



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB1722

Introduced 2/25/2005, by Sen. James F. Clayborne, Jr.

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/143a

from Ch. 73, par. 755a

215 ILCS 5/143e new

Amends the Illinois Insurance Code. Deletes language requiring insurance policies containing uninsured and hit and run motor vehicle coverage to require disputes as to coverage and amount of damages to be submitted to arbitration. Requires certain disputes to be submitted to mandatory binding arbitration. Requires disputes to be determined by a 3-person arbitration panel or, in lieu of this requirement, by any alternative dispute resolution forum agreed to by the parties. Sets forth rules for determining damages and coverage, including admissibility of certain documents, use of written opinions of expert or opinion witnesses, and subpoenas of authors of documents. Requires that all disputes determined by an alternative dispute resolution forum agreed to by the parties must be determined by the current published rules of the forum and that, if the amount being sought exceeds a certain amount as provided in the Illinois Vehicle Code, the rules of evidence that apply in the circuit court for placing medical opinions into evidence shall govern.

LRB094 08659 LJB 38869 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 and by adding Section 143e as follows:

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

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

9 (1) No policy insuring against loss resulting from  
10 liability imposed by law for bodily injury or death suffered by  
11 any person arising out of the ownership, maintenance or use of  
12 a motor vehicle that is designed for use on public highways and  
13 that is either required to be registered in this State or is  
14 principally garaged in this State shall be renewed, delivered,  
15 or issued for delivery in this State unless coverage is  
16 provided therein or supplemental thereto, in limits for bodily  
17 injury or death set forth in Section 7-203 of the Illinois  
18 Vehicle Code for the protection of persons insured thereunder  
19 who are legally entitled to recover damages from owners or  
20 operators of uninsured motor vehicles and hit-and-run motor  
21 vehicles because of bodily injury, sickness or disease,  
22 including death, resulting therefrom. Uninsured motor vehicle  
23 coverage does not apply to bodily injury, sickness, disease, or  
24 death resulting therefrom, of an insured while occupying a  
25 motor vehicle owned by, or furnished or available for the  
26 regular use of the insured, a resident spouse or resident  
27 relative, if that motor vehicle is not described in the policy  
28 under which a claim is made or is not a newly acquired or  
29 replacement motor vehicle covered under the terms of the  
30 policy. The limits for any coverage for any vehicle under the  
31 policy may not be aggregated with the limits for any similar  
32 coverage, whether provided by the same insurer or another

1 insurer, applying to other motor vehicles, for purposes of  
2 determining the total limit of insurance coverage available for  
3 bodily injury or death suffered by a person in any one  
4 accident. ~~No policy shall be renewed, delivered, or issued for  
5 delivery in this State unless it is provided therein that any  
6 dispute with respect to the coverage and the amount of damages  
7 shall be submitted for arbitration to the American Arbitration  
8 Association and be subject to its rules for the conduct of  
9 arbitration hearings as to all matters except medical opinions.  
10 As to medical opinions, if the amount of damages being sought  
11 is equal to or less than the amount provided for in Section  
12 7-203 of the Illinois Vehicle Code, then the current American  
13 Arbitration Association Rules shall apply. If the amount being  
14 sought in an American Arbitration Association case exceeds that  
15 amount as set forth in Section 7-203 of the Illinois Vehicle  
16 Code, then the Rules of Evidence that apply in the circuit  
17 court for placing medical opinions into evidence shall govern.  
18 Alternatively, disputes with respect to damages and the  
19 coverage shall be determined in the following manner: Upon the  
20 insured requesting arbitration, each party to the dispute shall  
21 select an arbitrator and the 2 arbitrators so named shall  
22 select a third arbitrator. If such arbitrators are not selected  
23 within 45 days from such request, either party may request that  
24 the arbitration be submitted to the American Arbitration  
25 Association. Any decision made by the arbitrators shall be  
26 binding for the amount of damages not exceeding \$50,000 for  
27 bodily injury to or death of any one person, \$100,000 for  
28 bodily injury to or death of 2 or more persons in any one motor  
29 vehicle accident, or the corresponding policy limits for bodily  
30 injury or death, whichever is less. All 3 person arbitration  
31 cases proceeding in accordance with any uninsured motorist  
32 coverage conducted in this State in which the claimant is only  
33 seeking monetary damages up to the limits set forth in Section  
34 7-203 of the Illinois Vehicle Code shall be subject to the  
35 following rules:~~

36 (A) ~~If at least 60 days' written notice of the~~

1 ~~intention to offer the following documents in evidence is~~  
2 ~~given to every other party, accompanied by a copy of the~~  
3 ~~document, a party may offer in evidence, without foundation~~  
4 ~~or other proof:~~

5 ~~(1) bills, records, and reports of hospitals,~~  
6 ~~doctors, dentists, registered nurses, licensed~~  
7 ~~practical nurses, physical therapists, and other~~  
8 ~~healthcare providers;~~

