

SB1367



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1367

Introduced 2/9/2007, by Sen. William R. Haine

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 insurers providing liability coverage on an excess or umbrella basis or a commercial general liability policy that includes a hired or non-owned motor vehicle liability endorsement are neither required to provide, nor are they prohibited from offering or making available coverages conforming to the Code on a supplemental basis. Removes a reference to coverage on a supplemental basis. Effective immediately.

LRB095 10893 KBJ 31177 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) 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. Insurers providing
23 liability coverage on an excess or umbrella basis or a

1 commercial general liability policy that includes a hired or
2 non-owned motor vehicle liability endorsement are neither
3 required to provide, nor are they prohibited from offering or
4 making available coverages conforming to this Section on a
5 supplemental basis. Uninsured motor vehicle coverage does not
6 apply to bodily injury, sickness, disease, or death resulting
7 therefrom, of an insured while occupying a motor vehicle owned
8 by, or furnished or available for the regular use of the
9 insured, a resident spouse or resident relative, if that motor
10 vehicle is not described in the policy under which a claim is
11 made or is not a newly acquired or replacement motor vehicle
12 covered under the terms of the policy. The limits for any
13 coverage for any vehicle under the policy may not be aggregated
14 with the limits for any similar coverage, whether provided by
15 the same insurer or another insurer, applying to other motor
16 vehicles, for purposes of determining the total limit of
17 insurance coverage available for bodily injury or death
18 suffered by a person in any one accident. No policy shall be
19 renewed, delivered, or issued for delivery in this State unless
20 it is provided therein that any dispute with respect to the
21 coverage and the amount of damages shall be submitted for
22 arbitration to the American Arbitration Association and be
23 subject to its rules for the conduct of arbitration hearings as
24 to all matters except medical opinions. As to medical opinions,
25 if the amount of damages being sought is equal to or less than
26 the amount provided for in Section 7-203 of the Illinois

1 Vehicle Code, then the current American Arbitration
2 Association Rules shall apply. If the amount being sought in an
3 American Arbitration Association case exceeds that amount as
4 set forth in Section 7-203 of the Illinois Vehicle Code, then
5 the Rules of Evidence that apply in the circuit court for
6 placing medical opinions into evidence shall govern.
7 Alternatively, disputes with respect to damages and the
8 coverage shall be determined in the following manner: Upon the
9 insured requesting arbitration, each party to the dispute shall
10 select an arbitrator and the 2 arbitrators so named shall
11 select a third arbitrator. If such arbitrators are not selected
12 within 45 days from such request, either party may request that
13 the arbitration be submitted to the American Arbitration
14 Association. Any decision made by the arbitrators shall be
15 binding for the amount of damages not exceeding \$50,000 for
16 bodily injury to or death of any one person, \$100,000 for
17 bodily injury to or death of 2 or more persons in any one motor
18 vehicle accident, or the corresponding policy limits for bodily
19 injury or death, whichever is less. All 3-person arbitration
20 cases proceeding in accordance with any uninsured motorist
21 coverage conducted in this State in which the claimant is only
22 seeking monetary damages up to the limits set forth in Section
23 7-203 of the Illinois Vehicle Code shall be subject to the
24 following rules:

25 (A) If at least 60 days' written notice of the
26 intention to offer the following documents in evidence is

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

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

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

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

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

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

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

25 Any party receiving a notice under this paragraph (A)
26 may apply to the arbitrator or panel of arbitrators, as the

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

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

20 (C) Any other party may subpoena the author or maker of
21 a document admissible under this subsection, at that
22 party's expense, and examine the author or maker as if
23 under cross-examination. The provisions of Section 2-1101
24 of the Code of Civil Procedure shall be applicable to
25 arbitration hearings, and it shall be the duty of a party
26 requesting the subpoena to modify the form to show that the

1 appearance is set before an arbitration panel and to give
2 the time and place set for the hearing.

