

4288

2011-2012 Regular Sessions

I N A S S E M B L Y

February 2, 2011

Introduced by M. of A. P. RIVERA -- read once and referred to the  
Committee on Insurance

AN ACT to amend the insurance law, in relation to the terms of motor  
vehicle liability insurance policies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 5103 of the insurance law is amended by adding a  
2 new subsection (i) to read as follows:

3 (I) EVERY OWNER'S POLICY OF LIABILITY INSURANCE ISSUED ON A MOTOR  
4 VEHICLE OR A MOTORCYCLE IN SATISFACTION OF THE REQUIREMENTS OF ARTICLE  
5 SIX OR EIGHT OF THE VEHICLE AND TRAFFIC LAW SHALL CONTAIN THE PROVISIONS  
6 SPECIFIED IN THIS SUBSECTION IN THE WORDS IN WHICH SUCH PROVISIONS  
7 APPEAR, EXCEPT THAT AN INSURER MAY, AT ITS OPTION, SUBSTITUTE FOR ONE OR  
8 MORE OF SUCH PROVISIONS CORRESPONDING PROVISIONS OF DIFFERENT WORDING  
9 APPROVED BY THE SUPERINTENDENT WHICH ARE NOT LESS FAVORABLE IN ANY  
10 RESPECT TO THE INSURED OR ANY COVERED PERSON. EACH PROVISION CONTAINED  
11 IN THE POLICY SHALL BE PRECEDED BY THE APPLICABLE CAPTION OR, AT THE  
12 INSURER'S OPTION, BY SUCH APPROPRIATE CAPTIONS OR SUBCAPTIONS AS THE  
13 SUPERINTENDENT MAY APPROVE.

14 (1) EACH POLICY SHALL, EXCEPT WITH RESPECT TO DESIGNATION BY NUMBERS  
15 OR LETTERS, CONTAIN THE FOLLOWING PROVISIONS:

16 (A) ACTION AGAINST INSURER. NO ACTION SHALL LIE AGAINST THE INSURER  
17 UNLESS, AS A CONDITION PRECEDENT THERETO, THERE SHALL HAVE BEEN FULL  
18 COMPLIANCE WITH THE TERMS OF THIS COVERAGE.

19 (B) NOTICE. IN THE EVENT OF AN ACCIDENT, WRITTEN NOTICE SETTING FORTH  
20 DETAILS SUFFICIENT TO IDENTIFY THE ELIGIBLE INJURED PERSON, ALONG WITH  
21 REASONABLY OBTAINABLE INFORMATION REGARDING THE TIME, PLACE AND CIRCUM-  
22 STANCES OF THE ACCIDENT, SHALL BE GIVEN BY, OR ON BEHALF OF, EACH ELIGI-  
23 BLE INJURED PERSON, TO THE INSURER, OR ANY OF THE INSURER'S AUTHORIZED  
24 AGENTS, AS SOON AS REASONABLY PRACTICABLE, BUT IN NO EVENT MORE THAN SIX  
25 MONTHS AFTER THE DATE OF THE ACCIDENT, UNLESS THE ELIGIBLE INJURED

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 PERSON SUBMITS WRITTEN PROOF PROVIDING A JUSTIFICATION FOR THE FAILURE  
2 TO COMPLY WITH SUCH TIME LIMITATION WHICH IS REASONABLE BY A PREPONDER-  
3 ANCE OF EVIDENCE. IF AN ELIGIBLE INJURED PERSON OR THAT PERSON'S LEGAL  
4 REPRESENTATIVE INSTITUTES A PROCEEDING TO RECOVER DAMAGES FOR PERSONAL  
5 INJURY UNDER SUBSECTION (B) OF SECTION FIVE THOUSAND ONE HUNDRED FOUR OF  
6 THIS ARTICLE, A COPY OF THE SUMMONS AND COMPLAINT OR OTHER PROCESS  
7 SERVED IN CONNECTION WITH SUCH ACTION SHALL BE FORWARDED WITHIN SIX  
8 MONTHS AFTER THE DATE OF THE ACCIDENT TO THE INSURER OR ANY OF THE  
9 INSURER'S AUTHORIZED AGENTS BY SUCH ELIGIBLE INJURED PERSON OR THAT  
10 PERSON'S LEGAL REPRESENTATIVE. IN ANY INSTANCE IN WHICH AN ELIGIBLE  
11 INJURED PERSON IS UNABLE AFTER MAKING A REASONABLE EFFORT TO ASCERTAIN  
12 WHETHER THE INSURER IS LIABLE FOR SUCH PERSON'S CLAIM, NOTICE SHALL BE  
13 DEEMED TO HAVE BEEN MADE UPON THE APPROPRIATE INSURER, IF SUCH NOTICE  
14 SHALL HAVE BEEN SERVED UPON THE STATE INSURANCE FUND. THE ELIGIBLE  
15 INJURED PERSON SHALL BE DEEMED TO HAVE MADE A REASONABLE EFFORT TO  
16 ASCERTAIN THE APPROPRIATE INSURER, IF HE OR SHE SHALL HAVE DIRECTED  
17 CORRESPONDENCE TO THE INSURED BY A MANNER OF SERVICE ENUMERATED IN  
18 SECTION THREE HUNDRED EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

