



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2402

Introduced 2/15/2011, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

215 ILCS 5/155.18	from Ch. 73, par. 767.18
215 ILCS 5/155.18a	
215 ILCS 5/155.19	from Ch. 73, par. 767.19
215 ILCS 5/1204	from Ch. 73, par. 1065.904

Amends the Illinois Insurance Code to re-enact certain provisions of Public Act 94-677, which was declared to be unconstitutional. Includes explanatory, validation, and severability provisions. Includes revisory changes. Effective immediately.

LRB097 10185 RPM 50375 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Findings; purpose; revisory changes;
5 validation.

6 (a) The Illinois Supreme Court, in *Lebron v. Gottlieb*
7 *Memorial Hospital*, found that the limitations on noneconomic
8 damages in medical malpractice actions that were created in
9 Public Act 94-677, contained in Section 2-1706.5 of the Code of
10 Civil Procedure, violate the separation of powers clause of the
11 Illinois Constitution. Because Public Act 94-677 contained an
12 inseverability provision, the Court held the Act to be void in
13 its entirety. The Court emphasized, however, that "because the
14 other provisions contained in Public Act 94-677 are deemed
15 invalid solely on inseverability grounds, the legislature
16 remains free to reenact any provisions it deems appropriate".

17 (b) It is the purpose of this Act to reenact the provisions
18 of Public Act 94-677 that amended the Illinois Insurance Code,
19 and to validate certain actions taken in reliance on those
20 provisions.

21 (c) Public Act 94-677 amended existing Sections 155.18,
22 155.19, and 1204 of the Illinois Insurance Code and added a new
23 Section 155.18a. Section 1204 was subsequently amended by
24 Public Act 95-331, which was a revisory bill that combined the

1 changes made by Public Act 94-277 with those made by Public Act
2 94-677. Sections 155.18, 155.18a, and 155.19 have not been
3 amended since the enactment of Public Act 94-677.

4 Executive Order No. 2004-6 changed the Department of
5 Insurance into the Division of Insurance within the Department
6 of Financial and Professional Regulation. In conformance with
7 that executive order, Public Act 94-677 changed certain
8 references in the affected Sections from the Director of
9 Insurance to the Secretary of Financial and Professional
10 Regulation. Public Act 96-811 superseded the executive order
11 and re-established the Department of Insurance as a separate
12 department, once again under the supervision of the Director of
13 Insurance. Therefore, in reenacting these Sections, revisory
14 changes have been included that conform the text to Public Act
15 96-811 by changing references to the Secretary back to the
16 Director. A revisory change is also made in a reference to the
17 effective date of Public Act 94-677, which is replaced by the
18 actual date.

19 In this Act, the text of the reenacted Sections is set
20 forth as it existed at the time of the Supreme Court's
21 decision, including the amendment by Public Act 95-331.
22 Striking and underscoring is used only to show the revisory
23 changes being made to that text.

24 (d) All otherwise lawful actions taken in reasonable
25 reliance on or pursuant to the Sections re-enacted by this Act,
26 as set forth in Public Act 94-677 or subsequently amended, by

1 any officer, employee, agency, or unit of State or local
2 government or by any other person or entity, are hereby
3 validated.

4 With respect to actions taken in relation to matters
5 arising under the Sections re-enacted by this Act, a person is
6 rebuttably presumed to have acted in reasonable reliance on and
7 pursuant to the provisions of Public Act 94-677, as those
8 provisions had been amended at the time the action was taken.

9 With respect to its administration of matters arising
10 under the Sections re-enacted by this Act, the Department of
11 Insurance shall continue to apply the provisions of Public Act
12 94-677, as those provisions had been amended at the relevant
13 time.

14 Section 5. The Illinois Insurance Code is amended by
15 reenacting and changing Sections 155.18, 155.18a, 155.19, and
16 1204 as follows:

17 (215 ILCS 5/155.18) (from Ch. 73, par. 767.18)

18 Sec. 155.18. (a) This Section shall apply to insurance on
19 risks based upon negligence by a physician, hospital or other
20 health care provider, referred to herein as medical liability
21 insurance. This Section shall not apply to contracts of
22 reinsurance, nor to any farm, county, district or township
23 mutual insurance company transacting business under an Act
24 entitled "An Act relating to local mutual district, county and

1 township insurance companies", approved March 13, 1936, as now
2 or hereafter amended, nor to any such company operating under a
3 special charter.

