

SB2773



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB2773

Introduced 1/20/2006, by Sen. William E. Peterson

SYNOPSIS AS INTRODUCED:

215 ILCS 5/143a

from Ch. 73, par. 755a

215 ILCS 5/143a-2

from Ch. 73, par. 755a-2

Amends the Illinois Insurance Code. Provides that automobile insurers do not have to make available uninsured or underinsured motorist coverage in connection with the issuance of certain commercial liability policies. Effective immediately.

LRB094 14550 LJB 49490 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 Sections 143a and 143a-2 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) Except as provided in subsection (2.5) of this Section,
10 no ~~no~~ policy insuring against loss resulting from liability
11 imposed by law for bodily injury or death suffered by any
12 person arising out of the ownership, maintenance or use of a
13 motor vehicle that is designed for use on public highways and
14 that is either required to be registered in this State or is
15 principally garaged in this State shall be renewed, delivered,
16 or issued for delivery in this State unless coverage is
17 provided therein or supplemental thereto, in limits for bodily
18 injury or death set forth in Section 7-203 of the Illinois
19 Vehicle Code for the protection of persons insured thereunder
20 who are legally entitled to recover damages from owners or
21 operators of uninsured motor vehicles and hit-and-run motor
22 vehicles because of bodily injury, sickness or disease,
23 including death, resulting therefrom. Uninsured motor vehicle
24 coverage does not apply to bodily injury, sickness, disease, or
25 death resulting therefrom, of an insured while occupying a
26 motor vehicle owned by, or furnished or available for the
27 regular use of the insured, a resident spouse or resident
28 relative, if that motor vehicle is not described in the policy
29 under which a claim is made or is not a newly acquired or
30 replacement motor vehicle covered under the terms of the
31 policy. The limits for any coverage for any vehicle under the
32 policy may not be aggregated with the limits for any similar

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

1 (A) If at least 60 days' written notice of the
2 intention to offer the following documents in evidence is
3 given to every other party, accompanied by a copy of the
4 document, a party may offer in evidence, without foundation
5 or other proof:

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

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

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

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

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

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

27 Any party receiving a notice under this paragraph (A)
28 may apply to the arbitrator or panel of arbitrators, as the
29 case may be, for the issuance of a subpoena directed to the
30 author or maker or custodian of the document that is the
31 subject of the notice, requiring the person subpoenaed to
32 produce copies of any additional documents as may be
33 related to the subject matter of the document that is the
34 subject of the notice. Any such subpoena shall be issued in
35 substantially similar form and served by notice as provided
36 by Illinois Supreme Court Rule 204(a)(4). Any such subpoena

1 shall be returnable not less than 5 days before the
2 arbitration hearing.

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

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

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

24 (2) Except as provided in subsection (2.5) of this Section,
25 no ~~no~~ policy insuring against loss resulting from liability
26 imposed by law for property damage arising out of the
27 ownership, maintenance, or use of a motor vehicle shall be
28 renewed, delivered, or issued for delivery in this State with
29 respect to any private passenger or recreational motor vehicle
30 that is designed for use on public highways and that is either
31 required to be registered in this State or is principally
32 garaged in this State and is not covered by collision insurance
33 under the provisions of such policy, unless coverage is made
34 available in the amount of the actual cash value of the motor
35 vehicle described in the policy or \$15,000 whichever is less,
36 subject to a \$250 deductible, for the protection of persons

1 insured thereunder who are legally entitled to recover damages
2 from owners or operators of uninsured motor vehicles and
3 hit-and-run motor vehicles because of property damage to the
4 motor vehicle described in the policy.

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

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

29 An insurance company issuing uninsured motor vehicle
30 property damage coverage may provide that:

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

35 (ii) There shall be no coverage for loss of use of the
36 insured motor vehicle and no coverage for loss or damage to

1 personal property located in the insured motor vehicle.

2 (iii) Any claim submitted shall include the name and
3 address of the owner of the at-fault uninsured motor
4 vehicle, or a registration number and description of the
5 vehicle, or any other available information to establish
6 that there is no applicable motor vehicle property damage
7 liability insurance.

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

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

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

29 (2) 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 (3) 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 (A)
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. Any such subpoena shall be issued in
10 substantially similar form and served by notice as provided
11 by Illinois Supreme Court Rule 204(a)(4). Any such subpoena
12 shall be returnable not less than 5 days before the
13 arbitration hearing.

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

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

35 (2.5) Notwithstanding any other provision of this Section
36 or Section 143a-2 of this Code, no insurer shall be required to

1 make available uninsured or underinsured motorist coverage in
2 connection with the issuance of any of the following:

3 (A) a commercial liability policy, including a
4 commercial vehicle policy;

5 (B) a commercial package policy that includes
6 commercial liability and other coverages;

7 (C) a commercial umbrella or excess liability policy;

8 (D) a commercial liability policy that provides hired
9 or nonowned motor vehicle liability coverage; or

10 (E) a commercial liability policy that provides
11 limited or incidental coverage for liability arising out of
12 the ownership, maintenance, operation, or use of a motor
13 vehicle, including a motor vehicle that is not subject to
14 motor vehicle registration and not intended or designed to
15 be used on a public roadway.

