



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/5/2004, by Peter J. Roskam

SYNOPSIS AS INTRODUCED:

215 ILCS 5/143a-2

from Ch. 73, par. 755a-2

Amends the Illinois Insurance Code. In provisions pertaining to the limits of liability for an insurer providing underinsured motorist coverage, deletes a provision that provides that the maximum amount payable by the underinsured motorist coverage carrier shall not exceed the amount by which the limits of the underinsured motorist coverage exceeds the limits of the bodily injury liability insurance of the owner or operator of the underinsured motor vehicle.

LRB093 20990 SAS 46989 b

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 5. The Illinois Insurance Code is amended by
5 changing Section 143a-2 as follows:

6 (215 ILCS 5/143a-2) (from Ch. 73, par. 755a-2)

7 Sec. 143a-2. (1) Additional uninsured motor vehicle
8 coverage. No policy insuring against loss resulting from
9 liability imposed by law for bodily injury or death suffered by
10 any person arising out of the ownership, maintenance or use of
11 a motor vehicle shall be renewed or delivered or issued for
12 delivery in this State with respect to any motor vehicle
13 designed for use on public highways and required to be
14 registered in this State unless uninsured motorist coverage as
15 required in Section 143a of this Code is included in an amount
16 equal to the insured's bodily injury liability limits unless
17 specifically rejected by the insured. Each insurance company
18 providing the coverage must provide applicants with a brief
19 description of the coverage and advise them of their right to
20 reject the coverage in excess of the limits set forth in
21 Section 7-203 of The Illinois Vehicle Code. The provisions of
22 this amendatory Act of 1990 apply to policies of insurance
23 applied for after June 30, 1991.

24 (2) Right of rejection of additional uninsured motorist
25 coverage. After June 30, 1991, every application for motor
26 vehicle coverage must contain a space for indicating the
27 rejection of additional uninsured motorist coverage. No
28 rejection of that coverage may be effective unless the
29 applicant signs or initials the indication of rejection. The
30 applicant may reject additional uninsured motorist coverage in
31 excess of the limits set forth in Section 7-203 of the Illinois
32 Vehicle Code. In those cases, including policies first issued

1 before July 1, 1991, where the insured has elected to purchase
2 limits of uninsured motorist coverage which are less than
3 bodily injury liability limits or to reject limits in excess of
4 those required by law, the insurer need not provide in any
5 renewal, reinstatement, reissuance, substitute, amended,
6 replacement or supplementary policy, coverage in excess of that
7 elected by the insured in connection with a policy previously
8 issued to such insured by the same insurer unless the insured
9 subsequently makes a written request for such coverage.

10 (3) The original application indicating the applicant's
11 selection of uninsured motorist coverage limits shall
12 constitute sufficient evidence of the applicant's selection of
13 uninsured motorist coverage limits and shall be binding on all
14 persons insured under the policy. For purposes of this Section
15 any reproduction of the application by means of photograph,
16 photostat, microfiche, computerized optical imaging process,
17 or other similar process or means of reproduction shall be
18 deemed the equivalent of the original application.

19 (4) For the purpose of this Code the term "underinsured
20 motor vehicle" means a motor vehicle whose ownership,
21 maintenance or use has resulted in bodily injury or death of
22 the insured, as defined in the policy, and for which the sum of
23 the limits of liability under all bodily injury liability
24 insurance policies or under bonds or other security required to
25 be maintained under Illinois law applicable to the driver or to
26 the person or organization legally responsible for such vehicle
27 and applicable to the vehicle, is less than the limits for
28 underinsured coverage provided the insured as defined in the
29 policy at the time of the accident. The limits of liability for
30 an insurer providing underinsured motorist coverage shall be
31 the limits of such coverage, less those amounts actually
32 recovered under the applicable bodily injury insurance
33 policies, bonds or other security maintained on the
34 underinsured motor vehicle. ~~However, the maximum amount~~
35 ~~payable by the underinsured motorist coverage carrier shall not~~
36 ~~exceed the amount by which the limits of the underinsured~~

