

# GENERAL SUMMARY OF PROPOSED UTAH INSURER RECEIVERSHIP ACT

## General Description

The bill repeals the existing statutes that govern insurance company rehabilitation and liquidation and enacts a new act.

## General Summary of Provisions of the Bill

The bill:

- repeals Title 31A, Chapter 27, Insurers Rehabilitation and Liquidation and enacts Title 31A, Chapter 27a, Insurer Receivership Act;
- provides general provisions relating to:
  - definitions;
  - persons covered;
  - court proceedings, including jurisdiction, venue, notice and hearings, orders, and statute of limitations;
  - exemption from fees;
  - actions by and against a receiver, providing immunity and indemnification to a receiver, and the possession and control of an insurer's records by a receiver;
  - financial obligations, including approval and payment of expenses and financial reporting; and
  - severability;
- provides procedures governing delinquency proceedings, including:
  - commencing delinquency proceedings, expedited trials, decisions, and appeals;
  - finding grounds for rehabilitation or liquidation of an insurance company, and the entry and effect of an order of rehabilitation or liquidation; and
  - preserving the confidentiality of the proceedings;
- provides provisions governing the rehabilitation of an insurer, including:
  - issuing rehabilitation orders;
  - establishing the powers and duties of the rehabilitator;
  - filing of rehabilitation plans;
  - terminating rehabilitation; and

- requiring coordination with guaranty associations to assist in the orderly transition to rehabilitation or liquidation;
- establishes provisions for liquidation of an insurer, including:
  - establishing the power of the liquidator;
  - providing notice requirements;
  - issuance of liquidation orders;
  - continuance of coverage issued by the insurer; and
  - providing for the sale or dissolution of the corporate entity;
- addresses asset recovery, including:
  - turning over assets;
  - recovering from affiliates;
  - unauthorized post-petition transfers;
  - voidable preferences and liens;
  - avoidance of property title transfers;
  - fraudulent transfers and obligations;
  - liability of transferees;
  - providing for setoffs;
  - providing for assessment of assets;
  - reinsurers' liability;
  - life and health reinsurance;
  - recovering of premiums owed; and
  - requiring in certain circumstances reinsurance recoverable trust;
- establishes claim procedures relating to:
  - filing, proof, and allowance of claims;
  - claims under occurrence policies, surety bonds and surety undertakings;
  - allowance of contingent and unliquidated claims;
  - provisions for third party claims, disputed claims, co-debtors, and secured creditors' claims; and
  - qualified financial contracts;

- provides for distribution of assets, including priority for distribution, early distribution, and partial and final distribution;
- establishes discharge and termination of delinquency and liquidations proceedings;
- establishes provisions relating to interstate relations;
- authorizes the commissioner to conduct administrative actions; and
- amends 37 other provisions in Title 31A that have references to the current law that will need to have references to this act; and
- amends, and renumbers five provisions in the current law relating to administrative procedures and action preliminary to rehabilitation or receivership that have references to this act that need to be incorporated into the act.

The Utah Insurer Receivership Act is modeled on the Insurer Receivership Model Act adopted by the National Association of Insurance Commissioner (NAIC). The NAIC adopted the model act in its Winter National Meeting in December 2005. As the current law has provisions that were developed to resolve issues unique to past and current Utah receiverships and liquidations, these provisions have been incorporated into the Utah Insurer Receivership Act to maintain case law related to the provisions. Another difference between the NAIC model act and the Utah Insurer Receivership Act is that the proposed Utah Insurer Receivership Act does not include provisions related to conservation proceedings that are unique to a few big states such as California.