

1 AMENDMENT TO SENATE BILL 1207

2 AMENDMENT NO. _____. Amend Senate Bill 1207, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Illinois Insurance Code is amended by
6 changing Sections 143a and 155 as follows:

7 (215 ILCS 5/143a) (from Ch. 73, par. 755a)

8 Sec. 143a. Uninsured and hit and run motor vehicle
9 coverage.

10 (1) No policy insuring against loss resulting from
11 liability imposed by law for bodily injury or death suffered
12 by any person arising out of the ownership, maintenance or
13 use of a motor vehicle that is designed for use on public
14 highways and that is either required to be registered in this
15 State or is principally garaged in this State shall be
16 renewed, delivered, or issued for delivery in this State
17 unless coverage is provided therein or supplemental thereto,
18 in limits for bodily injury or death set forth in Section
19 7-203 of the Illinois Vehicle Code for the protection of
20 persons insured thereunder who are legally entitled to
21 recover damages from owners or operators of uninsured motor
22 vehicles and hit-and-run motor vehicles because of bodily

1 injury, sickness or disease, including death, resulting
2 therefrom. Uninsured motor vehicle coverage does not apply to
3 bodily injury, sickness, disease, or death resulting
4 therefrom, of an insured while occupying a motor vehicle
5 owned by, or furnished or available for the regular use of
6 the insured, a resident spouse or resident relative, if that
7 motor vehicle is not described in the policy under which a
8 claim is made or is not a newly acquired or replacement motor
9 vehicle covered under the terms of the policy. The limits
10 for any coverage for any vehicle under the policy may not be
11 aggregated with the limits for any similar coverage, whether
12 provided by the same insurer or another insurer, applying to
13 other motor vehicles, for purposes of determining the total
14 limit of insurance coverage available for bodily injury or
15 death suffered by a person in any one accident. No policy
16 shall be renewed, delivered, or issued for delivery in this
17 State unless it is provided therein that any dispute with
18 respect to the coverage and the amount of damages shall be
19 submitted for arbitration to the American Arbitration
20 Association and be subject to its rules for the conduct of
21 arbitration hearings as to all matters except medical
22 opinions. As to medical opinions, if the amount of damages
23 being sought is equal to or less than the amount provided for
24 in Section 7-203 of the Illinois Vehicle Code, then the
25 current American Arbitration Association Rules shall apply.
26 If the amount being sought in an American Arbitration
27 Association case exceeds that amount as set forth in Section
28 7-203 of the Illinois Vehicle Code, then the Rules of
29 Evidence that apply in the circuit court for placing medical
30 opinions into evidence shall govern. Alternatively, disputes
31 with respect to damages and the coverage shall be determined
32 in the following manner: Upon the insured requesting
33 arbitration, each party to the dispute shall select an
34 arbitrator and the 2 arbitrators so named shall select a

1 third arbitrator. If such arbitrators are not selected
 2 within 45 days from such request, either party may request
 3 that the arbitration be submitted to the American Arbitration
 4 Association. Any decision made by the arbitrators shall be
 5 binding for the amount of damages not exceeding \$50,000 the
 6 limits for bodily injury to or death of any one person,
 7 \$100,000 for bodily injury to or death of 2 or more persons
 8 in any one motor vehicle accident, and \$45,000 because of
 9 injury to or destruction of property of others in any one
 10 motor vehicle accident set forth in Section 7-203 of the
 11 Illinois Vehicle Code. All 3-person arbitration cases
 12 proceeding in accordance with any uninsured motorist coverage
 13 conducted in this State in which the claimant is only seeking
 14 monetary damages up to the limits set forth in Section 7-203
 15 of the Illinois Vehicle Code shall be subject to the
 16 following rules:

17 (A) If at least 60 days' written notice of the
 18 intention to offer the following documents in evidence is
 19 given to every other party, accompanied by a copy of the
 20 document, a party may offer in evidence, without
 21 foundation or other proof:

22 (1) bills, records, and reports of hospitals,
 23 doctors, dentists, registered nurses, licensed
 24 practical nurses, physical therapists, and other
 25 healthcare providers;

