

1 **INSURERS REHABILITATION AND**
2 **LIQUIDATION**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: John Dougall**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Insurance Code to address rehabilitation and liquidation.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ deletes references to reinsurers in the provision addressing claim estimation;
- 13 ▶ deletes certain provisions related to commutations including references to an
- 14 arbitration panel reviewing commutations;
- 15 ▶ addresses payments by reinsurers; and
- 16 ▶ makes technical changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23 **31A-27-330.5**, as last amended by Chapter 185, Laws of Utah 1997

24 **31A-27-330.6**, as last amended by Chapter 105, Laws of Utah 2004

26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **31A-27-330.5** is amended to read:



28 **31A-27-330.5. Claim estimation.**

29 (1) (a) After the entry of a liquidation order, the liquidator may apply to the court for an
30 order authorizing the estimation of the liabilities owed by or to the insurer. The liquidator’s
31 application shall:

- 32 (i) identify the proposed method for estimating the liabilities; and
- 33 (ii) provide for reasonable participation in the estimation process of the claimant and
34 other affected parties~~[, including reinsurers]~~.

35 (b) The proof and allowance of liability, value, and due date of such a claim may be
36 estimated if:

- 37 (i) the proof, allowance, or adjudication of any contingent, unliquidated, or immature
38 claim owed by or to the insurer would unduly delay the administration of the liquidation; or
- 39 (ii) the administrative expense of processing and adjudicating the claim would be
40 unduly excessive when compared with the funds that are estimated to be available for
41 distribution with respect to the claim.

42 (c) An estimation made pursuant to this section:

- 43 (i) (A) shall be made in a commercially reasonable and actuarially sound manner~~[;]~~; or
44 (B) upon another accepted and verifiable method of determining, proving, and
45 allowing contingent, unliquidated, or immature claims with reasonable certainty; and
46 ~~[(ii) shall provide for reasonable participation of affected reinsurers, consistent with
47 this section; and]~~

48 ~~[(iii)]~~ (ii) may authorize the present value estimation of contingent, unliquidated, and
49 immature claims, including incurred but not reported losses, except that losses incurred but not
50 reported may only be based upon the certification of a member in good standing of the
51 American Academy of Actuaries.

52 (2) Contingent, unliquidated, and immature claims shall not share in any distribution to
53 creditors of an insurer under Section 31A-27-336 until the liability, value, and due date of the
54 claims have been proved, allowed, and adjudicated.

55 Section 2. Section **31A-27-330.6** is amended to read:

56 **31A-27-330.6. Reinsurance commutations and recoveries.**

57 (1) Notwithstanding Section 31A-27-330.5, when the insurer has been a party to a
58 reinsurance agreement~~[;]~~ this Subsection (1) applies.

59 ~~[(4)]~~ (a) The liquidator may negotiate a voluntary commutation and release of all
60 obligations arising from the ~~[agreements]~~ reinsurance agreement.

61 (b) (i) Subject to Subsection (1)(b)(ii), a commutation and release agreement
62 voluntarily entered into by the parties shall be:

63 (A) commercially reasonable;

64 (B) actuarially sound; and

65 (C) made in the best interests of the creditors of the insurer.

66 (ii) A commutation and release agreement voluntarily entered into by the parties that
67 exceeds \$100,000 shall be:

68 (A) reviewed by the court; and

69 (B) approved if the agreement meets the standards described in Subsection (1)(b)(i).

70 ~~[(2) At any time following a five-year period subsequent to the entry of the order of
71 liquidation, the liquidator may apply to the court, with notice to the other party, for an order
72 requiring that parties to the reinsurance agreement submit their commutation proposal to a
73 panel of three arbitrators.]~~

74 ~~[(3)(a) Venue for the arbitration shall be:]~~

75 ~~[(i) within the district of the liquidation court's jurisdiction; or]~~

76 ~~[(ii) such other location as may be agreed to by the parties.]~~

77 ~~[(b) (i) Upon the court's determination that commutation would be in the best interests
78 of the creditors of the liquidation estate, the court shall require that the liquidator and the other
79 party each appoint an arbitrator within 30 days.]~~

80 ~~[(ii) Within 30 days after appointment of the two arbitrators under Subsection (3)(b)(i),
81 the court shall appoint an independent, impartial, disinterested arbitrator qualified by actuarial
82 training in the insurance and reinsurance industry.]~~

