



Rep. Frank J. Mautino

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LRB093 20536 AMC 51807 a

1 AMENDMENT TO SENATE BILL 2404

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2404, AS AMENDED,  
3 with reference to page and line numbers of House Amendment No.  
4 1, on page 1, line 5, after "204,", by inserting "209,"; and  
5 on page 10, immediately below line 31, by inserting the  
6 following:

7 "(215 ILCS 5/209) (from Ch. 73, par. 821)

8 Sec. 209. Proof and allowance of claims.

9 (1) A proof of claim shall consist of a written statement  
10 signed under oath setting forth the claim, the consideration  
11 for it, whether the claim is secured and, if so, how, what  
12 payments have been made on the claim, if any, and that the sum  
13 claimed is justly owing from the company. Whenever a claim is  
14 based upon a document, the document, unless lost or destroyed,  
15 shall be filed with the proof of claim. If the document is lost  
16 or destroyed, a statement of that fact and of the circumstances  
17 of the loss or destruction shall be included in the proof of  
18 claim. A claim may be allowed even if contingent or  
19 unliquidated as of the date fixed by the court pursuant to  
20 subsection (a) of Section 194 if it is filed in accordance with  
21 this subsection. Except as otherwise provided in subsection  
22 (7), a proof of claim required under this Section must identify  
23 a known loss or occurrence ~~particular claim~~.

24 (2) At any time, the Director may require the claimant to

1 present information or evidence supplementary to that required  
2 under subsection (1) and may take testimony under oath, require  
3 production of affidavits or depositions, or otherwise obtain  
4 additional information or evidence.

5 (3) Upon the liquidation, rehabilitation, or conservation  
6 of any company which has issued policies insuring the lives of  
7 persons, the Director shall, within a reasonable time, after  
8 the last day set for the filing of claims, make a list of the  
9 persons who have not filed proofs of claim with him and whose  
10 rights have not been reinsured, to whom it appears from the  
11 books of the company, there are owing amounts on such policies  
12 and he shall set opposite the name of each person such amount  
13 so owing to such person. The Director shall incur no personal  
14 liability by reason of any mistake in such list. Each person  
15 whose name shall appear upon said list shall be deemed to have  
16 duly filed prior to the last day set for filing of claims a  
17 proof of claim for the amount set opposite his name on said  
18 list.

19 (4) (a) When a Liquidation, Rehabilitation, or Conservation  
20 Order has been entered in a proceeding against an insurer under  
21 this Code, any insured under an insurance policy shall have the  
22 right to file a contingent claim. The Court at the time of the  
23 entry of the Order of Liquidation, Rehabilitation or  
24 Conservation shall fix the final date for the liquidation of  
25 insureds' contingent claims, but in no event shall said date be  
26 more than 3 years after the last day fixed for the filing of  
27 claims, provided, such date may be extended by the Court on  
28 petition of the Director should the Director determine that  
29 such extension will not delay distribution of assets under  
30 Section 210. Such a contingent claim shall be allowed if such  
31 claim is liquidated and the insured claimant presents evidence  
32 of payment of such claim to the Director on or before the last  
33 day fixed by the Court.

34 (b) When an insured has been unable to liquidate its claim

1 under paragraph (a) of this subsection (4), the insured may  
2 have its claim allowed by estimation if (i) it may be  
3 reasonably inferred from the proof presented upon the claim  
4 that a claim exists under the policy; (ii) the insured has  
5 furnished suitable proof, unless the court for good cause shown  
6 shall otherwise direct, that no further valid claims against  
7 the insurer arising out of the cause of action other than those  
8 already presented can be made, and (iii) the total liability of  
9 the insurer to all claimants arising out of the same act shall  
10 be no greater than its total liability would be were it not in  
11 liquidation, rehabilitation, or conservation.

12 (5) The obligation of the insurer, if any, to defend or  
13 continue the defense of any claim or suit under a liability  
14 insurance policy shall terminate on the entry of the Order of  
15 Liquidation, Rehabilitation or Conservation, except during the  
16 appeal of an Order of Liquidation as provided by Section 190.1  
17 or, unless upon the petition of the Director, the court directs  
18 otherwise. Insureds may include in contingent claims  
19 reasonable attorneys fees for services rendered subsequent to  
20 the date of Liquidation, Rehabilitation or Conservation in  
21 defense of claims or suits covered by the insured's policy  
22 provided such attorneys fees have actually been paid by the  
23 assured and evidence of payment presented in the manner  
24 required for insured's contingent claims.

25 (6) When a liquidation, rehabilitation, or conservation  
26 order has been entered in a proceeding against an insurer under  
27 this Code, any person who has a cause of action against an  
28 insured of the insurer under an insurance policy issued by the  
29 insurer shall have the right to file a claim in the proceeding,  
30 regardless of the fact that the claim may be contingent, and  
31 the claim may be allowed by estimation (a) if it may be  
32 reasonably, inferred from proof presented upon the claim that  
33 the claimant would be able to obtain a judgment upon the cause  
34 of action against the insured; and (b) if the person has

1 furnished suitable proof, unless the court for good cause shown  
2 shall otherwise direct, that no further valid claims against  
3 the insurer arising out of the cause of action other than those  
4 already presented can be made, and (c) the total liability of  
5 the insurer to all claimants arising out of the same act shall  
6 be no greater than its total liability would be were it not in  
7 liquidation, rehabilitation, or conservation.