4 (b) The following standards shall apply to the making and
5 use of rates pertaining to all classes of medical liability
6 insurance:

7 (1) Rates shall not be excessive or inadequate nor
8 shall they be unfairly discriminatory.

9 (2) Consideration shall be given, to the extent
10 applicable, to past and prospective loss experience within
11 and outside this State, to a reasonable margin for
12 underwriting profit and contingencies, to past and
13 prospective expenses both countrywide and those especially
14 applicable to this State, and to all other factors,
15 including judgment factors, deemed relevant within and
16 outside this State.

17 Consideration may also be given in the making and use
18 of rates to dividends, savings or unabsorbed premium
19 deposits allowed or returned by companies to their
20 policyholders, members or subscribers.

21 (3) The systems of expense provisions included in the
22 rates for use by any company or group of companies may
23 differ from those of other companies or groups of companies
24 to reflect the operating methods of any such company or
25 group with respect to any kind of insurance, or with
26 respect to any subdivision or combination thereof.

1 (4) Risks may be grouped by classifications for the
2 establishment of rates and minimum premiums.
3 Classification rates may be modified to produce rates for
4 individual risks in accordance with rating plans which
5 establish standards for measuring variations in hazards or
6 expense provisions, or both. Such standards may measure any
7 difference among risks that have a probable effect upon
8 losses or expenses. Such classifications or modifications
9 of classifications of risks may be established based upon
10 size, expense, management, individual experience, location
11 or dispersion of hazard, or any other reasonable
12 considerations and shall apply to all risks under the same
13 or substantially the same circumstances or conditions. The
14 rate for an established classification should be related
15 generally to the anticipated loss and expense factors of
16 the class.

17 (c) (1) Every company writing medical liability insurance
18 shall file with the Director of Insurance ~~Secretary of~~
19 ~~Financial and Professional Regulation~~ the rates and rating
20 schedules it uses for medical liability insurance. A rate shall
21 go into effect upon filing, except as otherwise provided in
22 this Section.

23 (2) If (i) 1% of a company's insureds within a specialty or
24 25 of the company's insureds (whichever is greater) request a
25 public hearing, (ii) the Director ~~Secretary~~ at his or her
26 discretion decides to convene a public hearing, or (iii) the

1 percentage increase in a company's rate is greater than 6%,
2 then the Director ~~Secretary~~ shall convene a public hearing in
3 accordance with this paragraph (2). The Director ~~Secretary~~
4 shall notify the public of any application by an insurer for a
5 rate increase to which this paragraph (2) applies. A public
6 hearing under this paragraph (2) must be concluded within 90
7 days after the request, decision, or increase that gave rise to
8 the hearing. The Director ~~Secretary~~ may, by order, adjust a
9 rate or take any other appropriate action at the conclusion of
10 the hearing.

11 (3) A rate filing shall occur upon a company's commencement
12 of medical liability insurance business in this State and
13 thereafter as often as the rates are changed or amended.

14 (4) For the purposes of this Section, any change in premium
15 to the company's insureds as a result of a change in the
16 company's base rates or a change in its increased limits
17 factors shall constitute a change in rates and shall require a
18 filing with the Director ~~Secretary~~.

19 (5) It shall be certified in such filing by an officer of
20 the company and a qualified actuary that the company's rates
21 are based on sound actuarial principles and are not
22 inconsistent with the company's experience. The Director
23 ~~Secretary~~ may request any additional statistical data and other
24 pertinent information necessary to determine the manner the
25 company used to set the filed rates and the reasonableness of
26 those rates. This data and information shall be made available,

1 on a company-by-company basis, to the general public.