9 ~~(2) bills for drugs, medical appliances, and~~  
10 ~~prostheses;~~

11 ~~(3) property repair bills or estimates, when~~  
12 ~~identified and itemized setting forth the charges for~~  
13 ~~labor and material used or proposed for use in the~~  
14 ~~repair of the property;~~

15 ~~(4) a report of the rate of earnings and time lost~~  
16 ~~from work or lost compensation prepared by an employer;~~

17 ~~(5) the written opinion of an opinion witness, the~~  
18 ~~deposition of a witness, and the statement of a witness~~  
19 ~~that the witness would be allowed to express if~~  
20 ~~testifying in person, if the opinion or statement is~~  
21 ~~made by affidavit or by certification as provided in~~  
22 ~~Section 1-109 of the Code of Civil Procedure;~~

23 ~~(6) any other document not specifically covered by~~  
24 ~~any of the foregoing provisions that is otherwise~~  
25 ~~admissible under the rules of evidence.~~

26 ~~Any party receiving a notice under this paragraph (A)~~  
27 ~~may apply to the arbitrator or panel of arbitrators, as the~~  
28 ~~case may be, for the issuance of a subpoena directed to the~~  
29 ~~author or maker or custodian of the document that is the~~  
30 ~~subject of the notice, requiring the person subpoenaed to~~  
31 ~~produce copies of any additional documents as may be~~  
32 ~~related to the subject matter of the document that is the~~  
33 ~~subject of the notice. Any such subpoena shall be issued in~~  
34 ~~substantially similar form and served by notice as provided~~  
35 ~~by Illinois Supreme Court Rule 204(a)(4). Any such subpoena~~  
36 ~~shall be returnable not less than 5 days before the~~

1 ~~arbitration hearing.~~

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

11 ~~(C) Any other party may subpoena the author or maker of~~  
12 ~~a document admissible under this subsection, at that~~  
13 ~~party's expense, and examine the author or maker as if~~  
14 ~~under cross examination. The provisions of Section 2-1101~~  
15 ~~of the Code of Civil Procedure shall be applicable to~~  
16 ~~arbitration hearings, and it shall be the duty of a party~~  
17 ~~requesting the subpoena to modify the form to show that the~~  
18 ~~appearance is set before an arbitration panel and to give~~  
19 ~~the time and place set for the hearing.~~

20 ~~(D) The provisions of Section 2-1102 of the Code of~~  
21 ~~Civil Procedure shall be applicable to arbitration~~  
22 ~~hearings under this subsection.~~

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

1 hit-and-run motor vehicles because of property damage to the  
2 motor vehicle described in the policy.

3 There shall be no liability imposed under the uninsured  
4 motorist property damage coverage required by this subsection  
5 if the owner or operator of the at-fault uninsured motor  
6 vehicle or hit-and-run motor vehicle cannot be identified. This  
7 subsection shall not apply to any policy which does not provide  
8 primary motor vehicle liability insurance for liabilities  
9 arising from the maintenance, operation, or use of a  
10 specifically insured motor vehicle.

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

27 An insurance company issuing uninsured motor vehicle  
28 property damage coverage may provide that:

29 (i) Property damage losses recoverable thereunder  
30 shall be limited to damages caused by the actual physical  
31 contact of an uninsured motor vehicle with the insured  
32 motor vehicle.

33 (ii) There shall be no coverage for loss of use of the  
34 insured motor vehicle and no coverage for loss or damage to  
35 personal property located in the insured motor vehicle.

36 (iii) Any claim submitted shall include the name and

1 address of the owner of the at-fault uninsured motor  
2 vehicle, or a registration number and description of the  
3 vehicle, or any other available information to establish  
4 that there is no applicable motor vehicle property damage  
5 liability insurance.

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

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

23 ~~(1) property repair bills or estimates, when~~  
24 ~~identified and itemized setting forth the charges for~~  
25 ~~labor and material used or proposed for use in the~~  
26 ~~repair of the property;~~

27 ~~(2) the written opinion of an opinion witness, the~~  
28 ~~deposition of a witness, and the statement of a witness~~  
29 ~~that the witness would be allowed to express if~~  
30 ~~testifying in person, if the opinion or statement is~~  
31 ~~made by affidavit or by certification as provided in~~  
32 ~~Section 1-109 of the Code of Civil Procedure;~~

33 ~~(3) any other document not specifically covered by~~  
34 ~~any of the foregoing provisions that is otherwise~~  
35 ~~admissible under the rules of evidence.~~

36 ~~Any party receiving a notice under this paragraph (A)~~

1 ~~may apply to the arbitrator or panel of arbitrators, as the~~  
2 ~~case may be, for the issuance of a subpoena directed to the~~  
3 ~~author or maker or custodian of the document that is the~~  
4 ~~subject of the notice, requiring the person subpoenaed to~~  
5 ~~produce copies of any additional documents as may be~~  
6 ~~related to the subject matter of the document that is the~~  
7 ~~subject of the notice. Any such subpoena shall be issued in~~  
8 ~~substantially similar form and served by notice as provided~~  
9 ~~by Illinois Supreme Court Rule 204(a)(4). Any such subpoena~~  
10 ~~shall be returnable not less than 5 days before the~~  
11 ~~arbitration hearing.~~

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

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

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

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



1 payment with respect to the legal liability of its insured  
2 within the limits specified in the policy because of the entry  
3 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, as  
6 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 any  
10 insurer from extending coverage under terms and conditions more  
11 favorable to its insureds than is required by this Section.

