of its supreme governing body at a regular or special meeting or, if its bylaws provide, by referendum. The referendum may be held in accordance with the provisions of its bylaws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges. A society may provide for voting by mail. An amendment submitted for adoption by referendum may not be adopted unless, within six months from the date of submission, a majority of the members voting have signified their consent to the amendment by one of the methods specified.

(B) An amendment to the bylaws of a domestic society may not take effect unless approved by the director or his designee who shall approve the amendment if he finds that it has been adopted and is not inconsistent with any requirement of the laws of this State or with the character, objects, and purposes of the society. The approval or disapproval of the director or his designee must be forwarded in writing and mailed to the secretary or corresponding officer of the society at its principal office. If the director or his designee disapproves the amendment, the reasons for the disapproval must be stated in the written notice.

(C) Within ninety days from approval by the director or his designee, all amendments, or a synopsis of the amendments, must be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of an officer of the society or of anyone authorized by it to mail amendments or synopses, stating facts which show that the amendments or synopses have been addressed and mailed, is prima facie evidence that the amendments or synopses have been furnished the addressee.

(D) Every foreign or alien society authorized to do business in this State must file with the director or his designee a certified copy of all amendments of, or additions to, its bylaws within ninety days after the enactment of the bylaws or additions to the bylaws.

(E) Printed copies of the bylaws as amended, certified by the secretary or corresponding officer of the society, are prima facie evidence of the legal adoption of the amended bylaws.

**SECTION 38‑38‑230.** Not‑for‑profit institutions for benefit of members.

A society may create, maintain, and operate or may establish organizations to operate not‑for‑profit institutions to further the purposes permitted by Section 38‑38‑50(A)(2). These institutions may furnish services free or at a reasonable charge. Real or personal property owned, held, or leased by the society for this purpose must be reported in every annual statement but is not allowed as an admitted asset of the society.

**SECTION 38‑38‑240.** Reinsurance.

(A) A domestic ceding society must comply with Section 38‑9‑200, but the society may not reinsure substantially all of its insurance in force without the written permission of the director or his designee.

(B) Notwithstanding subsection (A) of this section, a domestic society may reinsure the risks of another society in a consolidation, merger, or assumption reinsurance transaction approved by the director or his designee.

**SECTION 38‑38‑250.** Consolidation or merger of domestic societies.

(A) A domestic society may consolidate or merge with another society by complying with the applicable provisions of Chapter 21 of this title and Regulation 69‑14. It shall file with the director or his designee:

(1) the information required by Regulation 69‑14;

(2) a certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(3) a sworn statement by the president and secretary or corresponding officers of each society showing the financial condition the societies on a date fixed by the director or his designee, but not earlier than December thirty‑first next preceding the date of the contract;

(4) a certificate of the officers, verified by the respective oaths, that the consolidation or merger has been approved by a two‑thirds vote of the supreme governing body of each society; this vote must be conducted at a regular or special meeting of each body or, if the society’s bylaws permit, by mail; and

(5) evidence that, at least sixty days before the action of the supreme governing body of each society, the text of the contract was furnished to all members of each society either by mail or by publication in full in the official publication of each society.

(B) If the director or his designee finds that the transaction is in conformity with the provisions of this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the director or his designee shall approve the transaction and issue a certificate to that effect. Upon this approval, the contract is in full force and effect, unless a society which is a party to the contract is incorporated under the laws of another state or territory. In that event, the consolidation or merger does not become effective unless and until it has been approved as provided by the laws of that other state or territory and a certificate of that approval has been filed with the director or his designee of this State. If the laws of the other state or territory contain no such provision, then the consolidation or merger does not become effective unless and until it has been approved by the director of insurance, or equivalent official, of that state or territory and a certificate of the approval has been filed with the director or his designee of this State.

(C) Upon the consolidation or merger becoming effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every species of property, real, personal, or mixed, and things in action belonging to the same are vested in the society resulting from or remaining after the consolidation or merger without another instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to a real estate or interest in real estate, vested under the laws of this State in any of the societies consolidated or merged does not revert, nor is in any way impaired, by reason of the consolidation or merger but vests absolutely in the society resulting from or remaining after the consolidation or merger.