1 ~~motorist coverage exceeds the limits of the bodily injury~~
2 ~~liability insurance of the owner or operator of the~~
3 ~~underinsured motor vehicle.~~

4 On or after July 1, 1983, no policy insuring against loss
5 resulting from liability imposed by law for bodily injury or
6 death suffered by any person arising out of the ownership,
7 maintenance or use of a motor vehicle shall be renewed or
8 delivered or issued for delivery in this State with respect to
9 any motor vehicle designed for use on public highways and
10 required to be registered in this State unless underinsured
11 motorist coverage is included in such policy in an amount equal
12 to the total amount of uninsured motorist coverage provided in
13 that policy where such uninsured motorist coverage exceeds the
14 limits set forth in Section 7-203 of the Illinois Vehicle Code.

15 (5) Scope. Nothing herein shall prohibit an insurer from
16 setting forth policy terms and conditions which provide that if
17 the insured has coverage available under this Section under
18 more than one policy or provision of coverage, any recovery or
19 benefits may be equal to, but may not exceed, the higher of the
20 applicable limits of the respective coverage, and the limits of
21 liability under this Section shall not be increased because of
22 multiple motor vehicles covered under the same policy of
23 insurance. Insurers providing liability coverage on an excess
24 or umbrella basis are neither required to provide, nor are they
25 prohibited from offering or making available coverages
26 conforming to this Section on a supplemental basis.
27 Notwithstanding the provisions of this Section, an insurer
28 shall not be prohibited from solely providing a combination of
29 uninsured and underinsured motorist coverages where the limits
30 of liability under each coverage is in the same amount.

31 (6) Subrogation against underinsured motorists. No insurer
32 shall exercise any right of subrogation under a policy
33 providing additional uninsured motorist coverage against an
34 underinsured motorist where the insurer has been provided with
35 written notice in advance of a settlement between its insured
36 and the underinsured motorist and the insurer fails to advance

1 a payment to the insured, in an amount equal to the tentative
2 settlement, within 30 days following receipt of such notice.

3 (7) A policy which provides underinsured motor vehicle
4 coverage may include a clause which denies payment until the
5 limits of liability or portion thereof under all bodily injury
6 liability insurance policies applicable to the underinsured
7 motor vehicle and its operators have been partially or fully
8 exhausted by payment of judgment or settlement. A judgment or
9 settlement of the bodily injury claim in an amount less than
10 the limits of liability of the bodily injury coverages
11 applicable to the claim shall not preclude the claimant from
12 making an underinsured motorist claim against the underinsured
13 motorist coverage. Any such provision in a policy of insurance
14 shall be inapplicable if the insured, or the legal
15 representative of the insured, and the insurer providing
16 underinsured motor vehicle coverage agree that the insured has
17 suffered bodily injury or death as the result of the negligent
18 operation, maintenance, or use of an underinsured motor vehicle
19 and, without arbitration, agree also on the amount of damages
20 that the insured is legally entitled to collect. The maximum
21 amount payable pursuant to such an underinsured motor vehicle
22 insurance settlement agreement shall not exceed the amount by
23 which the limits of the underinsured motorist coverage exceed
24 the limits of the bodily injury liability insurance of the
25 owner or operator of the underinsured motor vehicle. Any such
26 agreement shall be final as to the amount due and shall be
27 binding upon both the insured and the underinsured motorist
28 insurer regardless of the amount of any judgment, or any
29 settlement reached between any insured and the person or
30 persons responsible for the accident. No such settlement
31 agreement shall be concluded unless: (i) the insured has
32 complied with all other applicable policy terms and conditions;
33 and (ii) before the conclusion of the settlement agreement, the
34 insured has filed suit against the underinsured motor vehicle
35 owner or operator and has not abandoned the suit, or settled
36 the suit without preserving the rights of the insurer providing

1 underinsured motor vehicle coverage in the manner described in
2 paragraph (6) of this Section.

3 (Source: P.A. 89-658, eff. 1-1-97.)