8 (7) Contingent or unliquidated general creditors' and  
9 ceding insurers' claims that are not made absolute and  
10 liquidated by the last day fixed by the court pursuant to  
11 subsection (4) may ~~shall~~ be determined and allowed by  
12 estimation. Any such estimate shall be based upon an actuarial  
13 evaluation made with reasonable actuarial certainty or upon  
14 another accepted method of valuing claims with reasonable  
15 certainty and, with respect to ceding insurers' claims, may  
16 include an estimate of incurred but not reported losses.

17 (7.5) (a) The estimation and allowance of the loss  
18 development on a known loss or occurrence shall trigger a  
19 reinsurer's obligation to pay pursuant to its reinsurance  
20 contract with the insolvent company, provided that the  
21 allowance is made in accordance with paragraph (b) of  
22 subsection (4) or subsection (6). The Director shall have the  
23 authority to exercise all available remedies on behalf of the  
24 insolvent company to marshal these reinsurance recoverables.

25 (b) That portion of any estimated and allowed contingent  
26 claim that is attributable to claims incurred but not reported  
27 to the insolvent company's reinsured shall not be billable to  
28 the insolvent company's reinsurers, except to the extent that  
29 (A) such claims develop into known losses or occurrences and  
30 become billable under paragraph (a) of this subsection or (B)  
31 the reinsurance contract specifically provides for the payment  
32 of such losses or reserves.

33 (c) Notwithstanding any other provision of this Code, the  
34 liquidator may negotiate a voluntary commutation and release of

1 all obligations arising from reinsurance contracts or other  
2 agreements.

3 (8) No judgment against such an insured or an insurer taken  
4 after the date of the entry of the liquidation, rehabilitation,  
5 or conservation order shall be considered in the proceedings as  
6 evidence of liability, or of the amount of damages, and no  
7 judgment against an insured or an insurer taken by default, or  
8 by collusion prior to the entry of the liquidation order shall  
9 be considered as conclusive evidence in the proceeding either  
10 of the liability of such insured to such person upon such cause  
11 of action or of the amount of damages to which such person is  
12 therein entitled.

13 (9) The value of securities held by secured creditors shall  
14 be determined by converting the same into money according to  
15 the terms of the agreement pursuant to which such securities  
16 were delivered to such creditors, or by such creditors and the  
17 Director by agreement, or by the court, and the amount of such  
18 value shall be credited upon the claims of such secured  
19 creditors and their claims allowed only for the balance.

20 (10) Claims of creditors or policyholders who have received  
21 preferences voidable under Section 204 or to whom conveyances  
22 or transfers, assignments or incumbrances have been made or  
23 given which are void under Section 204, shall not be allowed  
24 unless such creditors or policyholders shall surrender such  
25 preferences, conveyances, transfers, assignments or  
26 incumbrances.

27 (11) (a) When the Director denies a claim or allows a claim  
28 for less than the amount requested by the claimant, written  
29 notice of the determination and of the right to object shall be  
30 given promptly to the claimant or the claimant's representative  
31 by first class mail at the address shown on the proof of claim.  
32 Within 60 days from the mailing of the notice, the claimant may  
33 file his written objections with the Director. If no such  
34 filing is made on a timely basis, the claimant may not further

1 object to the determination.

2 (b) Whenever objections are filed with the Director and he  
3 does not alter his determination as a result of the objection  
4 and the claimant continues to object, the Director shall  
5 petition the court for a hearing as soon as practicable and  
6 give notice of the hearing by first class mail to the claimant  
7 or his representative and to any other persons known by the  
8 Director to be directly affected, not less than 10 days before  
9 the date of the hearing.

10 (12) The Director shall review all claims duly filed in the  
11 liquidation, rehabilitation, or conservation proceeding,  
12 unless otherwise directed by the court, and shall make such  
13 further investigation as he considers necessary. The Director  
14 may compound, compromise, or in any other manner negotiate the  
15 amount for which claims will be recommended to the court.  
16 Unresolved disputes shall be determined under subsection (11).

17 (13) (a) The Director shall present to the court reports of  
18 claims reviewed under subsection (12) with his recommendations  
19 as to each claim.

20 (b) The court may approve or disapprove any recommendations  
21 contained in the reports of claims filed by the Director,  
22 except that the Director's agreements with claimants shall be  
23 accepted as final by the court on claims settled for \$10,000 or  
24 less.

25 (14) The changes made in this Section by this amendatory  
26 Act of 1993 apply to all liquidation, rehabilitation, or  
27 conservation proceedings that are pending on the effective date  
28 of this amendatory Act of 1993 and to all future liquidation,  
29 rehabilitation, or conservation proceedings, except that the  
30 changes made to the provisions of this Section by this  
31 amendatory Act of 1993 shall not apply to any company ordered  
32 into liquidation on or before January 1, 1982.

33 (15) The changes made in this Section by this amendatory  
34 Act of the 93rd General Assembly do not apply to any company

1 ordered into liquidation on or before January 1, 2004.

2 (Source: P.A. 91-357, eff. 7-29-99.)".