(D) The affidavit of an officer of the society or of anyone authorized by it to mail a notice or document, stating that the notice or document has been duly addressed and mailed, is prima facie evidence that the notice or document has been furnished the addressees.

**SECTION 38‑38‑260.** Reorganization into mutual life insurer.

A domestic fraternal benefit society may reorganize into a mutual life insurer. The reorganized fraternal benefit society must comply with all of the requirements of this title pertaining to the licensure and financial requirements for mutual life insurers and any other applicable provisions of this title. The plan of reorganization shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The plan of reorganization must contain the applicable information outlined in Section 38‑19‑1130 and must comply with all requirements of this title governing conversions of mutual insurers. The two‑thirds vote of all members of the supreme governing body at a regular or special meeting is necessary for approval of the plan. No such reorganization shall be effective until approved by the director or his designee in accordance with the procedures and the criteria set forth in Section 38‑19‑1140 or such other procedures as the director or his designee shall prescribe.

ARTICLE 7.

 CONTRACTUAL BENEFITS

**SECTION 38‑38‑310.** Contractual benefits allowed; persons covered.

(A) A society may provide the following contractual benefits in any form:

(1) death;

(2) endowment;

(3) annuity;

(4) temporary or permanent disability;

(5) hospital, medical, or nursing;

(6) monument or tombstone benefits to the memory of deceased members; and

(7) other benefits as authorized for life insurers under this title, provided the benefit is:

(a) offered in compliance with the requirements of this title, and

(b) consistent with this chapter.

(B) A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in subsection (A), consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person.

**SECTION 38‑38‑320.** Designation and change of beneficiary; payment of death benefits.

(A) The owner of a benefit contract has the right at all times to change the beneficiary or beneficiaries in accordance with the bylaws or rules of the society, unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society shall provide that no revocable beneficiary has, or can obtain, a vested interest in the proceeds of a certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.

(B) If at the death of a person insured under a benefit contract there is no lawful beneficiary to whom the proceeds are payable, the amount of the benefit, except to the extent that funeral benefits may be paid as provided in this chapter is payable to the personal representative of the deceased insured. If the owner of the certificate is other than the insured, the proceeds must be paid to that owner.

**SECTION 38‑38‑330.** Attachment, garnishment or seizure of benefits.

Money or other benefit, charity, relief, or aid to be paid, provided, or rendered by a society is not liable to attachment, garnishment, or other process, nor may it be seized, taken, appropriated, or applied by legal or equitable process or operation of law to pay a debt or liability of a member or beneficiary or another person who may have a right to it, either before or after payment by the society.

**SECTION 38‑38‑340.** Benefit certificates; subsequent bylaw changes; impaired reserves; evidence of terms and conditions; approval of certificates by director; transfer of ownership on gaining majority; assignment.

(A) Every society authorized to do business in this State shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided by the benefit contract. The certificate, riders or endorsements attached to the certificate, the bylaws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each of these items constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate must so state. A copy of the application for insurance and declaration of insurability, if any, must be endorsed upon or attached to the certificate. All statements on the application are representations and not warranties. A waiver of this provision is void.

(B) Any changes, additions, or amendments to the bylaws of the society made or enacted subsequent to the issuance of the certificate bind the owner and the beneficiaries and govern and control the benefit contract in all respects as though the changes, additions, or amendments had been made before and were in force at the time of the application for insurance, except that a change, addition, or amendment does not destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

(C) A person upon whose life a benefit contract is issued before attaining the age of majority is bound by the terms of the application and certificate and by all the bylaws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(D) A society must provide in its bylaws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there be paid by the owner to the society the amount of the owner’s equitable proportion of the deficiency as ascertained by its board and that if the payment is not made either (1) it must stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates, or (2) instead of or in combination with (1), the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election in which alternative is to be presumed if no election is made. This provision must be disclosed in all certificates filed and approved by the director or his designee on or after the effective date of this chapter.

(E) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, must be received in evidence of the terms and conditions of the documents.

(F) A certificate may not be delivered or issued for delivery in this State unless a copy of the form has been filed with and approved by the director or his designee in the manner provided for like policies issued by life and health insurers in this State. Every life, accident and sickness, health, or disability insurance certificate and every annuity certificate issued on or after the effective date of this chapter must be filed with and approved by the director or his designee and shall meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life and health insurers in this State, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificate also shall contain a provision stating the premiums which are payable under the certificate. If the bylaws of the society provide for expulsion or suspension of a member, the certificate also shall contain a provision that a member expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership of insurance, has the privilege of maintaining the certificate in force by continuing payment of the required premium.