26 (2) bills for drugs, medical appliances, and
 27 prostheses;

28 (3) property repair bills or estimates, when
 29 identified and itemized setting forth the charges
 30 for labor and material used or proposed for use in
 31 the repair of the property;

32 (4) a report of the rate of earnings and time
 33 lost from work or lost compensation prepared by an
 34 employer;

1 (5) the written opinion of an opinion witness,
2 the deposition of a witness, and the statement of a
3 witness that the witness would be allowed to express
4 if testifying in person, if the opinion or statement
5 is made by affidavit or by certification as provided
6 in Section 1-109 of the Code of Civil Procedure;

7 (6) any other document not specifically
8 covered by any of the foregoing provisions that is
9 otherwise admissible under the rules of evidence.

10 Any party receiving a notice under this paragraph
11 (A) may apply to the arbitrator or panel of arbitrators,
12 as the case may be, for the issuance of a subpoena
13 directed to the author or maker or custodian of the
14 document that is the subject of the notice, requiring the
15 person subpoenaed to produce copies of any additional
16 documents as may be related to the subject matter of the
17 document that is the subject of the notice. Any such
18 subpoena shall be issued in substantially similar form
19 and served by notice as provided by Illinois Supreme
20 Court Rule 204(a)(4). Any such subpoena shall be
21 returnable not less than 5 days before the arbitration
22 hearing.

23 (B) Notwithstanding the provisions of Supreme Court
24 Rule 213(g), a party who proposes to use a written
25 opinion of an expert or opinion witness or the testimony
26 of an expert or opinion witness at the hearing may do so
27 provided a written notice of that intention is given to
28 every other party not less than 60 days prior to the date
29 of hearing, accompanied by a statement containing the
30 identity of the witness, his or her qualifications, the
31 subject matter, the basis of the witness's conclusions,
32 and his or her opinion.

33 (C) Any other party may subpoena the author or
34 maker of a document admissible under this subsection, at

1 that party's expense, and examine the author or maker as
2 if under cross-examination. The provisions of Section
3 2-1101 of the Code of Civil Procedure shall be applicable
4 to arbitration hearings, and it shall be the duty of a
5 party requesting the subpoena to modify the form to show
6 that the appearance is set before an arbitration panel
7 and to give the time and place set for the hearing.

8 (D) The provisions of Section 2-1102 of the Code of
9 Civil Procedure shall be applicable to arbitration
10 hearings under this subsection.

11 (2) No policy insuring against loss resulting from
12 liability imposed by law for property damage arising out of
13 the ownership, maintenance, or use of a motor vehicle shall
14 be renewed, delivered, or issued for delivery in this State
15 with respect to any private passenger or recreational motor
16 vehicle that is designed for use on public highways and that
17 is either required to be registered in this State or is
18 principally garaged in this State and is not covered by
19 collision insurance under the provisions of such policy,
20 unless coverage is made available in the amount of the actual
21 cash value of the motor vehicle described in the policy or
22 \$15,000 whichever is less, subject to a \$250 deductible, for
23 the protection of persons insured thereunder who are legally
24 entitled to recover damages from owners or operators of
25 uninsured motor vehicles and hit-and-run motor vehicles
26 because of property damage to the motor vehicle described in
27 the policy.

28 There shall be no liability imposed under the uninsured
29 motorist property damage coverage required by this subsection
30 if the owner or operator of the at-fault uninsured motor
31 vehicle or hit-and-run motor vehicle cannot be identified.
32 This subsection shall not apply to any policy which does not
33 provide primary motor vehicle liability insurance for
34 liabilities arising from the maintenance, operation, or use

1 of a specifically insured motor vehicle.

2 Each insurance company providing motor vehicle property
3 damage liability insurance shall advise applicants of the
4 availability of uninsured motor vehicle property damage
5 coverage, the premium therefor, and provide a brief
6 description of the coverage. Each insurer, with respect to
7 the initial renewal, reinstatement, or reissuance of a policy
8 of motor vehicle property damage liability insurance shall
9 provide present policyholders with the same information in
10 writing. That information need be given only once and shall
11 not be required in any subsequent renewal, reinstatement or
12 reissuance, substitute, amended, replacement or supplementary
13 policy. No written rejection shall be required, and the
14 absence of a premium payment for uninsured motor vehicle
15 property damage shall constitute conclusive proof that the
16 applicant or policyholder has elected not to accept uninsured
17 motorist property damage coverage.