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

6 (2) No policy insuring against loss resulting from
7 liability imposed by law for property damage arising out of the
8 ownership, maintenance, or use of a motor vehicle shall be
9 renewed, delivered, or issued for delivery in this State with
10 respect to any private passenger or recreational motor vehicle
11 that is designed for use on public highways and that is either
12 required to be registered in this State or is principally
13 garaged in this State and is not covered by collision insurance
14 under the provisions of such policy, unless coverage is made
15 available in the amount of the actual cash value of the motor
16 vehicle described in the policy or \$15,000 whichever is less,
17 subject to a \$250 deductible, for the protection of persons
18 insured thereunder who are legally entitled to recover damages
19 from owners or operators of uninsured motor vehicles and
20 hit-and-run motor vehicles because of property damage to the
21 motor vehicle described in the policy.

22 There shall be no liability imposed under the uninsured
23 motorist property damage coverage required by this subsection
24 if the owner or operator of the at-fault uninsured motor
25 vehicle or hit-and-run motor vehicle cannot be identified. This
26 subsection shall not apply to any policy which does not provide

1 primary motor vehicle liability insurance for liabilities
2 arising from the maintenance, operation, or use of a
3 specifically insured motor vehicle.

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

20 An insurance company issuing uninsured motor vehicle
21 property damage coverage may provide that:

22 (i) Property damage losses recoverable thereunder
23 shall be limited to damages caused by the actual physical
24 contact of an uninsured motor vehicle with the insured
25 motor vehicle.

26 (ii) There shall be no coverage for loss of use of the

1 insured motor vehicle and no coverage for loss or damage to
2 personal property located in the insured motor vehicle.

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

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

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

26 (1) property repair bills or estimates, when

1 identified and itemized setting forth the charges for
2 labor and material used or proposed for use in the
3 repair of the property;

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

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

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

25 (B) Notwithstanding the provisions of Supreme Court
26 Rule 213(g), a party who proposes to use a written opinion

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

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

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

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

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

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

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

1 reduce any insurance coverage or any right of any party under
2 this Code in effect before its effective date.

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

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

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

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

21 (215 ILCS 5/143a-2) (from Ch. 73, par. 755a-2)

22 Sec. 143a-2. (1) Additional uninsured motor vehicle
23 coverage. No policy insuring against loss resulting from
24 liability imposed by law for bodily injury or death suffered by
25 any person arising out of the ownership, maintenance or use of

1 a motor vehicle shall be renewed or delivered or issued for
2 delivery in this State with respect to any motor vehicle
3 designed for use on public highways and required to be
4 registered in this State unless uninsured motorist coverage as
5 required in Section 143a of this Code is included in an amount
6 equal to the insured's bodily injury liability limits unless
7 specifically rejected by the insured as provided in subsection
8 ~~paragraph~~ (2) of this Section. Each insurance company providing
9 the coverage must provide applicants with a brief description
10 of the coverage and advise them of their right to reject the
11 coverage in excess of the limits set forth in Section 7-203 of
12 The Illinois Vehicle Code. The provisions of this amendatory
13 Act of 1990 apply to policies of insurance applied for after
14 June 30, 1991.

15 (2) Right of rejection of additional uninsured motorist
16 coverage. Any named insured or applicant may reject additional
17 uninsured motorist coverage in excess of the limits set forth
18 in Section 7-203 of the Illinois Vehicle Code by making a
19 written request for limits of uninsured motorist coverage which
20 are less than bodily injury liability limits or a written
21 rejection of limits in excess of those required by law. This
22 election or rejection shall be binding on all persons insured
23 under the policy. In those cases where the insured has elected
24 to purchase limits of uninsured motorist coverage which are
25 less than bodily injury liability limits or to reject limits in
26 excess of those required by law, the insurer need not provide

1 in any renewal, reinstatement, reissuance, substitute,
2 amended, replacement or supplementary policy, coverage in
3 excess of that elected by the insured in connection with a
4 policy previously issued to such insured by the same insurer
5 unless the insured subsequently makes a written request for
6 such coverage.