(G) Benefit contracts issued on the lives of persons below the society’s minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer and may provide in all other respects for the regulation, government, and control of the certificates and all incidental and connected rights, obligations, and liabilities. Ownership rights before the transfer must be specified in the certificate.

(H) A society may specify the terms and conditions on which benefit contracts may be assigned.

**SECTION 38‑38‑350.** Application of laws of State.

(A) For certificates issued before the effective date of this chapter, the value of every paid‑up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted must comply with the provisions of law applicable immediately before the effective date of this chapter.

(B) For certificates issued on or after the effective date of this chapter, the value of every paid‑up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted must comply with the provisions of law applicable to life insurers issuing policies containing like benefits in this State.

ARTICLE 9.

 FINANCES

**SECTION 38‑38‑410.** Authorized investments.

A society shall invest its funds only in investments authorized by the laws of this State for the investment of assets of life insurers and subject to the limitations on those investments. A foreign or alien society permitted or seeking to do business in this State which invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated shall comply with the requirements of this section for the investment of funds.

**SECTION 38‑38‑420.** Assets to be held for use and benefit of society; special funds and accounts.

(A) All assets must be held, invested, and disbursed for the use and benefit of the society, and a member or beneficiary may not have or acquire individual rights in the assets or become entitled to an apportionment on the surrender of a part of the assets, except as provided in the benefit contract.

(B) A society may create, maintain, invest, disburse, and apply a special fund or funds necessary to carry out a purpose permitted by the bylaws of the society.

(C) A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to the provisions of law regulating life insurers establishing these accounts and issuing these contracts. To the extent the society considers it necessary in order to comply with applicable federal or state laws or regulations issued pursuant to federal or state laws, the society may (1) adopt special procedures for the conduct of the business and affairs of a separate account; (2) for persons having beneficial interests in the separate accounts, provide special voting and other rights including, without limitation, special rights and procedures relating to investment policy, investment advisory services, selection of certified public accounts, and selection of a committee to manage the business and affairs of the account; and (3) issue contracts on a variable basis, in which case subsections (B) and (D) of Section 38‑38‑340 do not apply.

**SECTION 38‑38‑430.** Governance by chapter.

Societies and associations described in Section 38‑38‑730(A)(8) are governed by this chapter and are exempt from all other provisions of the insurance laws of this State, unless expressly designated or specifically made applicable by this chapter.

**SECTION 38‑38‑440.** Designation as charitable and benevolent institution.

Every society organized or licensed under this chapter is declared to be a charitable and benevolent institution, and all of its funds are exempt from every state, county, district, municipal, and school tax other than taxes on real estate not occupied by the society in carrying on its business.

ARTICLE 11.

 REGULATION

**SECTION 38‑38‑510.** Standards of valuation for certificates; maintenance of excess reserves.

(A) Standards of valuation for certificates issued before the effective date of this chapter are those provided by the laws applicable immediately before the effective date of this chapter.

(B) The minimum standards of valuation for certificates issued on or after the effective date of this chapter are based upon the tables, valuation methods and standards, including interest assumptions, specified in the laws of this State applicable to life and health insurers issuing policies containing like benefits.

(C) The director or his designee may, in his discretion, accept other standards for valuation if he finds that the reserves produced will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard prescribed in this section. The director or his designee may, in his discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by a society authorized to do business in this State.

(D) A society, with the consent of the director of insurance, or similar official, of the state of domicile of the society and under conditions, if any, which the director may impose, may establish and maintain reserves on its certificates in excess of the required reserves, but the contractual rights of a benefit member shall not be affected.

**SECTION 38‑38‑520.** Required statements and reports; penalties.

(A) Every society annually shall file with the department by March first, in the form and detail the director or his designee prescribes, a statement showing the business standing and financial condition of the society on December thirty‑first of the preceding year, except that upon timely written request by the chief managing agent or officer setting forth reasons why the statement cannot be filed within the time provided, the director or his designee may grant in writing an extension of filing time for not more than thirty days. This statement must conform substantially to the form of statement adopted by the National Association of Insurance Commissioners. Unless the director or his designee provides otherwise, the annual statement is to be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners.

