

Representative John Dougall 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:

- ▶ deletes references to reinsurers in the provision addressing claim estimation;
 - ▶ deletes certain provisions related to commutations including references to an arbitration panel reviewing commutations;
 - ▶ addresses payments by reinsurers;
 - ▶ clarifies the application of the bill to liquidation proceedings instituted before July 1, 2007;
 - ▶ creates a mediation and arbitration process for parties to a reinsurance agreement;
- and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2007.

Utah Code Sections Affected:



26 AMENDS:

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

28 31A-27-330.6, as last amended by Chapter 105, Laws of Utah 2004

29 ENACTS:

30 31A-27-330.7, Utah Code Annotated 1953



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

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

34 **31A-27-330.5. Claim estimation.**

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

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

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

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

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

- 49 (i) shall be made:
 - 50 (A) in a commercially reasonable and actuarially sound manner[;]; or
 - 51 (B) upon another accepted and verifiable method of determining, proving, and
52 allowing contingent, unliquidated, or immature claims with reasonable certainty; and
53 ~~[(ii) shall provide for reasonable participation of affected reinsurers, consistent with~~
54 ~~this section; and]~~
55 ~~[(iii)]~~ (ii) may authorize the present value estimation of contingent, unliquidated, and
56 immature claims, including incurred but not reported losses, except that losses incurred but not

57 reported may only be based upon the certification of a member in good standing of the
58 American Academy of Actuaries.

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

62 (3) A liquidation proceeding instituted before July 1, 2007, shall be administered in
63 accordance with the law in effect before July 1, 2007.

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

65 **31A-27-330.6. Reinsurance commutations and recoveries.**

66 (1) Notwithstanding Section 31A-27-330.5, when the insurer has been a party to a
67 reinsurance agreement[+] this Subsection (1) applies.

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

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

72 (A) commercially reasonable;

73 (B) actuarially sound; and

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

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

77 (A) reviewed by the court; and

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

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

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

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

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

86 ~~[(b) (i) Upon the court's determination that commutation would be in the best interests~~
87 ~~of the creditors of the liquidation estate, the court shall require that the liquidator and the other~~

88 ~~party each appoint an arbitrator within 30 days.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

130 (i) estimated incurred but not reported losses or loss expenses; or

131 (ii) case reserves for unpaid losses and loss expenses, except with respect to case
132 reserves for unpaid losses or loss expenses allowed pursuant to Section 31A-27-331.

133 (b) For purposes of this Subsection (2), "case reserves" means a reserve:

134 (i) established by an insurer for financial reporting purposes; and

135 (ii) that represents reported unpaid losses, whether or not the insurer's liability is
136 certain.

137 (3) This chapter may not be construed to authorize the liquidator or any other entity to
138 compel payment from a life reinsurer on the basis of valuation reserves as established pursuant
139 to Chapter 17, Part 5, Standard Valuation Law.

140 (4) The obligation of a reinsurer to make payments to the insurer shall be determined
141 on the basis of reported claims that have been allowed pursuant to Section 31A-27-336.

142 (5) A liquidation proceeding instituted before July 1, 2007, shall be administered in
143 accordance with the law in effect before July 1, 2007.

144 Section 3. Section **31A-27-330.7** is enacted to read:

145 **31A-27-330.7. Mediation and arbitration.**

146 (1) (a) At any time after an eight-year period beginning with the day on which an order
147 of liquidation is entered, the liquidator may apply to the court, with notice to the other party,
148 for an order requiring the parties to the reinsurance agreement to enter into nonbinding
149 mediation to resolve any differences between the parties relating to the commutation and

150 release of all obligations relating to case reserves and incurred but not reported reserves.

151 (b) Upon the request of the liquidator under this Subsection (1), the court shall appoint
152 a mediator to mediate a resolution of the differences between the parties.

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

155 (d) If the parties are able to reach an agreement relating to the commutation and release
156 of all obligations under the reinsurance agreement, Section 31A-27-330.6 applies.

157 (e) The liquidator may apply to the court, with notice to the other party, for an order
158 requiring that the parties to the reinsurance agreement commence arbitration pursuant to
159 Subsection (2) at any time after:

160 (i) a two-year period beginning on the day on which the order issued under this
161 Subsection (1) is entered; and

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

164 (2) (a) If the reinsurance agreement contains an arbitration clause, the arbitration shall
165 be conducted pursuant to that clause.

166 (b) If the reinsurance agreement does not contain an arbitration clause, the arbitration
167 shall be conducted pursuant to the Procedures for the Resolution of U.S. Insurance and
168 Reinsurance Disputes, Neutral Panel Version dated April 2004.

169 (c) The arbitration clause shall determine the amount of reinsurance, if any, that is due
170 and payable to the liquidator in accordance with the reinsurance agreement.

171 **Section 4. Effective date.**

172 This bill takes effect on July 1, 2007.