2 (d) If after a public hearing the Director ~~Secretary~~ finds:

3 (1) that any rate, rating plan or rating system
4 violates the provisions of this Section applicable to it,
5 he shall issue an order to the company which has been the
6 subject of the hearing specifying in what respects such
7 violation exists and, in that order, may adjust the rate;

8 (2) that the violation of any of the provisions of this
9 Section by any company which has been the subject of the
10 hearing was wilful or that any company has repeatedly
11 violated any provision of this Section, he may take either
12 or both of the following actions:

13 (A) Suspend or revoke, in whole or in part, the
14 certificate of authority of such company with respect
15 to the class of insurance which has been the subject of
16 the hearing.

17 (B) Impose a penalty of up to \$1,000 against the
18 company for each violation. Each day during which a
19 violation occurs constitutes a separate violation.

20 The burden is on the company to justify the rate or
21 proposed rate at the public hearing.

22 (e) Every company writing medical liability insurance in
23 this State shall offer to each of its medical liability
24 insureds the option to make premium payments in quarterly
25 installments as prescribed by and filed with the Director
26 ~~Secretary~~. This offer shall be included in the initial offer or

1 in the first policy renewal occurring after August 25, 2005 ~~the~~
2 ~~effective date of this amendatory Act of the 94th General~~
3 ~~Assembly~~, but no earlier than January 1, 2006.

4 (f) Every company writing medical liability insurance is
5 encouraged, but not required, to offer the opportunity for
6 participation in a plan offering deductibles to its medical
7 liability insureds. Any plan to offer deductibles shall be
8 filed with the Department.

9 (g) Every company writing medical liability insurance is
10 encouraged, but not required, to offer their medical liability
11 insureds a plan providing premium discounts for participation
12 in risk management activities. Any such plan shall be reported
13 to the Department.

14 (h) A company writing medical liability insurance in
15 Illinois must give 180 days' notice before the company
16 discontinues the writing of medical liability insurance in
17 Illinois.

18 (Source: P.A. 94-677, eff. 8-25-05.)

19 (215 ILCS 5/155.18a)

20 Sec. 155.18a. Professional Liability Insurance Resource
21 Center. The Director of Insurance ~~Secretary of Financial and~~
22 ~~Professional Regulation~~ shall establish a Professional
23 Liability Insurance Resource Center on the Department's
24 Internet website containing the name, telephone number, and
25 base rates of each licensed company providing medical liability

1 insurance and the name, address, and telephone number of each
2 producer who sells medical liability insurance and the name of
3 each licensed company for which the producer sells medical
4 liability insurance. Each company and producer shall submit the
5 information to the Department on or before September 30 of each
6 year in order to be listed on the website. Hyperlinks to
7 company websites shall be included, if available. The
8 publication of the information on the Department's website
9 shall commence on January 1, 2006. The Department shall update
10 the information on the Professional Liability Insurance
11 Resource Center at least annually.

12 (Source: P.A. 94-677, eff. 8-25-05.)

13 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

14 Sec. 155.19. All claims filed after December 31, 1976 with
15 any insurer and all suits filed after December 31, 1976 in any
16 court in this State, alleging liability on the part of any
17 physician, hospital or other health care provider for medically
18 related injuries, shall be reported to the Director of
19 Insurance ~~Secretary of Financial and Professional Regulation~~
20 in such form and under such terms and conditions as may be
21 prescribed by the Director ~~Secretary~~. In addition, and
22 notwithstanding any other provision of law to the contrary, any
23 insurer, stop loss insurer, captive insurer, risk retention
24 group, county risk retention trust, religious or charitable
25 risk pooling trust, surplus line insurer, or other entity