16 For the purposes of this subsection (2.5), "commercial
17 vehicle policy" means an insurance policy that provides
18 coverage for at least one of the following:

19 (i) A motor vehicle that is rated or insured as a
20 business or commercial vehicle.

21 (ii) A motor vehicle that is licensed by the State as a
22 commercial vehicle.

23 (iii) A commercial motor vehicle business, including
24 an individual who or entity that is in the business or
25 occupation of selling, repairing, servicing, storing, or
26 parking motor vehicles, including a business that is a
27 commercial garage operation, an automobile sales entity, a
28 motor vehicle repair entity, a motor vehicle service
29 station, or a public parking operation.

30 (iv) A motor vehicle that is used as a public or
31 private livery or a rental conveyance.

32 (v) A motor vehicle that is owned or used by a named
33 insured that is not a natural person.

34 (3) For the purpose of the coverage the term "uninsured
35 motor vehicle" includes, subject to the terms and conditions of
36 the coverage, a motor vehicle where on, before or after the

1 accident date the liability insurer thereof is unable to make
2 payment with respect to the legal liability of its insured
3 within the limits specified in the policy because of the entry
4 by a court of competent jurisdiction of an order of
5 rehabilitation or liquidation by reason of insolvency on or
6 after the accident date. An insurer's extension of coverage, as
7 provided in this subsection, shall be applicable to all
8 accidents occurring after July 1, 1967 during a policy period
9 in which its insured's uninsured motor vehicle coverage is in
10 effect. Nothing in this Section may be construed to prevent any
11 insurer from extending coverage under terms and conditions more
12 favorable to its insureds than is required by 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 and
15 conditions of the coverage, the insurer making the payment
16 shall, to the extent thereof, be entitled to the proceeds of
17 any settlement or judgment resulting from the exercise of any
18 rights of recovery of the person against any person or
19 organization legally responsible for the property damage,
20 bodily injury or death for which the payment is made, including
21 the proceeds recoverable from the assets of the insolvent
22 insurer. With respect to payments made by reason of the
23 coverage described in subsection (3), the insurer making such
24 payment shall not be entitled to any right of recovery against
25 the tort-feasor in excess of the proceeds recovered from the
26 assets of the insolvent insurer of the tort-feasor.

27 (5) This amendatory Act of 1967 shall not be construed to
28 terminate or reduce any insurance coverage or any right of any
29 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
35 forms with the Safety Responsibility Section of the Department
36 of Transportation within 120 days of the accident date shall

1 create a rebuttable presumption that the motorist was uninsured
2 at the time of the injurious occurrence.

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

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

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

15 (215 ILCS 5/143a-2) (from Ch. 73, par. 755a-2)

16 Sec. 143a-2. (1) Additional uninsured motor vehicle
17 coverage. Except as exempted in subsection (2.5) of Section
18 143a of this Code, no ~~No~~ policy insuring against loss resulting
19 from liability imposed by law for bodily injury or death
20 suffered by any person arising out of the ownership,
21 maintenance or use of a motor vehicle shall be renewed or
22 delivered or issued for delivery in this State with respect to
23 any motor vehicle designed for use on public highways and
24 required to be registered in this State unless uninsured
25 motorist coverage as required in Section 143a of this Code is
26 included in an amount equal to the insured's bodily injury
27 liability limits unless specifically rejected by the insured as
28 provided in subsection ~~paragraph~~ (2) of this Section. Each
29 insurance company providing the coverage must provide
30 applicants with a brief description of the coverage and advise
31 them of their right to reject the coverage in excess of the
32 limits set forth in Section 7-203 of The Illinois Vehicle Code.
33 The provisions of this amendatory Act of 1990 apply to policies
34 of insurance applied for after June 30, 1991.

35 (2) Right of rejection of additional uninsured motorist

1 coverage. Any named insured or applicant may reject additional
2 uninsured motorist coverage in excess of the limits set forth
3 in Section 7-203 of the Illinois Vehicle Code by making a
4 written request for limits of uninsured motorist coverage which
5 are less than bodily injury liability limits or a written
6 rejection of limits in excess of those required by law. This
7 election or rejection shall be binding on all persons insured
8 under the policy. In those cases where the insured has elected
9 to purchase limits of uninsured motorist coverage which are
10 less than bodily injury liability limits or to reject limits in
11 excess of those required by law, the insurer need not provide
12 in any renewal, reinstatement, reissuance, substitute,
13 amended, replacement or supplementary policy, coverage in
14 excess of that elected by the insured in connection with a
15 policy previously issued to such insured by the same insurer
16 unless the insured subsequently makes a written request for
17 such coverage. The provisions of this subsection (2) do not
18 apply to policies of insurance exempted under subsection (2.5)
19 of Section 143a of this Code.