83 ~~[(c) Within 60 days following the appointment of the third arbitrator under Subsection
84 (3)(b), the parties shall submit to the arbitration panel their commutation proposals and other
85 documents and information relevant to the determination of the parties' rights and obligations
86 under the reinsurance agreement to be commuted, including:]~~

87 ~~[(i) a written review of open claim files; and]~~

88 ~~[(ii) an actuarial estimate of incurred-but-not-reported losses.]~~

89 ~~[(d) (i) Within 60 days following the parties' submissions under Subsection (3)(c):]~~

90 ~~[(A) the arbitration panel shall issue an award specifying the general terms of a~~
91 ~~commercially reasonable and actuarially sound commutation and release agreement; and]~~

92 ~~[(B) the liquidator shall promptly submit the award to the court.]~~

93 ~~[(ii) The court shall confirm the arbitration panel's award absent proof of statutory~~
94 ~~grounds for vacating or modifying the award.]~~

95 ~~[(e) The time periods established in this Subsection (3) may be extended upon the~~
96 ~~consent of the parties or by order of the court, for good cause shown.]~~

97 ~~[(f) If the arbitration panel finds, upon request of either party, that payment of or~~
98 ~~enforcement of the arbitration panel's award would likely cause the insolvency of the affected~~
99 ~~reinsurer, the portion of the award related to outstanding and incurred but not reported losses~~
100 ~~may not be enforced and payment of the obligations may not be accelerated, except:]~~

101 ~~[(i) to the extent that the liquidator agrees to the payment, after consultation with the~~
102 ~~reinsurer's domiciliary commissioner; and]~~

103 ~~[(ii) on the liquidator's determination that enforcement of the award will not cause the~~
104 ~~reinsurer's insolvency.]~~

105 ~~[(g) Except as provided in Subsection (4), nothing in this section may be construed to~~
106 ~~supersede or impair any provision in a reinsurance agreement that establishes a commercially~~
107 ~~reasonable and actuarially sound method for valuing and commuting the obligations of the~~
108 ~~parties to the reinsurance agreement by providing in the contract the specific methodology to~~
109 ~~be used for valuing and commuting the obligations.]~~

110 ~~[(4) (a) A commutation provision is not effective if it is demonstrated to the court that~~
111 ~~the provision was entered into in contemplation of the insolvency of one or more of the~~
112 ~~parties.]~~

113 ~~[(b) A contractual commutation provision entered into within one year of the~~
114 ~~liquidation order of the insurer shall be rebuttably presumed to have been entered into in~~
115 ~~contemplation of insolvency.]~~

116 ~~[(5) Sections 31A-27-330 and 31A-27-330.5 and this section apply to liquidation~~
117 ~~proceedings that are pending on April 29, 1996, and to all future liquidations.]~~

118 (2) (a) The provisions of this chapter, including Section 31A-27-330.5, may not be
119 construed to authorize the liquidator or any other entity to compel payment from a reinsurer
120 that is not a life reinsurer on the basis of:

- 121 (i) estimated incurred but not reported losses or loss expenses; or
122 (ii) case reserves for unpaid losses and loss expenses, except with respect to case
123 reserves for unpaid losses or loss expenses allowed pursuant to Section 31A-27-331.
124 (b) For purposes of this Subsection (2), "case reserves" means a reserve:
125 (i) established by an insurer for financial reporting purposes; and
126 (ii) that represents reported unpaid losses, whether or not the insurer's liability is
127 certain.
128 (3) This chapter may not be construed to authorize the liquidator or any other entity to
129 compel payment from a life reinsurer on the basis of valuation reserves as established pursuant
130 to Chapter 17, Part 5, Standard Valuation Law.
131 (4) The obligation of a reinsurer to make payments to the insurer shall be determined
132 on the basis of reported claims that have been allowed pursuant to Section 31A-27-336.
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Legislative Review Note
as of 1-31-05 9:56 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0263

Insurers Rehabilitation and Liquidation

08-Feb-05

7:17 PM

AMENDED NOTE

State Impact

No fiscal impact.

Individual and Business Impact

This bill allows the statutory liquidator (the Insurance Commissioner) to determine claims of long duration but would remove the authority to compel payment of these estimated liabilities before an estate closed. Any fiscal impact will be dependent on circumstances associated with each action.

Office of the Legislative Fiscal Analyst