1 authorized or permitted by law to provide medical liability
2 insurance in this State shall report to the Director ~~Secretary~~,
3 in such form and under such terms and conditions as may be
4 prescribed by the Director ~~Secretary~~, all claims filed after
5 December 31, 2005 and all suits filed after December 31, 2005
6 in any court in this State alleging liability on the part of
7 any physician, hospital, or health care provider for medically
8 related injuries. Each clerk of the circuit court shall provide
9 to the Director ~~Secretary~~ such information as the Director
10 ~~Secretary~~ may deem necessary to verify the accuracy and
11 completeness of reports made to the Director ~~Secretary~~ under
12 this Section. The Director ~~Secretary~~ shall maintain complete
13 and accurate records of all claims and suits including their
14 nature, amount, disposition (categorized by verdict,
15 settlement, dismissal, or otherwise and including disposition
16 of any post-trial motions and types of damages awarded, if any,
17 including but not limited to economic damages and non-economic
18 damages) and other information as he may deem useful or
19 desirable in observing and reporting on health care provider
20 liability trends in this State. Records received by the
21 Director ~~Secretary~~ under this Section shall be available to the
22 general public; however, the records made available to the
23 general public shall not include the names or addresses of the
24 parties to any claims or suits. The Director ~~Secretary~~ shall
25 release to appropriate disciplinary and licensing agencies any
26 such data or information which may assist such agencies in

1 improving the quality of health care or which may be useful to
2 such agencies for the purpose of professional discipline.

3 With due regard for appropriate maintenance of the
4 confidentiality thereof, the Director ~~Secretary~~ shall release,
5 on an annual basis, to the Governor, the General Assembly and
6 the general public statistical reports based on such data and
7 information.

8 If the Director ~~Secretary~~ finds that any entity required to
9 report information in its possession under this Section has
10 violated any provision of this Section by filing late,
11 incomplete, or inaccurate reports, the Director ~~Secretary~~ may
12 fine the entity up to \$1,000 for each offense. Each day during
13 which a violation occurs constitutes a separate offense.

14 The Director ~~Secretary~~ may promulgate such rules and
15 regulations as may be necessary to carry out the provisions of
16 this Section.

17 (Source: P.A. 94-677, eff. 8-25-05.)

18 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

19 Sec. 1204. (A) The Director ~~Secretary~~ shall promulgate
20 rules and regulations which shall require each insurer licensed
21 to write property or casualty insurance in the State and each
22 syndicate doing business on the Illinois Insurance Exchange to
23 record and report its loss and expense experience and other
24 data as may be necessary to assess the relationship of
25 insurance premiums and related income as compared to insurance

1 costs and expenses. The Director ~~Secretary~~ may designate one or
2 more rate service organizations or advisory organizations to
3 gather and compile such experience and data. The Director
4 ~~Secretary~~ shall require each insurer licensed to write property
5 or casualty insurance in this State and each syndicate doing
6 business on the Illinois Insurance Exchange to submit a report,
7 on a form furnished by the Director ~~Secretary~~, showing its
8 direct writings in this State and companywide.

9 (B) Such report required by subsection (A) of this Section
10 may include, but not be limited to, the following specific
11 types of insurance written by such insurer:

12 (1) Political subdivision liability insurance reported
13 separately in the following categories:

14 (a) municipalities;

15 (b) school districts;

16 (c) other political subdivisions;

17 (2) Public official liability insurance;

18 (3) Dram shop liability insurance;

19 (4) Day care center liability insurance;

20 (5) Labor, fraternal or religious organizations
21 liability insurance;

22 (6) Errors and omissions liability insurance;

23 (7) Officers and directors liability insurance
24 reported separately as follows:

25 (a) non-profit entities;

26 (b) for-profit entities;

1 (8) Products liability insurance;
2 (9) Medical malpractice insurance;
3 (10) Attorney malpractice insurance;
4 (11) Architects and engineers malpractice insurance;
5 and

6 (12) Motor vehicle insurance reported separately for
7 commercial and private passenger vehicles as follows:

8 (a) motor vehicle physical damage insurance;
9 (b) motor vehicle liability insurance.

10 (C) Such report may include, but need not be limited to the
11 following data, both specific to this State and companywide, in
12 the aggregate or by type of insurance for the previous year on
13 a calendar year basis:

14 (1) Direct premiums written;
15 (2) Direct premiums earned;
16 (3) Number of policies;
17 (4) Net investment income, using appropriate estimates
18 where necessary;

19 (5) Losses paid;
20 (6) Losses incurred;
21 (7) Loss reserves:
22 (a) Losses unpaid on reported claims;
23 (b) Losses unpaid on incurred but not reported
24 claims;

25 (8) Number of claims:
26 (a) Paid claims;

- 1 (b) Arising claims;
- 2 (9) Loss adjustment expenses:
- 3 (a) Allocated loss adjustment expenses;
- 4 (b) Unallocated loss adjustment expenses;
- 5 (10) Net underwriting gain or loss;
- 6 (11) Net operation gain or loss, including net
- 7 investment income;
- 8 (12) Any other information requested by the Director
- 9 Secretary.

