

H.B. 36

INSURANCE REVISIONS

HOUSE FLOOR AMENDMENTS

AMENDMENT 3

FEBRUARY 1, 2016 5:13 PM

Representative **James A. Dunnigan** proposes the following amendments:

1. *Page 2, Lines 28 through 30:*

28 for reinsurance ceded by a domestic insurer to another assuming insurer;

▶ addresses rulemaking authority of the commissioner;

29 ▶ provides {~~when the liability of insurer under a motor vehicle liability possibility~~

30 ~~becomes absolute~~} when a motor vehicle liability policy may be rescinded or cancelled ;

2. *Page 2, Lines 39 through 41:*

39 policyholder;

▶ addresses exemption from claims filing requirements;

40 ▶ modifies citations related to allowance of contingent and unliquidated claims;

41 ▶ modifies disclosure requirements when a policy or contract is not covered by a

3. *Page 2, Lines 48 through 50:*

48 ▶ addresses the application of the Risk Retention Groups Act to captive insurers;

49 {~~addresses capital requirements for captive insurers;~~}

50 ▶ modifies provisions related to reinsurance and captive insurance companies;

4. *Page 2, Lines 54 through 57:*

54 ▶ modifies provisions related to the Title Insurance Recovery, Education, and

55 Research Fund Act;

56 ▶ modifies the repeal date for {~~a~~} specified {~~section~~} statutory provisions ;

57 ▶ repeals provisions related to employee welfare funds and plans;

5. *Page 3, Line 81:*

81 31A-17-404.1, as enacted by Laws of Utah 2008, Chapter 257

= 31A-17-404.3, as enacted by Laws of Utah 2008, Chapter 257 =

6. *Page 4, Line 92:*

92 31A-26-213, as last amended by Laws of Utah 2014, Chapters 290 and 300

31A-27a-601, as enacted by Laws of Utah 2007, Chapter 309

7. Page 7, Lines 189 through 191:

- 189 (i) an insurer that is certified under Section 31A-4-103; or
190 (ii) a surplus lines insurer ~~{licensed}~~ eligible under Section ~~[31A-23a-104]~~ 31A-15-103.
191 (9) An insurer that provides coverage for a transportation network driver explicitly for

8. Page 7, Lines 205 through 207:

- 205 (b) Subsection (11)(a) does not apply to coverage a transportation network company
206 provides under Subsection ~~{(9)}~~ (10) in the event a transportation network driver's coverage under
207 Subsection (1) or (2) lapses or ceases to exist.

9. Page 16, Line 490 through Page 17, Line 504:

- 490 (52) (a) "Eligible employee" means:
491 (i) an employee who:
492 (A) works on a full-time basis; and
493 (B) has a normal work week of 30 or more hours; or
494 (ii) a person described in Subsection (52)(b).
495 (b) "Eligible employee" includes ~~{,}~~ :
(i) an owner who:
(A) works on a full-time basis; and
(B) has a normal work week of 30 or more hours; and
(ii) if the individual is included under a health benefit
496 plan of a small employer:
497 ~~{(i)}~~ (A) a sole proprietor;
498 ~~{(ii)}~~ (B) a partner in a partnership; or
499 ~~{(iii)}~~ (C) an independent contractor.
500 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):
501 (i) an individual who works on a temporary or substitute basis for a small employer;
502 (ii) an employer's spouse who does not meet the requirements of Subsection (52)(a)(i) ; or
503 (iii) a dependent of an employer who does not meet the requirements of Subsection (52)(a)(i) .
504 (53) "Employee" means :
(a) an individual employed by an employer ~~{,}~~ ; and
(b) an owner who meets the requirements of Subsection (52)(b)(i).

10. Page 41, Lines 1255 through 1261:

- 1255 (161) (a) "Small employer" means, in connection with a health benefit plan and with
1256 respect to a calendar year and to a plan year ~~{, an employer who}~~ :
1257 ~~{(a)}~~ (i) an employer who employed at least one employee but not more than ~~[an average of]~~ 50
[eligible]

1258 employees on business days during the preceding calendar year; and
1259 ~~(b)~~ (ii) employs at least one employee on the first day of the plan year.
1260 (b) The number of employees shall :
(i) be determined using the method set forth in 26
1261 U.S.C. Sec. 4980H(c)(2) ; and
(ii) include an owner described in Subsection (52)(b)(i) .

11. Page 84, Line 2586:

2586 credit expires, is extended, is renewed, is modified, or is amended.

Section 18. Section 31A-17-404.3 is amended to read:

31A-17-404.3. Rules.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and this chapter, the commissioner may make rules prescribing:

- {(1)} (a) the form of a letter of credit required under this chapter;
- {(2)} (b) the requirements for a trust or trust instrument required by this chapter;
- {(3)} (c) the procedures for licensing and accrediting; ~~{-and-}~~
- {(4)} (d) minimum capital and surplus requirements ~~{-}~~ ;

(e) additional requirements relating to calculation of credit allowed a domestic ceding insurer against reserves for reinsurance under Section 31A-17-404; and

(f) additional requirements relating to calculation of asset reduction from liability for reinsurance ceded by a domestic insurer to other ceding insurers under Section 31A-17-404.1.

(2) A rule made pursuant to Subsection (1)(e) or (1)(f) may apply to reinsurance relating to:

(a) a life insurance policy with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(b) a universal life insurance policy with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(c) a variable annuity with guaranteed death or living benefits;

(d) a long-term care insurance policy; or

(e) such other life and health insurance or annuity product as to which the National Association of Insurance Commissioners adopts model regulatory requirements with respect for credit for reinsurance.