19 (C) PROOF OF CLAIM; MEDICAL, WORK LOSS AND OTHER NECESSARY EXPENSES.  
20 IN THE CASE OF A CLAIM FOR HEALTH SERVICE EXPENSES, THE ELIGIBLE INJURED  
21 PERSON OR THAT PERSON'S ASSIGNEE OR LEGAL REPRESENTATIVE SHALL SUBMIT  
22 WRITTEN PROOF OF CLAIM TO THE INSURER, INCLUDING FULL PARTICULARS OF THE  
23 NATURE AND EXTENT OF THE INJURIES AND TREATMENT RECEIVED AND CONTEM-  
24 PLATED, AS SOON AS REASONABLY PRACTICABLE BUT, IN NO EVENT LATER THAN  
25 SIX MONTHS AFTER THE DATE SERVICES ARE INITIALLY RENDERED. THE ELIGIBLE  
26 INJURED PERSON OR THAT PERSON'S LEGAL REPRESENTATIVE SHALL SUBMIT WRIT-  
27 TEN PROOF OF CLAIM FOR WORK LOSS BENEFITS AND FOR OTHER NECESSARY  
28 EXPENSES TO THE INSURER WITHIN SIX MONTHS AFTER THE ACCIDENT. THE FORE-  
29 GOING TIME LIMITATIONS FOR THE SUBMISSION OF PROOF OF CLAIM SHALL APPLY  
30 UNLESS THE ELIGIBLE INJURED PERSON OR THAT PERSON'S LEGAL REPRESENTATIVE  
31 SUBMITS WRITTEN PROOF PROVIDING JUSTIFICATION FOR THE FAILURE TO COMPLY  
32 WITH SUCH TIME LIMITATION WHICH IS REASONABLE BY A PREPONDERANCE OF  
33 EVIDENCE. UPON REQUEST BY THE INSURER, THE ELIGIBLE INJURED PERSON OR  
34 THAT PERSON'S ASSIGNEE OR REPRESENTATIVE SHALL:

35 (A) EXECUTE A WRITTEN PROOF OF CLAIM UNDER OATH;

36 (B) AS MAY REASONABLY BE REQUIRED SUBMIT TO EXAMINATIONS UNDER OATH BY  
37 ANY PERSON NAMED BY THE INSURER AND SUBSCRIBE THE SAME;

38 (C) PROVIDE AUTHORIZATION THAT WILL ENABLE THE INSURER TO OBTAIN  
39 MEDICAL RECORDS; AND

40 (D) PROVIDE ANY OTHER PERTINENT INFORMATION THAT MAY ASSIST THE INSUR-  
41 ER IN DETERMINING THE AMOUNT DUE AND PAYABLE.

42 THE ELIGIBLE INJURED PERSON SHALL SUBMIT TO MEDICAL EXAMINATION BY  
43 PHYSICIANS SELECTED BY, OR ACCEPTABLE TO, THE INSURER, WHEN, AND AS  
44 OFTEN AS, THE INSURER MAY REASONABLY REQUIRE.

45 (2) THE DEPARTMENT SHALL PROMULGATE SUCH RULES AND REGULATIONS AS ARE  
46 NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION; PROVIDED,  
47 HOWEVER, THAT SUCH RULES AND REGULATIONS SHALL NOT BE LESS FAVORABLE IN  
48 ANY RESPECT TO ANY COVERED PERSONS, NOR SHALL ANY ADDITIONAL CONDITION  
49 PRECEDENT FOR COVERAGE OR FILING A CLAIM BE ESTABLISHED THEREBY.

50 S 2. This act shall take effect on the one hundred twentieth day after  
51 it shall have become a law; provided that any rules and regulations  
52 necessary to implement the provisions of this act on its effective date  
53 are authorized and directed to be promulgated and shall become effective  
54 on such date.