10 (C-3) Additional information by an advisory organization

11 as defined in Section 463 of this Code.

12 (1) An advisory organization as defined in Section 463

13 of this Code shall report annually the following

14 information in such format as may be prescribed by the

15 Director Secretary:

16 (a) paid and incurred losses for each of the past

17 10 years;

18 (b) medical payments and medical charges, if

19 collected, for each of the past 10 years;

20 (c) the following indemnity payment information:

21 cumulative payments by accident year by calendar year

22 of development. This array will show payments made and

23 frequency of claims in the following categories:

24 medical only, permanent partial disability (PPD),

25 permanent total disability (PTD), temporary total

26 disability (TTD), and fatalities;

1 (d) injuries by frequency and severity;

2 (e) by class of employee.

3 (2) The report filed with the Director ~~Secretary of~~
4 ~~Financial and Professional Regulation~~ under paragraph (1)
5 of this subsection (C-3) shall be made available, on an
6 aggregate basis, to the General Assembly and to the general
7 public. The identity of the petitioner, the respondent, the
8 attorneys, and the insurers shall not be disclosed.

9 (3) Reports required under this subsection (C-3) shall
10 be filed with the Director ~~Secretary~~ no later than
11 September 1 in 2006 and no later than September 1 of each
12 year thereafter.

13 (C-5) Additional information required from medical
14 malpractice insurers.

15 (1) In addition to the other requirements of this
16 Section, the following information shall be included in the
17 report required by subsection (A) of this Section in such
18 form and under such terms and conditions as may be
19 prescribed by the Director ~~Secretary~~:

20 (a) paid and incurred losses by county for each of
21 the past 10 policy years;

22 (b) earned exposures by ISO code, policy type, and
23 policy year by county for each of the past 10 years;
24 and

25 (c) the following actuarial information:

26 (i) Base class and territory equivalent

1 exposures by report year by relative accident
2 year.

3 (ii) Cumulative loss array by accident year by
4 calendar year of development. This array will show
5 frequency of claims in the following categories:
6 open, closed with indemnity (CWI), closed with
7 expense (CWE), and closed no pay (CNP); paid
8 severity in the following categories: indemnity
9 and allocated loss adjustment expenses (ALAE) on
10 closed claims; and indemnity and expense reserves
11 on pending claims.

12 (iii) Cumulative loss array by report year by
13 calendar year of development. This array will show
14 frequency of claims in the following categories:
15 open, closed with indemnity (CWI), closed with
16 expense (CWE), and closed no pay (CNP); paid
17 severity in the following categories: indemnity
18 and allocated loss adjustment expenses (ALAE) on
19 closed claims; and indemnity and expense reserves
20 on pending claims.

21 (iv) Maturity year and tail factors.

22 (v) Any expense, contingency ddr (death,
23 disability, and retirement), commission, tax,
24 and/or off-balance factors.

25 (2) The following information must also be annually
26 provided to the Department:

1 (a) copies of the company's reserve and surplus
2 studies; and

3 (b) consulting actuarial report and data
4 supporting the company's rate filing.

5 (3) All information collected by the Director
6 ~~Secretary~~ under paragraphs (1) and (2) shall be made
7 available, on a company-by-company basis, to the General
8 Assembly and the general public. This provision shall
9 supersede any other provision of State law that may
10 otherwise protect such information from public disclosure
11 as confidential.

12 (D) In addition to the information which may be requested
13 under subsection (C), the Director ~~Secretary~~ may also request
14 on a companywide, aggregate basis, Federal Income Tax
15 recoverable, net realized capital gain or loss, net unrealized
16 capital gain or loss, and all other expenses not requested in
17 subsection (C) above.

