



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3612

Introduced 2/24/2009, by Rep. JoAnn D. Osmond

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 a commercial general liability policy that includes hired automobile and non-owned automobile liability are neither required to provide, nor are they prohibited from offering or making available uninsured and hit and run vehicle coverage. Provides that insurers providing a commercial automobile policy shall offer and provide such coverage as required by the Illinois Vehicle Code to contract carriers transporting employees in the course of their employment. Effective immediately.

LRB096 08430 RPM 18545 b

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 a
23 commercial general liability policy that includes hired

1 automobile and non-owned automobile liability are neither
2 required to provide, nor are they prohibited from offering or
3 making available, coverages conforming to this Section.
4 Insurers providing a commercial automobile policy shall offer
5 and provide such coverage as required by subsection (c) of
6 Section 8-101 of the Illinois Vehicle Code to contract carriers
7 transporting employees in the course of their employment.

8 Uninsured motor vehicle coverage does not apply to bodily
9 injury, sickness, disease, or death resulting therefrom, of an
10 insured while occupying a motor vehicle owned by, or furnished
11 or available for the regular use of the insured, a resident
12 spouse or resident relative, if that motor vehicle is not
13 described in the policy under which a claim is made or is not a
14 newly acquired or replacement motor vehicle covered under the
15 terms of the policy. The limits for any coverage for any
16 vehicle under the policy may not be aggregated with the limits
17 for any similar coverage, whether provided by the same insurer
18 or another insurer, applying to other motor vehicles, for
19 purposes of determining the total limit of insurance coverage
20 available for bodily injury or death suffered by a person in
21 any one accident. No policy shall be renewed, delivered, or
22 issued for delivery in this State unless it is provided therein
23 that any dispute with respect to the coverage and the amount of
24 damages shall be submitted for arbitration to the American
25 Arbitration Association and be subject to its rules for the
26 conduct of arbitration hearings as to all matters except

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

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

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

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

1 arbitration hearings, and it shall be the duty of a party
2 requesting the subpoena to modify the form to show that the
3 appearance is set before an arbitration panel and to give
4 the time and place set for the hearing.

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

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

24 There shall be no liability imposed under the uninsured
25 motorist property damage coverage required by this subsection
26 if the owner or operator of the at-fault uninsured motor

1 vehicle or hit-and-run motor vehicle cannot be identified. This
2 subsection shall not apply to any policy which does not provide
3 primary motor vehicle liability insurance for liabilities
4 arising from the maintenance, operation, or use of a
5 specifically insured motor vehicle.

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

22 An insurance company issuing uninsured motor vehicle
23 property damage coverage may provide that:

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

1 motor vehicle.

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

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

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

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

1 or other proof:

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

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

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

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

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

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

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

22 (3) For the purpose of the coverage the term "uninsured
23 motor vehicle" includes, subject to the terms and conditions of
24 the coverage, a motor vehicle where on, before or after the
25 accident date the liability insurer thereof is unable to make
26 payment with respect to the legal liability of its insured

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

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

25 (5) This amendatory Act of 1967 shall not be construed to
26 terminate or reduce any insurance coverage or any right of any

1 party under this Code in effect before July 1, 1967. This
2 amendatory Act of 1990 shall not be construed to terminate or
3 reduce any insurance coverage or any right of any party under
4 this Code in effect before its effective date.

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

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

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

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

23 (215 ILCS 5/143a-2) (from Ch. 73, par. 755a-2)

24 Sec. 143a-2. (1) Additional uninsured motor vehicle
25 coverage. No policy insuring against loss resulting from

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

17 (2) Right of rejection of additional uninsured motorist
18 coverage. Any named insured or applicant may reject additional
19 uninsured motorist coverage in excess of the limits set forth
20 in Section 7-203 of the Illinois Vehicle Code by making a
21 written request for limits of uninsured motorist coverage which
22 are less than bodily injury liability limits or a written
23 rejection of limits in excess of those required by law. This
24 election or rejection shall be binding on all persons insured
25 under the policy. In those cases where the insured has elected
26 to purchase limits of uninsured motorist coverage which are

1 less than bodily injury liability limits or to reject limits in
2 excess of those required by law, the insurer need not provide
3 in any renewal, reinstatement, reissuance, substitute,
4 amended, replacement or supplementary policy, coverage in
5 excess of that elected by the insured in connection with a
6 policy previously issued to such insured by the same insurer
7 unless the insured subsequently makes a written request for
8 such coverage.

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

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

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

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

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

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

1 applicable limits of the respective coverage, and the limits of
2 liability under this Section shall not be increased because of
3 multiple motor vehicles covered under the same policy of
4 insurance. Insurers providing liability coverage on an excess
5 or umbrella basis are neither required to provide, nor are they
6 prohibited from offering or making available, coverages
7 conforming to this Section ~~on a supplemental basis~~.
8 Notwithstanding the provisions of this Section, an insurer
9 shall not be prohibited from solely providing a combination of
10 uninsured and underinsured motorist coverages where the limits
11 of liability under each coverage is in the same amount.
12 Insurers providing a commercial general liability policy that
13 includes hired automobile and non-owned automobile liability
14 are neither required to provide, nor are they prohibited from
15 offering or making available, coverages conforming to this
16 Section. Insurers providing a commercial automobile policy
17 shall offer and provide such coverage as required by subsection
18 (c) of Section 8-101 of the Illinois Vehicle Code to contract
19 carriers transporting employees in the course of their
20 employment.

21 (6) Subrogation against underinsured motorists. No insurer
22 shall exercise any right of subrogation under a policy
23 providing additional uninsured motorist coverage against an
24 underinsured motorist where the insurer has been provided with
25 written notice in advance of a settlement between its insured
26 and the underinsured motorist and the insurer fails to advance

1 a payment to the insured, in an amount equal to the tentative
2 settlement, within 30 days following receipt of such notice.

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