18 An insurance company issuing uninsured motor vehicle
19 property damage coverage may provide that:

20 (i) Property damage losses recoverable thereunder
21 shall be limited to damages caused by the actual physical
22 contact of an uninsured motor vehicle with the insured
23 motor vehicle.

24 (ii) There shall be no coverage for loss of use of
25 the insured motor vehicle and no coverage for loss or
26 damage to personal property located in the insured motor
27 vehicle.

28 (iii) Any claim submitted shall include the name
29 and address of the owner of the at-fault uninsured motor
30 vehicle, or a registration number and description of the
31 vehicle, or any other available information to establish
32 that there is no applicable motor vehicle property damage
33 liability insurance.

34 Any dispute with respect to the coverage and the amount

1 of damages shall be submitted for arbitration to the American
2 Arbitration Association and be subject to its rules for the
3 conduct of arbitration hearings or for determination in the
4 following manner: Upon the insured requesting arbitration,
5 each party to the dispute shall select an arbitrator and the
6 2 arbitrators so named shall select a third arbitrator. If
7 such arbitrators are not selected within 45 days from such
8 request, either party may request that the arbitration be
9 submitted to the American Arbitration Association. Any
10 arbitration proceeding under this subsection seeking recovery
11 for property damages shall be subject to the following rules:

12 (A) If at least 60 days' written notice of the
13 intention to offer the following documents in evidence is
14 given to every other party, accompanied by a copy of the
15 document, a party may offer in evidence, without
16 foundation or other proof:

17 (1) property repair bills or estimates, when
18 identified and itemized setting forth the charges
19 for labor and material used or proposed for use in
20 the repair of the property;

21 (2) the written opinion of an opinion witness,
22 the deposition of a witness, and the statement of a
23 witness that the witness would be allowed to express
24 if testifying in person, if the opinion or statement
25 is made by affidavit or by certification as provided
26 in Section 1-109 of the Code of Civil Procedure;

27 (3) any other document not specifically
28 covered by any of the foregoing provisions that is
29 otherwise admissible under the rules of evidence.

30 Any party receiving a notice under this paragraph
31 (A) may apply to the arbitrator or panel of arbitrators,
32 as the case may be, for the issuance of a subpoena
33 directed to the author or maker or custodian of the
34 document that is the subject of the notice, requiring the

1 person subpoenaed to produce copies of any additional
2 documents as may be related to the subject matter of the
3 document that is the subject of the notice. Any such
4 subpoena shall be issued in substantially similar form
5 and served by notice as provided by Illinois Supreme
6 Court Rule 204(a)(4). Any such subpoena shall be
7 returnable not less than 5 days before the arbitration
8 hearing.

9 (B) Notwithstanding the provisions of Supreme Court
10 Rule 213(g), a party who proposes to use a written
11 opinion of an expert or opinion witness or the testimony
12 of an expert or opinion witness at the hearing may do so
13 provided a written notice of that intention is given to
14 every other party not less than 60 days prior to the date
15 of hearing, accompanied by a statement containing the
16 identity of the witness, his or her qualifications, the
17 subject matter, the basis of the witness's conclusions,
18 and his or her opinion.

19 (C) Any other party may subpoena the author or
20 maker of a document admissible under this subsection, at
21 that party's expense, and examine the author or maker as
22 if under cross-examination. The provisions of Section
23 2-1101 of the Code of Civil Procedure shall be applicable
24 to arbitration hearings, and it shall be the duty of a
25 party requesting the subpoena to modify the form to show
26 that the appearance is set before an arbitration panel
27 and to give the time and place set for the hearing.

28 (D) The provisions of Section 2-1102 of the Code of
29 Civil Procedure shall be applicable to arbitration
30 hearings under this subsection.