18 (E) Violations - Suspensions - Revocations.

19 (1) Any company or person subject to this Article, who
20 willfully or repeatedly fails to observe or who otherwise
21 violates any of the provisions of this Article or any rule
22 or regulation promulgated by the Director ~~Secretary~~ under
23 authority of this Article or any final order of the
24 Director ~~Secretary~~ entered under the authority of this
25 Article shall by civil penalty forfeit to the State of
26 Illinois a sum not to exceed \$2,000. Each day during which

1 a violation occurs constitutes a separate offense.

2 (2) No forfeiture liability under paragraph (1) of this
3 subsection may attach unless a written notice of apparent
4 liability has been issued by the Director ~~Secretary~~ and
5 received by the respondent, or the Director ~~Secretary~~ sends
6 written notice of apparent liability by registered or
7 certified mail, return receipt requested, to the last known
8 address of the respondent. Any respondent so notified must
9 be granted an opportunity to request a hearing within 10
10 days from receipt of notice, or to show in writing, why he
11 should not be held liable. A notice issued under this
12 Section must set forth the date, facts and nature of the
13 act or omission with which the respondent is charged and
14 must specifically identify the particular provision of
15 this Article, rule, regulation or order of which a
16 violation is charged.

17 (3) No forfeiture liability under paragraph (1) of this
18 subsection may attach for any violation occurring more than
19 2 years prior to the date of issuance of the notice of
20 apparent liability and in no event may the total civil
21 penalty forfeiture imposed for the acts or omissions set
22 forth in any one notice of apparent liability exceed
23 \$100,000.

24 (4) All administrative hearings conducted pursuant to
25 this Article are subject to 50 Ill. Adm. Code 2402 and all
26 administrative hearings are subject to the Administrative

1 Review Law.

2 (5) The civil penalty forfeitures provided for in this
3 Section are payable to the General Revenue Fund of the
4 State of Illinois, and may be recovered in a civil suit in
5 the name of the State of Illinois brought in the Circuit
6 Court in Sangamon County or in the Circuit Court of the
7 county where the respondent is domiciled or has its
8 principal operating office.

9 (6) In any case where the Director ~~Secretary~~ issues a
10 notice of apparent liability looking toward the imposition
11 of a civil penalty forfeiture under this Section that fact
12 may not be used in any other proceeding before the Director
13 ~~Secretary~~ to the prejudice of the respondent to whom the
14 notice was issued, unless (a) the civil penalty forfeiture
15 has been paid, or (b) a court has ordered payment of the
16 civil penalty forfeiture and that order has become final.

17 (7) When any person or company has a license or
18 certificate of authority under this Code and knowingly
19 fails or refuses to comply with a lawful order of the
20 Director ~~Secretary~~ requiring compliance with this Article,
21 entered after notice and hearing, within the period of time
22 specified in the order, the Director ~~Secretary~~ may, in
23 addition to any other penalty or authority provided, revoke
24 or refuse to renew the license or certificate of authority
25 of such person or company, or may suspend the license or
26 certificate of authority of such person or company until

1 compliance with such order has been obtained.

2 (8) When any person or company has a license or
3 certificate of authority under this Code and knowingly
4 fails or refuses to comply with any provisions of this
5 Article, the Director ~~Secretary~~ may, after notice and
6 hearing, in addition to any other penalty provided, revoke
7 or refuse to renew the license or certificate of authority
8 of such person or company, or may suspend the license or
9 certificate of authority of such person or company, until
10 compliance with such provision of this Article has been
11 obtained.

12 (9) No suspension or revocation under this Section may
13 become effective until 5 days from the date that the notice
14 of suspension or revocation has been personally delivered
15 or delivered by registered or certified mail to the company
16 or person. A suspension or revocation under this Section is
17 stayed upon the filing, by the company or person, of a
18 petition for judicial review under the Administrative
19 Review Law.

20 (Source: P.A. 94-277, eff. 7-20-05; 94-677, eff. 8-25-05;
21 95-331, eff. 8-21-07.)

22 Section 97. Severability. The provisions of this Act are
23 severable under Section 1.31 of the Statute on Statutes.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.