

Introduced by Senator Rosenthal

February 25, 1997

An act to amend Section 1025 of, and to add Sections 1025.1 and 1025.2 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 663, as introduced, Rosenthal. Insurance: liquidation.

Existing law contains provisions for the liquidation of insurers by the Insurance Commissioner, and for the payment of claims made against the insurer being liquidated. Existing law provides that claims founded upon unliquidated or undetermined demands shall not share in any distribution to creditors until they have been definitely determined.

This bill would provide for the estimation of unliquidated or undetermined claims if certain conditions are met. The bill would make related changes.

The bill would also provide that, when an insurer has been a party to a reinsurance agreement, the commissioner, acting as rehabilitator or liquidator, may negotiate a voluntary commutation agreement, or may, upon court order, provide for a determination of commutation by arbitration. The bill would provide that a contractual commutation provision is not effective and shall not be applied if it is demonstrated to the court that the provision was entered into in contemplation of the insolvency of one or more of the parties.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1025 of the Insurance Code is
2 amended to read:

3 1025. Claims founded upon unliquidated or
4 undetermined demands must be filed within the time
5 ~~limit provided in this article~~ *limits established under*
6 *Section 1021* for the filing of claims, but claims founded
7 upon ~~such~~ *those* demands shall not share in any
8 distribution to creditors of a person proceeded against
9 under section 1016 until ~~such~~ *the* claims have been
10 definitely determined; *and proved or established under*
11 *Section 1025.1*, and allowed. Thereafter, ~~such~~ *those* claims
12 shall share ratably with other claims of the same class in
13 all subsequent distributions.

14 An unliquidated or undetermined claim or demand
15 within the meaning of this article shall be deemed ~~to be~~
16 ~~any such~~ *an unliquidated or undetermined* claim or
17 demand upon which a right of action has accrued at the
18 date of the order of liquidation and upon which the
19 liability has not been determined or the amount thereof
20 liquidated.

21 SEC. 2. Section 1025.1 is added to the Insurance Code,
22 to read:

23 1025.1. (a) When an insured has been unable to
24 determine and prove its claim under Section 1025, the
25 claim may be proved and allowed by estimation if (1) it
26 may be reasonably inferred from the proof presented on
27 the claim that a claim exists under the policy, (2) the
28 insured has furnished suitable proof, unless a court for
29 good cause otherwise directs, that no further valid claims
30 against the insurer arising out of the cause of action other
31 than those presented can be made, and (3) the total
32 liability of the insurer to all claimants arising out of the
33 same act shall be no greater than its total liability would
34 be if it were not in liquidation, rehabilitation, or
35 conservation.

36 (b) Contingent or unliquidated claims that are filed
37 and not made absolute and liquidated by the day fixed
38 pursuant to Section 1021 may be determined and allowed



1 by estimation. Any estimate shall be based on an actuarial
2 evaluation made with reasonable actuarial certainty or on
3 another accepted method of valuing claims with
4 reasonable certainty and may include an estimate of
5 incurred but not reported losses.

6 SEC. 3. Section 1025.2 is added to the Insurance Code,
7 to read:

8 1025.2. (a) Notwithstanding Section 1025.1, when
9 the insurer has been a party to a reinsurance agreement:

10 (1) The commissioner, acting as rehabilitator or
11 liquidator, may negotiate a voluntary commutation and
12 release of all obligations arising from the agreements.
13 Commutation and release agreements voluntarily
14 entered into by the parties shall be reviewed by the court
15 and shall be approved if the agreements are made in the
16 best interests of all creditors of the estate.

17 (2) At any time upon the earlier of five years
18 subsequent to the entry of the order of liquidation or
19 rehabilitation or voluntary commutations of 75 percent of
20 all reinsurance agreements relating to the estate, the
21 liquidator may apply to the court, with notice to the other
22 party to the reinsurance agreement, for an order
23 requiring that each party to a reinsurance agreement
24 submit its commutation proposal to a panel of three
25 arbitrators. Thereafter, the following procedures shall
26 apply:

27 (A) Upon the court's determination that commutation
28 would be in the best interests of the creditors of the estate,
29 the court shall require that the commissioner, on the one
30 hand, and the reinsurer or reinsurers, on the other hand,
31 each appoint an arbitrator within 30 days. Within 30 days
32 after appointment of the two arbitrators, the court shall
33 appoint an independent, impartial, disinterested
34 arbitrator qualified by actuarial training in the insurance
35 and reinsurance industry.

36 (B) Within 60 days following the appointment of the
37 third arbitrator, the parties shall submit to the arbitration
38 panel their commutation proposals and other documents
39 and information relevant to the determination of the
40 parties' rights and obligations under the reinsurance



1 agreement to be commuted, including a written review
2 of open claim files and an actuarial estimate of
3 incurred-but-not-reported losses. Venue for the
4 arbitration shall be within the county where the
5 liquidation court is located or such other location as may
6 be agreed to by the parties and approved by the court.

7 (C) Within 60 days following the parties' submissions,
8 the arbitration panel shall issue an award specifying the
9 general terms of a commercially reasonable and
10 actuarially sound commutation, and release agreement,
11 and the commissioner shall promptly submit the award to
12 the court. The court shall confirm the panel's award
13 absent proof of statutory grounds for vacating or
14 modifying the award in accordance with Chapter 4
15 (commencing with Section 1285) of Title 9.3 of Part 3 of
16 the Code of Civil Procedure.

17 (D) Except as provided by subdivision (c), the
18 arbitration panel shall be required to apply commercially
19 reasonable and actuarially sound provisions of a
20 reinsurance agreement that provide a methodology for
21 valuing and calculating commutations.

22 (b) The time periods established in subparagraphs
23 (A), (B), and (C) paragraph (2) of subdivision (a) may
24 be extended upon the consent of the parties or by order
25 of the court, for good cause shown.

26 (c) (1) A contractual commutation provision is not
27 effective and shall not be applied if it is demonstrated to
28 the court that the provision was entered into in
29 contemplation of the insolvency of one or more of the
30 parties.

31 (2) A contractual commutation provision entered into
32 within one year of the liquidation order of the insurer
33 shall be rebuttably presumed to have been entered into
34 in contemplation of insolvency.

35 SEC. 4. This act shall apply to liquidation proceedings
36 that are pending on January 1, 1998, and to all future
37 liquidations.

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