(B) The director or his designee may require every society to file quarterly reports and additional information considered necessary to enable the director or his designee to carry out his duties under this chapter. The reports and information must be furnished in the time and manner prescribed by the director or his designee.

(C) On or before March first, as part of the annual statement, each society shall file with the director or his designee a valuation of its certificates in force on December thirty‑first of the previous calendar year. However, the director or his designee, in his discretion for cause shown, may extend the time for filing the valuation for not more than two calendar months. The valuation and underlying data must be certified by a qualified actuary or, at the expense of the society, verified by a qualified actuary of or retained by the Department of Insurance of the state of domicile of the society.

(D) A society neglecting to file the annual statement in the form and within the time provided by this section is subject to the penalties set forth in Section 38‑2‑10.

**SECTION 38‑38‑530.** Renewal of licenses; fees; license as prima facie evidence.

The authority of a fraternal benefit association authorized to transact business in this State which complies with this chapter terminates the last day of February. However, a license continues in effect until a new license is issued or specifically refused. For each license or renewal the association shall pay the department one thousand dollars every two years. However, if the association has less than two hundred members, it shall pay the department a fee of one hundred dollars every two years for its license or renewal. A certified copy or duplicate of the license is prima facie evidence that the licensee is a fraternal benefit association within the meaning of this chapter.

**SECTION 38‑38‑540.** Examination; notice of examination.

(A) The director or his designee may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this State in the same manner as authorized for examination of domestic, foreign, or alien insurers. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers are also applicable to the examination of societies.

(B) The provisions of Section 38‑13‑20(D) shall apply with regard to examinations.

**SECTION 38‑38‑550.** Authorization to transact business in State; what to file with director.

A society may not transact business in this State without a certificate of authority issued by the director or his designee. A society desiring admission to, or wishing to continue to transact business in this State, shall comply with the requirements and limitations of this chapter. A society may be authorized to transact, or continue to transact, business in this State upon filing with the director or his designee:

(1) a certified copy of its articles of incorporation;

(2) a copy of its bylaws, certified by its secretary or corresponding officer;

(3) a power of attorney to the director or his designee as prescribed in Section 38‑38‑710;

(4) a statement of its business under the oath of its president and secretary or corresponding officers in a form prescribed by the director or his designee, verified by an examination made by the supervising insurance official of its home state or other state, territory, province, or country, satisfactory to the director or his designee;

(5) certification from the proper official of this State or its home state, territory, province, or country that the society is legally incorporated, and that, for a foreign or alien society, it is licensed to transact business there and to write the lines of business for which authority is being requested;

(6) copies of its certificate forms;

(7) evidence that its assets are invested in accordance with the provisions of this chapter;

(8) evidence that its name is not substantially similar to another society authorized to do business in this State;

(9) evidence that the society’s surplus complies with the amount required by Section 38‑9‑20. A society, if possessed of surplus on December 31, 1998, that was in compliance with the law at that time but is less than the minimum required to be maintained by Section 38‑9‑20, shall maintain not less than the amount of surplus stated in its 1998 annual statement. If the surplus of the society is reduced to less than eighty percent of the amount shown in its 1998 annual statement, the society is considered delinquent, and the director or his designee may begin delinquency proceedings as provided by Chapter 27 of this title. If the surplus of the society is increased to an amount greater than the amount possessed on December 31, 1998, eighty percent of that greater amount of surplus, or the minimum amount required to be maintained by Section 38‑9‑20, whichever amount is the lesser, must be maintained after the increase, and if it is not maintained, the society is considered delinquent, and the director or his designee may begin delinquency proceedings as provided by Chapter 27 of this title;

(10) evidence that the society’s deposit complies with the amount required by Section 38‑9‑80 and Regulation 69‑15, Section 38‑9‑100, or Section 38‑9‑110;

(11) evidence that the society’s reserves are adequate for the protection of certificate holders of this State;

(12) evidence that the society’s directors and officers are competent, trustworthy, and have a good business reputation and that none of the directors and officers has been convicted of a crime in any jurisdiction involving fraud, dishonesty, or like moral turpitude or convicted of violating an insurance statute of any jurisdiction;

