



Sen. Denny Jacobs

**Filed: 3/22/2004**

09300SB2404sam003

LRB093 20536 WGH 48957 a

1 AMENDMENT TO SENATE BILL 2404

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2404 by replacing  
3 everything after the enacting clause with the following:

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  
24 June 30, 1991.

1 (2) Right of rejection of additional uninsured motorist  
2 coverage. Any named insured ~~After June 30, 1991, every~~  
3 ~~application for motor vehicle coverage must contain a space for~~  
4 ~~indicating the rejection of additional uninsured motorist~~  
5 ~~coverage. No rejection of that coverage may be effective unless~~  
6 ~~the applicant signs or initials the indication of rejection.~~  
7 ~~The applicant~~ may reject additional uninsured motorist  
8 coverage in excess of the limits set forth in Section 7-203 of  
9 the Illinois Vehicle Code by making a written request for  
10 limits of uninsured motorist coverage which are less than  
11 bodily injury liability limits or a written rejection of limits  
12 in excess of those required by law. This election or rejection  
13 shall be binding on all persons insured under the policy. In  
14 those cases, ~~including policies first issued before July 1,~~  
15 ~~1991,~~ where the insured has elected to purchase limits of  
16 uninsured motorist coverage which are less than bodily injury  
17 liability limits or to reject limits in excess of those  
18 required by law, the insurer need not provide in any renewal,  
19 reinstatement, reissuance, substitute, amended, replacement or  
20 supplementary policy, coverage in excess of that elected by the  
21 insured in connection with a policy previously issued to such  
22 insured by the same insurer unless the insured subsequently  
23 makes a written request for such coverage.

24 (3) The original document ~~application~~ indicating the  
25 applicant's selection of uninsured motorist coverage limits  
26 shall constitute sufficient evidence of the applicant's  
27 selection of uninsured motorist coverage limits ~~and shall be~~  
28 ~~binding on all persons insured under the policy.~~ For purposes  
29 of this Section any reproduction of the document ~~application~~ by  
30 means of photograph, photostat, microfiche, computerized  
31 optical imaging process, or other similar process or means of  
32 reproduction shall be deemed the equivalent of the original  
33 document ~~application~~. Any such document, application,  
34 selection, or rejection form obtained before the effective date

1 of this amendatory Act of the 93rd General Assembly and which  
2 indicated the applicant's or insured's selection shall be  
3 deemed sufficient evidence of the applicant's or insured's  
4 selection of additional uninsured motorist coverage.

5 (4) For the purpose of this Code the term "underinsured  
6 motor vehicle" means a motor vehicle whose ownership,  
7 maintenance or use has resulted in bodily injury or death of  
8 the insured, as defined in the policy, and for which the sum of  
9 the limits of liability under all bodily injury liability  
10 insurance policies or under bonds or other security required to  
11 be maintained under Illinois law applicable to the driver or to  
12 the person or organization legally responsible for such vehicle  
13 and applicable to the vehicle, is less than the limits for  
14 underinsured coverage provided the insured as defined in the  
15 policy at the time of the accident. The limits of liability for  
16 an insurer providing underinsured motorist coverage shall be  
17 the limits of such coverage, less those amounts actually  
18 recovered under the applicable bodily injury insurance  
19 policies, bonds or other security maintained on the  
20 underinsured motor vehicle. However, the maximum amount  
21 payable by the underinsured motorist coverage carrier shall not  
22 exceed the amount by which the limits of the underinsured  
23 motorist coverage exceeds the limits of the bodily injury  
24 liability insurance of the owner or operator of the  
25 underinsured motor vehicle.

26 On or after July 1, 1983, no policy insuring against loss  
27 resulting from liability imposed by law for bodily injury or  
28 death suffered by any person arising out of the ownership,  
29 maintenance or use of a motor vehicle shall be renewed or  
30 delivered or issued for delivery in this State with respect to  
31 any motor vehicle designed for use on public highways and  
32 required to be registered in this State unless underinsured  
33 motorist coverage is included in such policy in an amount equal  
34 to the total amount of uninsured motorist coverage provided in

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

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

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

27 (7) A policy which provides underinsured motor vehicle  
28 coverage may include a clause which denies payment until the  
29 limits of liability or portion thereof under all bodily injury  
30 liability insurance policies applicable to the underinsured  
31 motor vehicle and its operators have been partially or fully  
32 exhausted by payment of judgment or settlement. A judgment or  
33 settlement of the bodily injury claim in an amount less than  
34 the limits of liability of the bodily injury coverages

1 applicable to the claim shall not preclude the claimant from  
2 making an underinsured motorist claim against the underinsured  
3 motorist coverage. Any such provision in a policy of insurance  
4 shall be inapplicable if the insured, or the legal  
5 representative of the insured, and the insurer providing  
6 underinsured motor vehicle coverage agree that the insured has  
7 suffered bodily injury or death as the result of the negligent  
8 operation, maintenance, or use of an underinsured motor vehicle  
9 and, without arbitration, agree also on the amount of damages  
10 that the insured is legally entitled to collect. The maximum  
11 amount payable pursuant to such an underinsured motor vehicle  
12 insurance settlement agreement shall not exceed the amount by  
13 which the limits of the underinsured motorist coverage exceed  
14 the limits of the bodily injury liability insurance of the  
15 owner or operator of the underinsured motor vehicle. Any such  
16 agreement shall be final as to the amount due and shall be  
17 binding upon both the insured and the underinsured motorist  
18 insurer regardless of the amount of any judgment, or any  
19 settlement reached between any insured and the person or  
20 persons responsible for the accident. No such settlement  
21 agreement shall be concluded unless: (i) the insured has  
22 complied with all other applicable policy terms and conditions;  
23 and (ii) before the conclusion of the settlement agreement, the  
24 insured has filed suit against the underinsured motor vehicle  
25 owner or operator and has not abandoned the suit, or settled  
26 the suit without preserving the rights of the insurer providing  
27 underinsured motor vehicle coverage in the manner described in  
28 paragraph (6) of this Section.

29 (Source: P.A. 89-658, eff. 1-1-97.)

30 Section 99. Effective date. This Act takes effect upon  
31 becoming law."