

**SB1873**



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**SB1873**

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

**SYNOPSIS AS INTRODUCED:**

215 ILCS 5/143a-2

from Ch. 73, par. 755a-2

Amends the Illinois Insurance Code. Requires underinsured motorist coverage contracts to allow for arbitration claim deadlines at least 2 years after damages are determined and up to 10 years after the accident takes place.

LRB094 06734 LJB 36833 b

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 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 as provided in paragraph  
18 (2) of this Section. Each insurance company providing the  
19 coverage must provide applicants with a brief description of  
20 the coverage and advise them of their right to reject the  
21 coverage in excess of the limits set forth in Section 7-203 of  
22 The Illinois Vehicle Code. The provisions of this amendatory  
23 Act of 1990 apply to policies of insurance applied for after  
24 June 30, 1991.

25 (2) Right of rejection of additional uninsured motorist  
26 coverage. Any named insured or applicant may reject additional  
27 uninsured motorist coverage in excess of the limits set forth  
28 in Section 7-203 of the Illinois Vehicle Code by making a  
29 written request for limits of uninsured motorist coverage which  
30 are less than bodily injury liability limits or a written  
31 rejection of limits in excess of those required by law. This  
32 election or rejection shall be binding on all persons insured

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

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

20 (4) For the purpose of this Code the term "underinsured  
21 motor vehicle" means a motor vehicle whose ownership,  
22 maintenance or use has resulted in bodily injury or death of  
23 the insured, as defined in the policy, and for which the sum of  
24 the limits of liability under all bodily injury liability  
25 insurance policies or under bonds or other security required to  
26 be maintained under Illinois law applicable to the driver or to  
27 the person or organization legally responsible for such vehicle  
28 and applicable to the vehicle, is less than the limits for  
29 underinsured coverage provided the insured as defined in the  
30 policy at the time of the accident. The limits of liability for  
31 an insurer providing underinsured motorist coverage shall be  
32 the limits of such coverage, less those amounts actually  
33 recovered under the applicable bodily injury insurance  
34 policies, bonds or other security maintained on the  
35 underinsured motor vehicle.

36 On or after July 1, 1983, no policy insuring against loss

1 resulting from liability imposed by law for bodily injury or  
2 death suffered by any person arising out of the ownership,  
3 maintenance or use of a motor vehicle shall be renewed or  
4 delivered or issued for delivery in this State with respect to  
5 any motor vehicle designed for use on public highways and  
6 required to be registered in this State unless underinsured  
7 motorist coverage is included in such policy in an amount equal  
8 to the total amount of uninsured motorist coverage provided in  
9 that policy where such uninsured motorist coverage exceeds the  
10 limits set forth in Section 7-203 of the Illinois Vehicle Code.

11 The changes made to this subsection (4) by this amendatory  
12 Act of the 93rd General Assembly apply to policies issued or  
13 renewed on or after December 1, 2004.

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

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

1 settlement, within 30 days following receipt of such notice.

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

1 paragraph (6) of this Section.

2 (8) No policy for underinsured motorist coverage shall be  
3 renewed, delivered, or issued for delivery in this State unless  
4 the contractual deadline or limitation to initiate a demand for  
5 arbitration is no sooner than 2 years after the damages in the  
6 underlying claim or lawsuit have been determined, whether by  
7 suit, settlement, or otherwise. In no instance shall the  
8 written demand for arbitration be made more than 10 years after  
9 the accident for which damages are being sought took place.

10 (Source: P.A. 93-762, eff. 7-16-04.)