(3) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may apply to a treaty containing:

(a) a policy issued on or after January 1, 2015;

(b) a policy issued before January 1, 2015, if risk pertaining to the policy is ceded in connection with the treaty, either in whole or in part, on or after January 1, 2015.

(4) A rule adopted pursuant Subsection (1)(e) or (1)(f) may require the ceding insurer, in calculating the amounts or forms of security required to be held under rules made under this section, to use the Valuation Manual adopted by the National Association of Insurance Commissioners under Section 11B(1) of the National Association of Insurance Commissioners Standard Valuation Law,

including all amendments adopted by the National Association of Insurance Commissioners and in effect on the date as of which the calculation is made, to the extent applicable.

(5) A rule adopted pursuant to Subsection (1)(e) or (1)(f) may not apply to cessions to an assuming insurer that:

(a) is certified in this state or, if this state has not adopted provisions substantially equivalent to Section 2E of the Credit for Reinsurance Model Law, certified in a minimum of five other states; or

(b) maintains at least \$250,000,000 in capital and surplus when determined in accordance with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual, including all amendments thereto adopted by the National Association of Insurance Commissioners, excluding the impact of any permitted or prescribed practices and is:

(i) licensed in at least 26 states; or

(ii) licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

(6) The authority to adopt rules pursuant to Subsection (1)(e) or (1)(f) does not otherwise limit the commissioner's general authority to make rules pursuant to Subsection (1).

12. Page 84, Lines 2594 through 2596:

2594 ~~{(2) The liability of an insurer under a motor vehicle liability policy becomes absolute~~
2595 ~~when injury or damage covered by the motor vehicle liability policy occurs. The policy may~~
2596 ~~not be rescinded or canceled as to that liability to the detriment of a third party.}~~ =

(2) A motor vehicle liability policy may be rescinded or cancelled as to an insured for fraud, material misrepresentation, or any reason allowable under the law.

(3) A motor vehicle liability policy may not be rescinded for fraud or material misrepresentation, as to minimum liability coverage limits under Section 31A-22-304, to the detriment of a third-party for a loss otherwise covered by the policy.

13. Page 110, Line 3378:

3378 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

= Section 31. Section 31A-27A-601 is amended to read:

31A-27a-601. Filing of claims.

(1) (a) Subject to the other provisions of this Subsection (1), proof of a claim shall be filed with the liquidator in the form required by Section 31A-27a-602 on or before the last day for filing specified in the notice required under Section 31A-27a-406.

(b) The last day for filing specified in the notice may not be later than 18 months after the day on which the order of liquidation is entered unless the receivership court, for good cause shown, extends the time.

(c) Proof of a claim for the following does not need to be filed unless the liquidator expressly requires filing of proof:

(i) cash surrender value in life insurance and annuities;

(ii) investment value in life insurance and annuities other than cash surrender value; and

(iii) any other policy insuring the life of a person.

(d) Only upon application of the liquidator, the receivership court may allow alternative procedures and requirements for the filing of proof of a claim or for allowing or proving a claim.

(e) Upon application, if the receivership court dispenses with the requirements of filing a proof of claim by a person, class, or group of persons, a proof of claim for that person, class, or group is considered as being filed for all purposes, except that the receivership court's waiver of proof of claim requirements may not impact guaranty association proof of claim filing requirements or coverage determinations to the extent that the guaranty association statute or filing requirements are inconsistent with the receivership court's waiver of proof.

(2) The liquidator may permit a claimant that makes a late filing to share ratably in distributions, whether past or future, as if the claim were not filed late, to the extent that the payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) the eligibility to file a proof of claim was not known to the claimant, and the claimant files a proof of claim within 90 days after the day on which the claimant first learns of the eligibility;

(b) (i) a transfer to a creditor is:

(A) avoided under Section 31A-27a-503, 31A-27a-504, 31A-27a-506, or 31A-27a-507; or

(B) voluntarily surrendered under Section 31A-27a-509; and

(ii) the filing satisfies the conditions of Section 31A-27a-509; or

(c) the valuation of security held by a secured creditor under Section 31A-27a-610 shows a deficiency and the claim for the deficiency is filed within 30 days after the valuation.

(3) If a reinsurer's reinsurance contract terminates pursuant to Section 31A-27a-513:

(a) a claim filed by the receiver which arises from the termination may not be considered late if the claim is filed within 90 days of the day on which the reinsurance contract terminates; and

(b) the reinsurer shall receive a ratable share of distributions, whether past or future, as if the claim described in Subsection (3)(a) is not late.

(4) Notwithstanding any other provision of this chapter, the liquidator may petition the receivership court, subject to Section 31A-27a-107, to set a date certain after which no further claims may be filed.

(5) A Class 1 claim pursuant to Subsection 31A-27a-701(2)(a) is not subject to the claim filing provisions of this section.

14. Page 123, Lines 3789 through 3791:

3789 (i) provide all or part of the capital and surplus required by applicable law in an amount
3790 of not less than {+} \$350,000 {+} {~~\$250,000~~} , which amount the commissioner may increase by
order if
3791 the commissioner considers it necessary; and

15. Page 124, Lines 3838 through 3839:

3838 (iv) in the case of a sponsored captive insurance company, not less than \$1,000,000, of
3839 which a minimum of {+} \$350,000 {+} {~~\$250,000~~} is provided by the sponsor; or

16. Page 136, Lines 4183 through 4185:

- 4183 (1) Section 31A-22-315.5 is repealed July 1, [2016] {~~2021~~} 2019 .
- 4184 (2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed {~~July 1,~~
- 4185 ~~2016~~} December 31, 2018 .