



Sen. Bill Brady

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09300HB1075sam002

LRB093 05509 AMC 50898 a

1 AMENDMENT TO HOUSE BILL 1075

2 AMENDMENT NO. _____. Amend House Bill 1075, AS AMENDED,
3 with reference to page and line numbers of Senate Amendment No.
4 1, on page 1, line 4, after "amended by", by inserting
5 "changing Section 209 and"; and

6 on page 1, immediately below line 15, by inserting the
7 following:

8 "(215 ILCS 5/209) (from Ch. 73, par. 821)
9 Sec. 209. Proof and allowance of claims.

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

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

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

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

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

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

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

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

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

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

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

34 (c) Notwithstanding any other provision of this Code, the

1 liquidator may negotiate a voluntary commutation and release of
2 all obligations arising from reinsurance contracts or other
3 agreements.

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

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

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

28 (11) (a) When the Director denies a claim or allows a claim
29 for less than the amount requested by the claimant, written
30 notice of the determination and of the right to object shall be
31 given promptly to the claimant or the claimant's representative
32 by first class mail at the address shown on the proof of claim.
33 Within 60 days from the mailing of the notice, the claimant may
34 file his written objections with the Director. If no such

1 filing is made on a timely basis, the claimant may not further
2 object to the determination.

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

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

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

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

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

34 (15) The changes made in this Section by this amendatory

1 Act of the 93rd General Assembly do not apply to any company
2 ordered into liquidation on or before January 1, 2004.
3 (Source: P.A. 91-357, eff. 7-29-99.)".