(13) evidence that the society has employed one or more persons residing in this State with adequate experience and training to manage properly its business and affairs;

(14) evidence that the society has not entered into any management contract, agency agreement, or other agreement which may materially affect its financial condition so as to render its proceedings hazardous to the public or to its certificate holders;

(15) evidence that the society has made adequate reinsurance arrangements if required;

(16) evidence that the society’s proposed method of operation, when considered in light of its financial condition and the absence of any prior operating experience, will not likely render its proceedings hazardous to the public or to its policyholders;

(17) an affidavit of its president or other chief officer that it has not violated this title in the past year and that it accepts the terms and obligations of this title as part of the consideration for license;

(18) evidence that the society is safe and solvent;

(19) evidence that society’s dealings are fair and equitable;

(20) evidence that the society conducts its business in a manner not contrary to the public interest; and

(21) any other information the director or his designee considers necessary.

The above requirements are subject to retaliatory provisions, if applicable, pursuant to Section 38‑7‑90. If subsequently the director or his designee is of the opinion that a condition exists which would have prohibited him from issuing the original certificate of authority or license to the society, then that condition also constitutes a ground for license revocation under Section 38‑5‑120.

**SECTION 38‑38‑560.** Operating deficiencies of domestic society; notice and correction; voluntarily discontinuing business.

(A) When the director or his designee upon investigation finds that a domestic society has exceeded its powers, has failed to comply with a provision of this chapter, is not fulfilling its contracts in good faith, has a membership of less than four hundred after an existence of one year or more, or is conducting business fraudulently or in a manner hazardous to its members, creditors, or the public, the director or his designee shall notify the society of the deficiency or deficiencies and state in writing the reasons for his dissatisfaction. The director or his designee simultaneously shall issue a written notice to the society requiring that the deficiencies which exist be corrected. After this notice the society has thirty days in which to comply with the director or his designee’s request for correction, and if the society fails to comply, the director or his designee may take action as necessary and appropriate under Chapter 26 or 27 of this title or Section 38‑38‑570.

(B) The director or his designee may take action as necessary and appropriate under this section as respects a domestic society which voluntarily shall determine to discontinue business.

**SECTION 38‑38‑570.** Operating deficiencies of foreign society; notice and correction; hearing; revocation of authority to do business; continuation of contracts.

(A) When the director or his designee upon investigation finds that a foreign or alien society transacting or applying to transact business in this State (1) has exceeded its powers, (2) has failed to comply with any of the provisions of this chapter, (3) is not fulfilling its contracts in good faith, or (4) is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public, the director or his designee shall notify the society of the deficiencies and state in writing the reasons for his dissatisfaction. The director or his designee shall issue a written notice at once to the society requiring that the deficiencies which exist are corrected. The director shall issue a written notice to the society the nature of the alleged violations committed not less than thirty days before revoking its authority to do business in this State. The director or his designee must specify in the notice the particulars of the alleged violation of the law or its charter or grounds for revocation and an opportunity must be offered to the society for a hearing. The director or his designee may, in lieu of license revocation or suspension provided in Section 38‑2‑10, impose a monetary penalty as provided in Section 38‑2‑10 for each violation or failure of compliance or refusal to submit or perform as prescribed therein. Series of acts by a society which merely implement a basic violation and are not separate and distinct violations of an independent nature are considered to be a part of the basic violation and only one penalty may be imposed thereon. If on the named date the society does not present good and sufficient reason why its authority to do business in this State should not be suspended, revoked, or refused, the director or his designee may suspend or refuse the license of the society to do business in this State until satisfactory evidence is furnished to the director or his designee that the suspension or refusal should be withdrawn, or the director or his designee may revoke the authority of the society to do business in this State.

(B) Nothing contained in this section may be construed as preventing any society from continuing in good faith all contracts made in this State during the time the society was legally authorized to transact business in this State.

