

# HB2715



## 100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2715

by Rep. Emanuel Chris Welch

### SYNOPSIS AS INTRODUCED:

215 ILCS 5/143a

from Ch. 73, par. 755a

735 ILCS 5/2-1102 rep.

Amends the Civil Practice Article of the Code of Civil Procedure. Repeals a Section providing that a party, a person for whose immediate benefit an action is prosecuted or defended, or the officers, directors, managing agents, or foreman of a party to an action may be called and examined as if under cross-examination at the instance of an adverse party. Makes a corresponding change in the Illinois Insurance Code.

LRB100 08849 HEP 18991 b

A BILL FOR

1 AN ACT concerning civil law.

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 \$75,000 for  
10 bodily injury to or death of any one person, \$150,000 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) (Blank) ~~The provisions of Section 2-1102 of the~~  
24 ~~Code of 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. That information need be given only once and  
3 shall not be required in any subsequent renewal, reinstatement  
4 or reissuance, substitute, amended, replacement or  
5 supplementary policy. No written rejection shall be required,  
6 and the absence of a premium payment for uninsured motor  
7 vehicle property damage shall constitute conclusive proof that  
8 the applicant or policyholder has elected not to accept  
9 uninsured motorist property damage coverage.

10 An insurance company issuing uninsured motor vehicle  
11 property damage coverage may provide that:

12 (i) Property damage losses recoverable thereunder  
13 shall be limited to damages caused by the actual physical  
14 contact of an uninsured motor vehicle with the insured  
15 motor vehicle.

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

19 (iii) Any claim submitted shall include the name and  
20 address of the owner of the at-fault uninsured motor  
21 vehicle, or a registration number and description of the  
22 vehicle, or any other available information to establish  
23 that there is no applicable motor vehicle property damage  
24 liability insurance.

25 Any dispute with respect to the coverage and the amount of  
26 damages shall be submitted for arbitration to the American



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

11 (A) If at least 60 days' written notice of the  
12 intention to offer the following documents in evidence is  
13 given to every other party, accompanied by a copy of the  
14 document, a party may offer in evidence, without foundation  
15 or other proof:

16 (1) property repair bills or estimates, when  
17 identified and itemized setting forth the charges for  
18 labor and material used or proposed for use in the  
19 repair of the property;

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

26 (3) any other document not specifically covered by

1           any of the foregoing provisions that is otherwise  
2           admissible under the rules of evidence.

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

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

24          (C) Any other party may subpoena the author or maker of  
25          a document admissible under this subsection, at that  
26          party's expense, and examine the author or maker as if

1 under cross-examination. The provisions of Section 2-1101  
2 of the Code of Civil Procedure shall be applicable to  
3 arbitration hearings, and it shall be the duty of a party  
4 requesting the subpoena to modify the form to show that the  
5 appearance is set before an arbitration panel and to give  
6 the time and place set for the hearing.

7 (D) (Blank) ~~The provisions of Section 2-1102 of the~~  
8 ~~Code of Civil Procedure shall be applicable to arbitration~~  
9 ~~hearings under this subsection.~~

10 (3) For the purpose of the coverage, the term "uninsured  
11 motor vehicle" includes, subject to the terms and conditions of  
12 the coverage, a motor vehicle where on, before or after the  
13 accident date the liability insurer thereof is unable to make  
14 payment with respect to the legal liability of its insured  
15 within the limits specified in the policy because of the entry  
16 by a court of competent jurisdiction of an order of  
17 rehabilitation or liquidation by reason of insolvency on or  
18 after the accident date. An insurer's extension of coverage, as  
19 provided in this subsection, shall be applicable to all  
20 accidents occurring after July 1, 1967 during a policy period  
21 in which its insured's uninsured motor vehicle coverage is in  
22 effect. Nothing in this Section may be construed to prevent any  
23 insurer from extending coverage under terms and conditions more  
24 favorable to its insureds than is required by this Section.

25 (4) In the event of payment to any person under the  
26 coverage required by this Section and subject to the terms and

1 conditions of the coverage, the insurer making the payment  
2 shall, to the extent thereof, be entitled to the proceeds of  
3 any settlement or judgment resulting from the exercise of any  
4 rights of recovery of the person against any person or  
5 organization legally responsible for the property damage,  
6 bodily injury or death for which the payment is made, including  
7 the proceeds recoverable from the assets of the insolvent  
8 insurer. With respect to payments made by reason of the  
9 coverage described in subsection (3), the insurer making such  
10 payment shall not be entitled to any right of recovery against  
11 the tortfeasor in excess of the proceeds recovered from the  
12 assets of the insolvent insurer of the tortfeasor.

13 (5) This amendatory Act of 1967 (Laws of Illinois 1967,  
14 page 875) shall not be construed to terminate or reduce any  
15 insurance coverage or any right of any party under this Code in  
16 effect before July 1, 1967. Public Act 86-1155 shall not be  
17 construed to terminate or reduce any insurance coverage or any  
18 right of any party under this Code in effect before its  
19 effective date.

20 (6) Failure of the motorist from whom the claimant is  
21 legally entitled to recover damages to file the appropriate  
22 forms with the Safety Responsibility Section of the Department  
23 of Transportation within 120 days of the accident date shall  
24 create a rebuttable presumption that the motorist was uninsured  
25 at the time of the injurious occurrence.

26 (7) An insurance carrier may upon good cause require the

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

7 The changes made by Public Act 90-451 apply to all policies  
8 of insurance amended, delivered, issued, or renewed on and  
9 after January 1, 1998 (the effective date of Public Act  
10 90-451).

11 (8) The changes made by Public Act 98-927 apply to all  
12 policies of insurance amended, delivered, issued, or renewed on  
13 and after January 1, 2015 (the effective date of Public Act  
14 98-927).

15 (Source: P.A. 98-242, eff. 1-1-14; 98-927, eff. 1-1-15; 99-642,  
16 eff. 7-28-16.)

17 (735 ILCS 5/2-1102 rep.)

18 Section 10. The Code of Civil Procedure is amended by  
19 repealing Section 2-1102.