31 (3) For the purpose of the coverage the term "uninsured
32 motor vehicle" includes, subject to the terms and conditions
33 of the coverage, a motor vehicle where on, before or after
34 the accident date the liability insurer thereof is unable to

1 make payment with respect to the legal liability of its
2 insured within the limits specified in the policy because of
3 the entry by a court of competent jurisdiction of an order of
4 rehabilitation or liquidation by reason of insolvency on or
5 after the accident date. An insurer's extension of coverage,
6 as provided in this subsection, shall be applicable to all
7 accidents occurring after July 1, 1967 during a policy period
8 in which its insured's uninsured motor vehicle coverage is in
9 effect. Nothing in this Section may be construed to prevent
10 any insurer from extending coverage under terms and
11 conditions more favorable to its insureds than is required by
12 this Section.

13 (4) In the event of payment to any person under the
14 coverage required by this Section and subject to the terms
15 and conditions of the coverage, the insurer making the
16 payment shall, to the extent thereof, be entitled to the
17 proceeds of any settlement or judgment resulting from the
18 exercise of any rights of recovery of the person against any
19 person or organization legally responsible for the property
20 damage, bodily injury or death for which the payment is made,
21 including the proceeds recoverable from the assets of the
22 insolvent insurer. With respect to payments made by reason of
23 the coverage described in subsection (3), the insurer making
24 such payment shall not be entitled to any right of recovery
25 against the tort-feasor in excess of the proceeds recovered
26 from the assets of the insolvent insurer of the tort-feasor.

27 (5) This amendatory Act of 1967 shall not be construed
28 to terminate or reduce any insurance coverage or any right of
29 any party under this Code in effect before July 1, 1967. This
30 amendatory Act of 1990 shall not be construed to terminate or
31 reduce any insurance coverage or any right of any party under
32 this Code in effect before its effective date.

33 (6) Failure of the motorist from whom the claimant is
34 legally entitled to recover damages to file the appropriate

1 forms with the Safety Responsibility Section of the
2 Department of Transportation within 120 days of the accident
3 date shall create a rebuttable presumption that the motorist
4 was uninsured at the time of the injurious occurrence.

5 (7) An insurance carrier may upon good cause require the
6 insured to commence a legal action against the owner or
7 operator of an uninsured motor vehicle before good faith
8 negotiation with the carrier. If the action is commenced at
9 the request of the insurance carrier, the carrier shall pay
10 to the insured, before the action is commenced, all court
11 costs, jury fees and sheriff's fees arising from the action.

12 The changes made by this amendatory Act of 1997 apply to
13 all policies of insurance amended, delivered, issued, or
14 renewed on and after the effective date of this amendatory
15 Act of 1997.

16 (Source: P.A. 89-206, eff. 7-21-95; 90-451, eff. 1-1-98.)

17 (215 ILCS 5/155) (from Ch. 73, par. 767)
18 Sec. 155. Attorney fees.†

19 (1) In any action by or against a company wherein there
20 is in issue the liability of a company on a policy or
21 policies of insurance or the amount of the loss payable
22 thereunder, or for an unreasonable delay in settling a claim,
23 and it appears to the court that such action or delay is
24 vexatious and unreasonable, the court may allow as part of
25 the taxable costs in the action reasonable attorney fees,
26 other costs, plus an amount not to exceed any one of the
27 following amounts:

28 (a) ~~60%~~ 25% of the amount which the court or jury finds
29 such party is entitled to recover against the company,
30 exclusive of all costs;

31 (b) ~~\$60,000~~ \$25,000;

32 (c) the excess of the amount which the court or jury
33 finds such party is entitled to recover, exclusive of costs,

1 over the amount, if any, which the company offered to pay in
2 settlement of the claim prior to the action.

3 (2) Where there are several policies insuring the same
4 insured against the same loss whether issued by the same or
5 by different companies, the court may fix the amount of the
6 allowance so that the total attorney fees on account of one
7 loss shall not be increased by reason of the fact that the
8 insured brings separate suits on such policies.

9 (Source: P.A. 84-678.)".