**SECTION 38‑38‑580.** Injunctions.

Whenever the director or his designee believes, from evidence satisfactory to him, that a society is violating or about to violate this title, the director or his designee may, through the Attorney General or upon his own initiative, cause a complaint or petition for an injunction against a domestic, foreign, or alien society or lodge of a domestic, foreign, or alien society to be filed in the court of common pleas of Richland County to enjoin and restrain the society from continuing the violation, engaging in the violation, or doing any act in furtherance of the violation. The court has jurisdiction of the proceeding and has the power to make and enter an order or judgment awarding preliminary or final injunctive relief as in its judgment is proper.

**SECTION 38‑38‑590.** Licensing of agents.

Agents of societies must be licensed in accordance with and comply with the provisions of Chapter 43 and any other applicable provision of this title.

**SECTION 38‑38‑600.** Applicability of general insurance provisions; membership requirements exception.

Every society authorized to do business in this State is subject to Chapters 55, 57, and 59 of this title. However, nothing in Chapters 55, 57, and 59 of this title may be construed as applying to or affecting the right of a society to determine its eligibility requirements for membership, or be construed as applying or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society.

ARTICLE 13.

 MISCELLANEOUS PROVISIONS

**SECTION 38‑38‑710.** Appointment of director as legal attorney for service of process.

Every society shall, before being licensed, appoint in writing the director and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it must be served and in this writing shall agree that lawful process against it which is served upon this attorney is of the same legal force and validity as if served upon the society and that the authority continues in force so long as any liability remains outstanding in the State. Copies of the appointment, certified by the director, are sufficient evidence of the appointment and must be admitted in evidence with the same force and effect as the original might be admitted. Service upon a society must also comply with the requirements of Section 15‑9‑270 and any other applicable provisions of Title 15.

**SECTION 38‑38‑720.** False statement or misrepresentation with intent to defraud; penalties.

Any person or insurer who makes a false statement or misrepresentation, and any other person knowingly, with an intent to injure, defraud, or deceive, who assists, abets, solicits, or conspires with such person or insurer to make a false statement or misrepresentation, is guilty of a:

(1) misdemeanor, for a first offense violation, if the amount of the economic advantage benefit received is less than one thousand dollars. Upon conviction, the person must be punished by a fine not to exceed five hundred dollars or by imprisonment not to exceed thirty days;

(2) misdemeanor, for a first offense violation, if the amount of the economic advantage benefit received is one thousand dollars or more. Upon conviction, the person must be punished by a fine not to exceed fifty thousand dollars or by imprisonment for a term not to exceed three years, or by both such fine and imprisonment;

(3) felony, for a second or subsequent violation, regardless of the amount of the economic advantage benefit received. Upon conviction, the person must be punished by a fine not to exceed fifty thousand dollars or by imprisonment for a term not to exceed ten years, or by both such fine and imprisonment.

Any person or insurer convicted under this section must be ordered to make full restitution to the victim or victims for any economic advantage or benefit which has been obtained by the person or insurer as a result of that violation.

**SECTION 38‑38‑730.** Societies and associations exempted from provisions of chapter.

(A) This chapter does not apply to the following:

(1) Associations which limit their memberships to one hazardous occupation.

(2) Similar societies which do not issue insurance certificates.

(3) An association of local lodges of an association.

(4) The ladies’ societies or ladies’ auxiliaries to these societies or associations, doing business in this State on May 12, 1947, which provide death benefits not exceeding five hundred dollars to a person or disability benefits not exceeding three hundred dollars in one year to one person, or both.

(5) Contracts or reinsurance business on these plans in this State.

(6) Domestic associations which limit their memberships to the employees of a particular city or town or designated firm, business, house, or corporation.

(7) Domestic lodges, orders, or associations of a purely religious, charitable, and benevolent description which do not provide for a death benefit of more than one hundred dollars or for disability benefits of more than one hundred fifty dollars to one person in one year.

(8) An association, whether a fraternal benefit society or not, which was organized before 1880 and whose members are officers or enlisted, regular or reserve, active, retired, or honorably discharged members of the Armed Forces or Sea Services of the United States, and a principal purpose of which is to provide insurance and other benefits to its members and their dependents or beneficiaries.

(B) The director or his designee may require from a society or an association, by examination or otherwise, information that will enable the director or his designee to determine whether the society or association is exempt from the provisions of this chapter.

**SECTION 38‑38‑740.** Review of findings of director.

All decisions and findings of the director or his designee made under the provisions of this chapter are subject to review as set forth in Chapter 3 of this title.