

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0230

SENATE BILL NO. 44

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain investigative and enforcement procedures
2 regarding fraternal benefit societies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-37A-39 be amended to read as follows:

5 58-37A-39. In addition to the provisions contained in this chapter, the following chapters and
6 provisions of the South Dakota Code also apply to fraternal benefit societies, to the extent
7 applicable and not in conflict with the express provisions of this chapter and the reasonable
8 implications of this chapter:

9 (1) Chapter 47-6;

10 (2) Chapter 58-1;

11 (3) Chapter 58-2, with the exception of § 58-2-29;

12 (4) Chapter 58-3;

13 (5) Chapter 58-4;

14 (6) Chapter 58-5;

15 (7) ~~Section~~ Sections 58-6-8, 58-6-46, and 58-6-47;



1 (8) Chapters 58-15, 58-17, 58-17A, 58-17B, and 58-18;

2 (9) Chapter 58-29B;

3 (10) Chapter 58-30;

4 (11) Chapter 58-33;

5 (12) Chapters 58-17C and 58-33A.

6 Section 2. That § 58-37A-30 be repealed.

7 ~~58-37A-30. If the director upon investigation finds that a domestic society:~~

8 ~~(1) Has exceeded its powers;~~

9 ~~(2) Has failed to comply with any provision of this chapter;~~

10 ~~(3) Is not fulfilling its contracts in good faith;~~

11 ~~(4) Has a membership of less than four hundred after an existence of one year or more;~~

12 or

13 ~~(5) Is conducting business fraudulently or in a manner hazardous to its members,~~

14 ~~creditors, the public, or the business;~~

15 ~~the director shall notify the society of any deficiency and state in writing the reasons. The~~

16 ~~director shall at once issue a written notice to the society requiring that the deficiency be~~

17 ~~corrected. After this notice the society has a thirty-day period in which to comply with the~~

18 ~~director's request for correction, and if the society fails to comply the director shall notify the~~

19 ~~society of findings of noncompliance and require the society to show cause on a date named why~~

20 ~~it should not be enjoined from carrying on any business until the violation complained of is~~

21 ~~corrected, or why an action in quo warranto should not be commenced against the society.~~

22 ~~If on that date the society does not present good and sufficient reasons why it should not be~~

23 ~~enjoined or why this action should not be commenced, the director may present the facts relating~~

24 ~~to the injunction or this action to the attorney general who may commence an action to enjoin~~

1 ~~the society from transacting business or in quo warranto:~~

2 ~~—The court shall notify the officers of the society of a hearing. If after a full hearing it appears~~
3 ~~that the society should be enjoined or liquidated or a receiver appointed, the court shall enter the~~
4 ~~necessary order. No society so enjoined may do business until:~~

5 ~~—(1)—The director finds that the violation complained of has been corrected;~~

6 ~~—(2)—The costs of the action have been paid by the society if the court finds that the society~~
7 ~~was in default as charged;~~

8 ~~—(3)—The court has dissolved its injunction; and~~

9 ~~—(4)—The director has reinstated the certificate of authority.~~

10 ~~—If the court orders the society liquidated, it shall be enjoined from carrying on any further~~
11 ~~business, and the receiver of the society shall proceed at once to take possession of the books,~~
12 ~~papers, money, and other assets of the society and, under the direction of the court, proceed~~
13 ~~immediately to close the affairs of the society and to distribute its funds to those who are entitled.~~

14 ~~—No action under this section may be recognized in any court of this state unless brought by~~
15 ~~the attorney general upon request of the director. If a receiver is to be appointed for a domestic~~
16 ~~society, the court shall appoint the director as the receiver.~~

17 ~~—The provisions of this section relating to hearing by the director, action by the attorney~~
18 ~~general at the request of the director, hearing by the court, injunction and receivership are~~
19 ~~applicable to a society which voluntarily determines to discontinue business.~~

20 ~~—Domestic societies are also subject to the applicable provisions of chapter 58-29B of this title~~
21 ~~which are not inconsistent with this section.~~

22 Section 3. That § 58-37A-31 be repealed.

23 ~~—58-37A-31. If the director upon investigation finds that a foreign or alien society transacting~~
24 ~~or applying to transact business in this state:~~

- 1 ~~—(1)— Has exceeded its powers;~~
- 2 ~~—(2)— Has failed to comply with any of the provisions of this chapter;~~
- 3 ~~—(3)— Is not fulfilling its contracts in good faith; or~~
- 4 ~~—(4)— Is conducting its business fraudulently or in a manner hazardous to its members or~~
5 ~~creditors or the public;~~

6 ~~the director shall notify the society in writing of any deficiency and state in writing the reasons.~~
7 ~~The director shall at once issue a written order to the society requiring that the deficiency be~~
8 ~~corrected. After this order the society has a thirty-day period in which to comply with the~~
9 ~~director's order for correction, and if the society fails to comply, the director shall notify the~~
10 ~~society of his findings of noncompliance and require the society to show cause within ten days~~
11 ~~why its license should not be suspended, revoked, or refused. If on that date the society does not~~
12 ~~present good and sufficient reason why its authority to do business in this state should not be~~
13 ~~suspended, revoked, or refused, the director may suspend or refuse the license of the society to~~
14 ~~do business in this state until satisfactory evidence is furnished to the director that this suspension~~
15 ~~or refusal should be withdrawn or the director may revoke the authority of the society to do~~
16 ~~business in this state.~~

17 ~~— Nothing contained in this section may be construed as preventing any society from continuing~~
18 ~~in good faith all contracts made in this state during the time the society was legally authorized~~
19 ~~to transact business.~~

20 Section 4. That § 58-37A-32 be repealed.

21 ~~—58-37A-32. No application or petition for injunction against any domestic, foreign, or alien~~
22 ~~society, or lodge thereof, may be recognized in any court of this state unless made by the~~
23 ~~attorney general upon request of the director.~~