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

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

32 (6) Failure of the motorist from whom the claimant is  
33 legally entitled to recover damages to file the appropriate  
34 forms with the Safety Responsibility Section of the Department  
35 of Transportation within 120 days of the accident date shall  
36 create a rebuttable presumption that the motorist was uninsured

1 at the time of the injurious occurrence.

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

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

13 (Source: P.A. 93-485, eff. 1-1-04.)

14 (215 ILCS 5/143e new)

15 Sec. 143e. Mandatory binding arbitration of certain claims  
16 made against a policy of automobile insurance.

17 (a) No policy of automobile insurance as defined in  
18 subsection (a) of Section 143.13 of this Code shall be renewed,  
19 delivered, or issued for delivery in this State unless it is  
20 provided therein that disputes with respect to the following  
21 coverages and damage amounts shall be submitted for mandatory  
22 binding arbitration:

23 (1) physical damage claims between the insurer and  
24 another insurer for the amount of damages not exceeding  
25 \$10,000; or

26 (2) uninsured, underinsured, and hit and run motor  
27 vehicle coverage for the amount of damages not exceeding  
28 \$50,000 for bodily injury to or death of any one person,  
29 \$100,000 for bodily injury to or death of 2 or more persons  
30 in any one motor vehicle accident, or the corresponding  
31 policy limits for bodily injury or death if less than the  
32 amounts provided in this paragraph (2).

33 (b) All disputes with respect to damages and coverage  
34 referenced in subsection (a) shall be determined by a 3-person  
35 arbitration panel impaneled in the following manner: Each party

1 to the dispute shall select an arbitrator and the 2 arbitrators  
2 so named shall select a third arbitrator. In lieu of having the  
3 dispute determined by a 3-person arbitration panel as set forth  
4 in this Section, the parties may have disputes with respect to  
5 the damages and the coverage referenced in subsection (a) be  
6 determined by an alternative dispute resolution forum agreed to  
7 by the parties.

8 (c) All disputes with respect to damages and coverage  
9 determined by the 3-person arbitration panel as set forth in  
10 this Section shall be determined in accordance with the  
11 following rules:

12 (1) 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 foundation  
16 or other proof:

17 (A) bills, records, and reports of hospitals,  
18 doctors, dentists, registered nurses, licensed  
19 practical nurses, physical therapists, and other  
20 healthcare providers;

21 (B) bills for drugs, medical appliances, and  
22 prostheses;

23 (C) property repair bills or estimates, when  
24 identified and itemized setting forth the charges for  
25 labor and material used or proposed for use in the  
26 repair of the property;

27 (D) a report of the rate of earnings and time lost  
28 from work or lost compensation prepared by an employer;

29 (E) the written opinion of an opinion witness, the  
30 deposition of a witness, and the statement of a witness  
31 that the witness would be allowed to express if  
32 testifying in person, if the opinion or statement is  
33 made by affidavit or by certification as provided in  
34 Section 1-109 of the Code of Civil Procedure;

35 (F) any other document not specifically covered by  
36 any of the foregoing provisions that is otherwise

1 admissible under the rules of evidence.

2 Any party receiving a notice under this paragraph (1)  
3 may apply to the arbitrator or panel of arbitrators, as the  
4 case may be, for the issuance of a subpoena directed to the  
5 author or maker or custodian of the document that is the  
6 subject of the notice, requiring the person subpoenaed to  
7 produce copies of any additional documents as may be  
8 related to the subject matter of the document that is the  
9 subject of the notice. A subpoena shall be issued in  
10 substantially similar form and served by notice as provided  
11 by Illinois Supreme Court Rule 204(a)(4). A subpoena shall  
12 be returnable not less than 5 days before the arbitration  
13 hearing.

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

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

32 (4) The provisions of Section 2-1102 of the Code of  
33 Civil Procedure shall be applicable to arbitration  
34 hearings under this subsection.

35 (d) All disputes with respect to damages and coverages  
36 determined by an alternative dispute resolution forum agreed to

1 by the parties shall be determined pursuant to the current  
2 published rules of the agreed to alternative dispute resolution  
3 forum. If the amount being sought exceeds that amount as set  
4 forth in Section 7-203 of the Illinois Vehicle Code, then the  
5 Rules of Evidence that apply in the circuit court for placing  
6 medical opinions into evidence shall govern.