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

16 (4) For the purpose of this Code the term "underinsured
17 motor vehicle" means a motor vehicle whose ownership,
18 maintenance or use has resulted in bodily injury or death of
19 the insured, as defined in the policy, and for which the sum of
20 the limits of liability under all bodily injury liability
21 insurance policies or under bonds or other security required to
22 be maintained under Illinois law applicable to the driver or to
23 the person or organization legally responsible for such vehicle
24 and applicable to the vehicle, is less than the limits for
25 underinsured coverage provided the insured as defined in the
26 policy at the time of the accident. The limits of liability for

1 an insurer providing underinsured motorist coverage shall be
2 the limits of such coverage, less those amounts actually
3 recovered under the applicable bodily injury insurance
4 policies, bonds or other security maintained on the
5 underinsured motor vehicle.

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

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

20 (5) Scope. Nothing herein shall prohibit an insurer from
21 setting forth policy terms and conditions which provide that if
22 the insured has coverage available under this Section under
23 more than one policy or provision of coverage, any recovery or
24 benefits may be equal to, but may not exceed, the higher of the
25 applicable limits of the respective coverage, and the limits of
26 liability under this Section shall not be increased because of

1 multiple motor vehicles covered under the same policy of
2 insurance. Insurers providing liability coverage on an excess
3 or umbrella basis are neither required to provide, nor are they
4 prohibited from offering or making available, coverages
5 conforming to this Section ~~on a supplemental basis~~.
6 Notwithstanding the provisions of this Section, an insurer
7 shall not be prohibited from solely providing a combination of
8 uninsured and underinsured motorist coverages where the limits
9 of liability under each coverage is in the same amount.
10 Insurers providing liability coverage on an excess or umbrella
11 basis or a commercial general liability policy that includes a
12 hired or non-owned motor vehicle liability endorsement are
13 neither required to provide, nor are they prohibited from
14 offering or making available coverages conforming to this
15 Section on a supplemental basis.

16 (6) Subrogation against underinsured motorists. No insurer
17 shall exercise any right of subrogation under a policy
18 providing additional uninsured motorist coverage against an
19 underinsured motorist where the insurer has been provided with
20 written notice in advance of a settlement between its insured
21 and the underinsured motorist and the insurer fails to advance
22 a payment to the insured, in an amount equal to the tentative
23 settlement, within 30 days following receipt of such notice.

24 (7) A policy which provides underinsured motor vehicle
25 coverage may include a clause which denies payment until the
26 limits of liability or portion thereof under all bodily injury

1 liability insurance policies applicable to the underinsured
2 motor vehicle and its operators have been partially or fully
3 exhausted by payment of judgment or settlement. A judgment or
4 settlement of the bodily injury claim in an amount less than
5 the limits of liability of the bodily injury coverages
6 applicable to the claim shall not preclude the claimant from
7 making an underinsured motorist claim against the underinsured
8 motorist coverage. Any such provision in a policy of insurance
9 shall be inapplicable if the insured, or the legal
10 representative of the insured, and the insurer providing
11 underinsured motor vehicle coverage agree that the insured has
12 suffered bodily injury or death as the result of the negligent
13 operation, maintenance, or use of an underinsured motor vehicle
14 and, without arbitration, agree also on the amount of damages
15 that the insured is legally entitled to collect. The maximum
16 amount payable pursuant to such an underinsured motor vehicle
17 insurance settlement agreement shall not exceed the amount by
18 which the limits of the underinsured motorist coverage exceed
19 the limits of the bodily injury liability insurance of the
20 owner or operator of the underinsured motor vehicle. Any such
21 agreement shall be final as to the amount due and shall be
22 binding upon both the insured and the underinsured motorist
23 insurer regardless of the amount of any judgment, or any
24 settlement reached between any insured and the person or
25 persons responsible for the accident. No such settlement
26 agreement shall be concluded unless: (i) the insured has

1 complied with all other applicable policy terms and conditions;
2 and (ii) before the conclusion of the settlement agreement, the
3 insured has filed suit against the underinsured motor vehicle
4 owner or operator and has not abandoned the suit, or settled
5 the suit without preserving the rights of the insurer providing
6 underinsured motor vehicle coverage in the manner described in
7 subsection ~~paragraph~~ (6) of this Section.

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

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.