

SB0067



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB0067

Introduced 1/27/2011, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

215 ILCS 5/143a

from Ch. 73, par. 755a

Amends the Illinois Insurance Code. Deletes a provision concerning actual physical contact of an uninsured motor vehicle and provides instead that an insurance company issuing uninsured motor vehicle property damage coverage may not require that property damage losses recoverable thereunder be limited to damages caused by the actual physical contact of an uninsured motor vehicle with the insured motor vehicle.

LRB097 02856 RPM 42878 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 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

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

1 Alternatively, disputes with respect to damages and the
2 coverage shall be determined in the following manner: Upon the
3 insured requesting arbitration, each party to the dispute shall
4 select an arbitrator and the 2 arbitrators so named shall
5 select a third arbitrator. If such arbitrators are not selected
6 within 45 days from such request, either party may request that
7 the arbitration be submitted to the American Arbitration
8 Association. Any decision made by the arbitrators shall be
9 binding for the amount of damages not exceeding \$50,000 for
10 bodily injury to or death of any one person, \$100,000 for
11 bodily injury to or death of 2 or more persons in any one motor
12 vehicle accident, or the corresponding policy limits for bodily
13 injury or death, whichever is less. All 3-person arbitration
14 cases proceeding in accordance with any uninsured motorist
15 coverage conducted in this State in which the claimant is only
16 seeking monetary damages up to the limits set forth in Section
17 7-203 of the Illinois Vehicle Code shall be subject to the
18 following rules:

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

24 (1) bills, records, and reports of hospitals,
25 doctors, dentists, registered nurses, licensed
26 practical nurses, physical therapists, and other

1 healthcare providers;

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

4 (3) property repair bills or estimates, when
5 identified and itemized setting forth the charges for
6 labor and material used or proposed for use in the
7 repair of the property;

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

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

16 (6) any other document not specifically covered by
17 any of the foregoing provisions that is otherwise
18 admissible under the rules of evidence.

19 Any party receiving a notice under this paragraph (A)
20 may apply to the arbitrator or panel of arbitrators, as the
21 case may be, for the issuance of a subpoena directed to the
22 author or maker or custodian of the document that is the
23 subject of the notice, requiring the person subpoenaed to
24 produce copies of any additional documents as may be
25 related to the subject matter of the document that is the
26 subject of the notice. Any such subpoena shall be issued in

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

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

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

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

26 (2) No policy insuring against loss resulting from

1 liability imposed by law for property damage arising out of the
2 ownership, maintenance, or use of a motor vehicle shall be
3 renewed, delivered, or issued for delivery in this State with
4 respect to any private passenger or recreational motor vehicle
5 that is designed for use on public highways and that is either
6 required to be registered in this State or is principally
7 garaged in this State and is not covered by collision insurance
8 under the provisions of such policy, unless coverage is made
9 available in the amount of the actual cash value of the motor
10 vehicle described in the policy or \$15,000 whichever is less,
11 subject to a \$250 deductible, for the protection of persons
12 insured thereunder who are legally entitled to recover damages
13 from owners or operators of uninsured motor vehicles and
14 hit-and-run motor vehicles because of property damage to the
15 motor vehicle described in the policy.

16 There shall be no liability imposed under the uninsured
17 motorist property damage coverage required by this subsection
18 if the owner or operator of the at-fault uninsured motor
19 vehicle or hit-and-run motor vehicle cannot be identified. This
20 subsection shall not apply to any policy which does not provide
21 primary motor vehicle liability insurance for liabilities
22 arising from the maintenance, operation, or use of a
23 specifically insured motor vehicle.

24 Each insurance company providing motor vehicle property
25 damage liability insurance shall advise applicants of the
26 availability of uninsured motor vehicle property damage

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

14 An insurance company issuing uninsured motor vehicle
15 property damage coverage may provide that:

16 (i) (Blank) ~~Property damage losses recoverable~~
17 ~~thereunder shall be limited to damages caused by the actual~~
18 ~~physical contact of an uninsured motor vehicle with the~~
19 ~~insured motor vehicle.~~

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

23 (iii) Any claim submitted shall include the name and
24 address of the owner of the at-fault uninsured motor
25 vehicle, or a registration number and description of the
26 vehicle, or any other available information to establish

1 that there is no applicable motor vehicle property damage
2 liability insurance.

3 An insurance company issuing uninsured motor vehicle
4 property damage coverage may not require that property damage
5 losses recoverable thereunder be limited to damages caused by
6 the actual physical contact of an uninsured motor vehicle with
7 the insured motor vehicle.

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

1 labor and material used or proposed for use in the
2 repair of the property;

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

9 (3) any other document not specifically covered by
10 any of the foregoing provisions that is otherwise
11 admissible under the rules of evidence.

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

24 (B) Notwithstanding the provisions of Supreme Court
25 Rule 213(g), a party who proposes to use a written opinion
26 of an expert or opinion witness or the testimony of an

1 expert or opinion witness at the hearing may do so provided
2 a written notice of that intention is given to every other
3 party not less than 60 days prior to the date of hearing,
4 accompanied by a statement containing the identity of the
5 witness, his or her qualifications, the subject matter, the
6 basis of the witness's conclusions, and his or her opinion.

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

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

19 (3) For the purpose of the coverage the term "uninsured
20 motor vehicle" includes, subject to the terms and conditions of
21 the coverage, a motor vehicle where on, before or after the
22 accident date the liability insurer thereof is unable to make
23 payment with respect to the legal liability of its insured
24 within the limits specified in the policy because of the entry
25 by a court of competent jurisdiction of an order of
26 rehabilitation or liquidation by reason of insolvency on or

1 after the accident date. An insurer's extension of coverage, as
2 provided in this subsection, shall be applicable to all
3 accidents occurring after July 1, 1967 during a policy period
4 in which its insured's uninsured motor vehicle coverage is in
5 effect. Nothing in this Section may be construed to prevent any
6 insurer from extending coverage under terms and conditions more
7 favorable to its insureds than is required by this Section.

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

22 (5) This amendatory Act of 1967 shall not be construed to
23 terminate or reduce any insurance coverage or any right of any
24 party under this Code in effect before July 1, 1967. This
25 amendatory Act of 1990 shall not be construed to terminate or
26 reduce any insurance coverage or any right of any party under

1 this Code in effect before its effective date.

2 (6) Failure of the motorist from whom the claimant is
3 legally entitled to recover damages to file the appropriate
4 forms with the Safety Responsibility Section of the Department
5 of Transportation within 120 days of the accident date shall
6 create a rebuttable presumption that the motorist was uninsured
7 at the time of the injurious occurrence.

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

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

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