

Representative Todd E. Kiser 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:

- ▶ 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:

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



26 **31A-27-330.6. Reinsurance commutations and recoveries.**

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

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

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

33 (A) commercially reasonable;

34 (B) actuarially sound; and

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

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

38 (A) reviewed by the court; and

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

40 (2) (a) [At] Subject to Subsection (2)(b), at any time following a five-year period
41 subsequent to the entry of the order of liquidation, the liquidator may apply to the court, with
42 notice to the other party, for an order requiring that parties to the reinsurance agreement submit
43 their commutation proposal to a panel of three arbitrators.

44 (b) The discretionary power of the liquidator provided for in Subsection (2)(a) may be
45 exercised after approval by the court upon demonstration by the liquidator that:

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

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

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

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

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

56 (3) (a) Venue for the arbitration shall be:

- 57 (i) within the district of the liquidation court's jurisdiction; or
58 (ii) such other location as may be agreed to by the parties.
- 59 (b) (i) Upon the court's determination that commutation would be in the best interests
60 of the creditors of the liquidation estate, the court shall require that the liquidator and the other
61 party each appoint an arbitrator within 30 days.
- 62 (ii) Within 30 days after appointment of the two arbitrators under Subsection (3)(b)(i),
63 the court shall appoint an independent, impartial, disinterested arbitrator qualified by actuarial
64 training in the insurance and reinsurance industry.
- 65 (c) Within 60 days following the appointment of the third arbitrator under Subsection
66 (3)(b), the parties shall submit to the arbitration panel their commutation proposals and other
67 documents and information relevant to the determination of the parties' rights and obligations
68 under the reinsurance agreement to be commuted, including:
- 69 (i) a written review of open claim files; and
70 (ii) an actuarial estimate of incurred-but-not-reported losses.
- 71 (d) (i) Within 60 days following the parties' submissions under Subsection (3)(c):
72 (A) the arbitration panel shall issue an award specifying the general terms of a
73 commercially reasonable and actuarially sound commutation and release agreement; and
74 (B) the liquidator shall promptly submit the award to the court.
- 75 (ii) The court shall confirm the arbitration panel's award absent proof of statutory
76 grounds for vacating or modifying the award.
- 77 (e) The time periods established in this Subsection (3) may be extended upon the
78 consent of the parties or by order of the court, for good cause shown.
- 79 (f) If the arbitration panel finds, upon request of either party, that payment of or
80 enforcement of the arbitration panel's award would likely cause the insolvency of the affected
81 reinsurer, the portion of the award related to outstanding and incurred but not reported losses
82 may not be enforced and payment of the obligations may not be accelerated, except:
- 83 (i) to the extent that the liquidator agrees to the payment, after consultation with the
84 reinsurer's domiciliary commissioner; and
85 (ii) on the liquidator's determination that enforcement of the award will not cause the
86 reinsurer's insolvency.
- 87 (g) Except as provided in Subsection (4), nothing in this section may be construed to

88 supersede or impair any provision in a reinsurance agreement that establishes a commercially
89 reasonable and actuarially sound method for valuing and commuting the obligations of the
90 parties to the reinsurance agreement by providing in the contract the specific methodology to
91 be used for valuing and commuting the obligations.

92 (4) (a) A commutation provision is not effective if it is demonstrated to the court that
93 the provision was entered into in contemplation of the insolvency of one or more of the parties.

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

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