



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1646

Introduced 2/9/2017, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

215 ILCS 5/143a-2

from Ch. 73, par. 755a-2

Amends the Illinois Insurance Code. Provides that no policy which provides underinsured motor vehicle coverage shall be renewed, delivered, or issued for delivery unless it provides that any dispute with respect to the coverage and the amount of damages shall be submitted for arbitration to the American Arbitration Association and be subject to its rules for the conduct of arbitration hearings as to all matters except medical opinions. Provides the rules for arbitration in which a claimant is only seeking monetary damages up to certain limits. Provides rules for proposing to use the written opinion or testimony of an expert or opinion witness. Provides rules for subpoenaing the author or maker of a document. Provides that certain provisions in the Code of Civil Procedure shall be applicable to arbitration hearings.

LRB100 09627 SMS 19796 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Section 143a-2 as follows:

6 (215 ILCS 5/143a-2) (from Ch. 73, par. 755a-2)

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

1 June 30, 1991.

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

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

1 reproduction shall be deemed the equivalent of the original
2 document.

3 (4) For the purpose of this Code the term "underinsured
4 motor vehicle" means a motor vehicle whose ownership,
5 maintenance or use has resulted in bodily injury or death of
6 the insured, as defined in the policy, and for which the sum of
7 the limits of liability under all bodily injury liability
8 insurance policies or under bonds or other security required to
9 be maintained under Illinois law applicable to the driver or to
10 the person or organization legally responsible for such vehicle
11 and applicable to the vehicle, is less than the limits for
12 underinsured coverage provided the insured as defined in the
13 policy at the time of the accident. The limits of liability for
14 an insurer providing underinsured motorist coverage shall be
15 the limits of such coverage, less those amounts actually
16 recovered under the applicable bodily injury insurance
17 policies, bonds or other security maintained on the
18 underinsured motor vehicle.

19 On or after July 1, 1983, no policy insuring against loss
20 resulting from liability imposed by law for bodily injury or
21 death suffered by any person arising out of the ownership,
22 maintenance or use of a motor vehicle shall be renewed or
23 delivered or issued for delivery in this State with respect to
24 any motor vehicle designed for use on public highways and
25 required to be registered in this State unless underinsured
26 motorist coverage is included in such policy in an amount equal

1 to the total amount of uninsured motorist coverage provided in
2 that policy where such uninsured motorist coverage exceeds the
3 limits set forth in Section 7-203 of the Illinois Vehicle Code.

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

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

23 (6) Subrogation against underinsured motorists. No insurer
24 shall exercise any right of subrogation under a policy
25 providing additional uninsured motorist coverage against an
26 underinsured motorist where the insurer has been provided with

1 written notice in advance of a settlement between its insured
2 and the underinsured motorist and the insurer fails to advance
3 a payment to the insured, in an amount equal to the tentative
4 settlement, within 30 days following receipt of such notice.

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

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

15 (8) No policy which provides underinsured motor vehicle
16 coverage shall be renewed, delivered, or issued for delivery in
17 this State unless it is provided therein that any dispute with
18 respect to the coverage and the amount of damages shall be
19 submitted for arbitration to the American Arbitration
20 Association and be subject to its rules for the conduct of
21 arbitration hearings as to all matters except medical opinions.
22 As to medical opinions, if the amount of damages being sought
23 is equal to or less than the amount provided for in Section
24 7-203 of the Illinois Vehicle Code, then the current American
25 Arbitration Association Rules shall apply. If the amount being
26 sought in an American Arbitration Association case exceeds that

1 amount as set forth in Section 7-203 of the Illinois Vehicle
2 Code, then the Rules of Evidence that apply in the circuit
3 court for placing medical opinions into evidence shall govern.
4 Alternatively, disputes with respect to damages and the
5 coverage shall be determined in the following manner: Upon the
6 insured requesting arbitration, each party to the dispute shall
7 select an arbitrator and the 2 arbitrators so named shall
8 select a third arbitrator. If such arbitrators are not selected
9 within 45 days from such request, either party may request that
10 the arbitration be submitted to the American Arbitration
11 Association. Any decision made by the arbitrators shall be
12 binding for the amount of damages not exceeding \$75,000 for
13 bodily injury to or death of any one person, \$150,000 for
14 bodily injury to or death of 2 or more persons in any one motor
15 vehicle accident, or the corresponding policy limits for bodily
16 injury or death, whichever is less. All 3-person arbitration
17 cases proceeding in accordance with any underinsured motorist
18 coverage conducted in this State in which the claimant is only
19 seeking monetary damages up to the limits set forth in Section
20 7-203 of the Illinois Vehicle Code shall be subject to the
21 following rules:

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

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

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

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

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

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

19 (6) any other document not specifically covered by
20 any of the foregoing provisions that is otherwise
21 admissible under the rules of evidence.

22 Any party receiving a notice under this paragraph (A)
23 may apply to the arbitrator or panel of arbitrators, as the
24 case may be, for the issuance of a subpoena directed to the
25 author or maker or custodian of the document that is the
26 subject of the notice, requiring the person subpoenaed to

1 produce copies of any additional documents as may be
2 related to the subject matter of the document that is the
3 subject of the notice. Any such subpoena shall be issued in
4 substantially similar form and served by notice as provided
5 by Illinois Supreme Court Rule 204(a)(4). Any such subpoena
6 shall be returnable not less than 5 days before the
7 arbitration hearing.

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

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

26 (D) The provisions of Section 2-1102 of the Code of

1 Civil Procedure shall be applicable to arbitration
2 hearings under this subsection.

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