20 (3) The original document indicating the applicant's
21 selection of uninsured motorist coverage limits shall
22 constitute sufficient evidence of the applicant's selection of
23 uninsured motorist coverage limits. For purposes of this
24 Section any reproduction of the document by means of
25 photograph, photostat, microfiche, computerized optical
26 imaging process, or other similar process or means of
27 reproduction shall be deemed the equivalent of the original
28 document.

29 (4) For the purpose of this Code the term "underinsured
30 motor vehicle" means a motor vehicle whose ownership,
31 maintenance or use has resulted in bodily injury or death of
32 the insured, as defined in the policy, and for which the sum of
33 the limits of liability under all bodily injury liability
34 insurance policies or under bonds or other security required to
35 be maintained under Illinois law applicable to the driver or to
36 the person or organization legally responsible for such vehicle

1 and applicable to the vehicle, is less than the limits for
2 underinsured coverage provided the insured as defined in the
3 policy at the time of the accident. The limits of liability for
4 an insurer providing underinsured motorist coverage shall be
5 the limits of such coverage, less those amounts actually
6 recovered under the applicable bodily injury insurance
7 policies, bonds or other security maintained on the
8 underinsured motor vehicle.

9 Except as exempted in subsection (2.5) of Section 143a of
10 this Code, on or after July 1, 1983, no policy insuring
11 against loss resulting from liability imposed by law for bodily
12 injury or death suffered by any person arising out of the
13 ownership, maintenance or use of a motor vehicle shall be
14 renewed or delivered or issued for delivery in this State with
15 respect to any motor vehicle designed for use on public
16 highways and required to be registered in this State unless
17 underinsured motorist coverage is included in such policy in an
18 amount equal to the total amount of uninsured motorist coverage
19 provided in that policy where such uninsured motorist coverage
20 exceeds the limits set forth in Section 7-203 of the Illinois
21 Vehicle Code.

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

25 (5) Scope. Nothing herein shall prohibit an insurer from
26 setting forth policy terms and conditions which provide that if
27 the insured has coverage available under this Section under
28 more than one policy or provision of coverage, any recovery or
29 benefits may be equal to, but may not exceed, the higher of the
30 applicable limits of the respective coverage, and the limits of
31 liability under this Section shall not be increased because of
32 multiple motor vehicles covered under the same policy of
33 insurance. Insurers providing liability coverage on an excess
34 or umbrella basis are neither required to provide, nor are they
35 prohibited from offering or making available coverages
36 conforming to this Section on a supplemental basis.

1 Notwithstanding the provisions of this Section, an insurer
2 shall not be prohibited from solely providing a combination of
3 uninsured and underinsured motorist coverages where the limits
4 of liability under each coverage is in the same amount.

5 (6) Subrogation against underinsured motorists. No insurer
6 shall exercise any right of subrogation under a policy
7 providing additional uninsured motorist coverage against an
8 underinsured motorist where the insurer has been provided with
9 written notice in advance of a settlement between its insured
10 and the underinsured motorist and the insurer fails to advance
11 a payment to the insured, in an amount equal to the tentative
12 settlement, within 30 days following receipt of such notice.

13 (7) A policy which provides underinsured motor vehicle
14 coverage may include a clause which denies payment until the
15 limits of liability or portion thereof under all bodily injury
16 liability insurance policies applicable to the underinsured
17 motor vehicle and its operators have been partially or fully
18 exhausted by payment of judgment or settlement. A judgment or
19 settlement of the bodily injury claim in an amount less than
20 the limits of liability of the bodily injury coverages
21 applicable to the claim shall not preclude the claimant from
22 making an underinsured motorist claim against the underinsured
23 motorist coverage. Any such provision in a policy of insurance
24 shall be inapplicable if the insured, or the legal
25 representative of the insured, and the insurer providing
26 underinsured motor vehicle coverage agree that the insured has
27 suffered bodily injury or death as the result of the negligent
28 operation, maintenance, or use of an underinsured motor vehicle
29 and, without arbitration, agree also on the amount of damages
30 that the insured is legally entitled to collect. The maximum
31 amount payable pursuant to such an underinsured motor vehicle
32 insurance settlement agreement shall not exceed the amount by
33 which the limits of the underinsured motorist coverage exceed
34 the limits of the bodily injury liability insurance of the
35 owner or operator of the underinsured motor vehicle. Any such
36 agreement shall be final as to the amount due and shall be

1 binding upon both the insured and the underinsured motorist
2 insurer regardless of the amount of any judgment, or any
3 settlement reached between any insured and the person or
4 persons responsible for the accident. No such settlement
5 agreement shall be concluded unless: (i) the insured has
6 complied with all other applicable policy terms and conditions;
7 and (ii) before the conclusion of the settlement agreement, the
8 insured has filed suit against the underinsured motor vehicle
9 owner or operator and has not abandoned the suit, or settled
10 the suit without preserving the rights of the insurer providing
11 underinsured motor vehicle coverage in the manner described in
12 paragraph (6) of this Section.

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

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.