

Representative James A. Dunnigan proposes the following substitute bill:

**INSURERS REHABILITATION AND
LIQUIDATION**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: John Dougall

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ provides for mediation and arbitration;
- ▶ addresses what must be demonstrated by the liquidator in order to exercise the authority to seek an order to have the parties submit their commutation proposal to a panel of arbitrators; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



26 Section 1. Section 31A-27-330.6 is amended to read:

27 **31A-27-330.6. Reinsurance commutations.**

28 Notwithstanding Section 31A-27-330.5, when the insurer has been a party to a
29 reinsurance agreement[+] this section applies.

30 (1) (a) The liquidator may negotiate a voluntary commutation and release of all
31 obligations arising from the agreements.

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

34 (A) commercially reasonable;

35 (B) actuarially sound; and

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

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

39 (A) reviewed by the court; and

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

41 ~~[(2) At any time following a five-year period subsequent to the entry of the order of
42 liquidation]~~

43 (2) (a) At any time after an eight-year period beginning on the day on which an order of
44 liquidation is entered, the liquidator shall apply to the court, with notice to the other party, for
45 an order requiring the parties to the reinsurance agreement to enter into nonbinding mediation
46 to resolve any differences between the parties relating to a commutation and release of all
47 obligations relating to:

48 (i) open claim reserves; and

49 (ii) incurred but not reported claim reserves.

50 (b) Upon the request of the liquidator under this Subsection (2), the court shall appoint
51 a mediator to mediate a resolution of the differences between the parties.

52 (c) The expenses of the mediator shall be shared equally between the parties to the
53 reinsurance agreement.

54 (3) (a) Subject to Subsection (3)(b), the liquidator may apply to the court, with notice
55 to the other party, for an order requiring that parties to the reinsurance agreement submit their
56 commutation proposal to a panel of three arbitrators[-] at any time after:

57 (i) a two-year period beginning on the day on which an order is issued under
 58 Subsection (2); and

59 (ii) the court-appointed mediator certifies to the court that the parties are unable to
 60 resolve their differences.

61 (b) The discretionary power of the liquidator provided for in Subsection (3)(a) may be
 62 exercised after approval by the court upon demonstration by the liquidator that:

63 (i) a reinsurer is not negotiating in good faith;

64 (ii) a reinsurer is unduly delaying the negotiation or settlement of a reinsurance
 65 agreement between the insolvent insurer and the reinsurer;

66 (iii) a reinsurer ignores a properly presented bill for payment from the liquidator for
 67 more than 180 days;

68 (iv) any conduct by a reinsurer unduly or unreasonably impacts the administration or
 69 closure of the estate of the insolvent insurer by the liquidator; or

70 (v) conduct by a reinsurer is intended to delay or avoid negotiating settlement or
 71 payment of a proposal to commute a reinsurance agreement between the insolvent insurer and a
 72 reinsurer.

73 ~~[(3)]~~ (4) (a) Venue for the arbitration shall be:

74 (i) within the district of the liquidation court's jurisdiction; or

75 (ii) such other location as may be agreed to by the parties.

76 (b) ~~[(i) Upon]~~ Subject to Subsection (4)(e), upon the court's determination that
 77 commutation would be in the best interests of the creditors of the liquidation estate, the court
 78 shall require that the liquidator and the other party ~~[each appoint an arbitrator within 30 days]~~
 79 ~~H→ [to] ←H~~ commence arbitration to be conducted pursuant to the Procedures for Resolution of
 79a United

80 States Insurance and Reinsurance Disputes, Neutral Panel Version dated April 2004.

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

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

- 88 (i) a written review of open claim files; and
- 89 (ii) an actuarial estimate of incurred-but-not-reported losses.

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

91 [~~(A) the~~] (d) (i) The arbitration panel shall issue an award specifying the general terms
92 of a commercially reasonable and actuarially sound commutation and release agreement[;] and
93 [(B)] the liquidator shall promptly submit the award to the court.

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

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

98 (e) (i) If the reinsurance agreement contains an arbitration clause that is not in conflict
99 with this section, the arbitration shall be conducted consistent with the reinsurance agreement
100 arbitration clause, otherwise the arbitration shall be conducted as provided in this section.

101 (ii) The award determined under this Subsection (4)(e) shall be submitted to the court
102 as provided in Subsection (4)(d).

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

107 (i) to the extent that the liquidator agrees to the payment, after consultation with the
108 reinsurer's domiciliary commissioner; and

109 (ii) on the liquidator's determination that enforcement of the award will not cause the
110 reinsurer's insolvency.

111 (g) Except as provided in Subsection [~~(4)~~] (5), nothing in this section may be construed
112 to supersede or impair any provision in a reinsurance agreement that establishes a
113 commercially reasonable and actuarially sound method for valuing and commuting the
114 obligations of the parties to the reinsurance agreement by providing in the contract the specific
115 methodology to be used for valuing and commuting the obligations.

116 [~~(4)~~] (5) (a) A commutation provision is not effective if it is demonstrated to the court
117 that the provision was entered into in contemplation of the insolvency of one or more of the
118 parties.

119 (b) A contractual commutation provision entered into within one year of the liquidation
120 order of the insurer shall be rebuttably presumed to have been entered into in contemplation of
121 insolvency.

122 [~~5~~] (6) Sections 31A-27-330 and 31A-27-330.5 and this section apply to liquidation
123 proceedings that are pending on April 29, 1996, and to all future liquidations.