

4507--A

Cal. No. 553

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I N S E N A T E

April 8, 2011

Introduced by Sens. GOLDEN, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the insurance law and the vehicle and traffic law, in relation to permitting an insurer to rescind or retroactively cancel a policy in certain circumstances

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

1 Section 1. The insurance law is amended by adding a new section 3455
2 to read as follows:
3 S 3455. CANCELLATION OF POLICY. (A) AN INSURER MAY, WITHIN THE FIRST
4 SIXTY DAYS, RESCIND OR RETROACTIVELY CANCEL TO THE INCEPTION OF THE
5 POLICY, A NEWLY ISSUED COVERED POLICY SUBJECT TO SUBSECTION (A) OF
6 SECTION THREE THOUSAND FOUR HUNDRED TWENTY-FIVE OF THIS ARTICLE OR A
7 NEWLY ISSUED COMMERCIAL AUTOMOBILE INSURANCE POLICY SUBJECT TO SECTION
8 THREE THOUSAND FOUR HUNDRED TWENTY-SIX OF THIS ARTICLE, IF THE INITIAL
9 PREMIUM PAYMENT IS NOT HONORED BY A FINANCIAL INSTITUTION DUE TO
10 NON-SUFFICIENT FUNDS, THE NONEXISTENCE OF A BANK ACCOUNT OR THE UNAU-
11 THORIZED USE OF THE ACCOUNT. IN THE EVENT THAT SUCH INITIAL PAYMENT IS
12 NOT HONORED BY A FINANCIAL INSTITUTION DUE TO NON-SUFFICIENT FUNDS IN AN
13 EXISTING ACCOUNT THAT THE POLICYHOLDER IS AUTHORIZED TO USE, THE INSURER
14 SHALL NOTIFY THE POLICYHOLDER THAT UNLESS THE POLICYHOLDER REMITS A
15 CHECK CERTIFIED PURSUANT TO SECTION 3-411 OF THE UNIFORM COMMERCIAL
16 CODE, ALONG WITH ANY FEES ACCESSED FOR NON-SUFFICIENT FUNDS, TO THE
17 INSURER WITHIN TEN DAYS, THE POLICY MAY BE RESCINDED OR CANCELLED
18 RETROACTIVELY TO THE INCEPTION OF THE POLICY.
19 (B) A PERSON WHO IS INJURED DURING THIS PERIOD SHALL HAVE RECOURSE TO
20 HIS OR HER OWN POLICY, SUBJECT TO THE TERMS AND CONDITIONS OF THE
21 CONTRACT, OR THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,

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

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1 PROVIDED SUCH PERSON DID NOT PARTICIPATE IN ANY FRAUDULENT ACTIVITY,
2 INCLUDING, BUT NOT LIMITED TO, A STAGED OR CAUSED ACCIDENT. THE MOTOR
3 VEHICLE ACCIDENT INDEMNIFICATION CORPORATION MAY NOT SUBROGATE ITS CLAIM
4 AGAINST THE RESCINDING INSURER.

5 S 2. Paragraph 2 of subsection (d) of section 3420 of the insurance
6 law, as amended by chapter 388 of the laws of 2008, is amended to read
7 as follows:

8 (2) If under a liability policy issued or delivered in this state, an
9 insurer shall disclaim liability [or], deny coverage, OR RESCIND COVER-
10 AGE PURSUANT TO SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS
11 ARTICLE, for death or bodily injury arising out of a motor vehicle acci-
12 dent, INCLUDING ANY CLAIM FOR PERSONAL INJURIES UNDER AN UNINSURED
13 MOTORIST ENDORSEMENT BY ANY OCCUPANT OF A MOTOR VEHICLE INVOLVED IN A
14 STAGED OR ARRANGED ACCIDENT WHO IS WITHOUT KNOWLEDGE OF THE STAGING OR
15 ARRANGING OF THE ACCIDENT, or any other type of accident occurring with-
16 in this state, it shall give written notice as soon as is reasonably
17 possible of such disclaimer of liability or denial of coverage to the
18 insured and the injured person or any other claimant.

19 S 3. Paragraph 1 of subsection (f) of section 3420 of the insurance
20 law, as amended by chapter 305 of the laws of 1995, is amended to read
21 as follows:

22 (1) No policy insuring against loss resulting from liability imposed
23 by law for bodily injury or death suffered by any natural person arising
24 out of the ownership, maintenance and use of a motor vehicle by the
25 insured shall be issued or delivered by any authorized insurer upon any
26 motor vehicle then principally garaged or principally used in this state
27 unless it contains a provision whereby the insurer agrees that it will
28 pay to the insured, as defined in such provision, subject to the terms
29 and conditions set forth therein to be prescribed by the board of direc-
30 tors of the Motor Vehicle Accident Indemnification Corporation and
31 approved by the superintendent, all sums, not exceeding a maximum amount
32 or limit of twenty-five thousand dollars exclusive of interest and
33 costs, on account of injury to and all sums, not exceeding a maximum
34 amount or limit of fifty thousand dollars exclusive of interest and
35 costs, on account of death of one person, in any one accident, and the
36 maximum amount or limit, subject to such limit for any one person so
37 injured of fifty thousand dollars or so killed of one hundred thousand
38 dollars, exclusive of interest and costs, on account of injury to, or
39 death of, more than one person in any one accident, which the insured or
40 his legal representative shall be entitled to recover as damages from an
41 owner or operator of an uninsured motor vehicle, unidentified motor
42 vehicle which leaves the scene of an accident, a motor vehicle regis-
43 tered in this state as to which at the time of the accident there was
44 not in effect a policy of liability insurance, A MOTOR VEHICLE FOR WHICH
45 THE POLICY OF INSURANCE HAS BEEN RESCINDED OR CANCELLED PURSUANT TO
46 SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS ARTICLE, a stolen
47 vehicle, A MOTOR VEHICLE INVOLVED IN AN INTENTIONAL FRAUDULENT STAGED
48 ACCIDENT, EXCEPT SUCH VEHICLE OR THOSE VEHICLES OWNED AND/OR OPERATED BY
49 THE PERPETRATOR OR PERPETRATORS OF THE INTENTIONAL FRAUDULENT STAGED
50 ACCIDENT, a motor vehicle operated without permission of the owner, an
51 insured motor vehicle where the insurer disclaims liability or denies
52 coverage or an unregistered vehicle because of bodily injury, sickness
53 or disease, including death resulting therefrom, sustained by the
54 insured, caused by accident occurring in this state and arising out of
55 the ownership, maintenance or use of such motor vehicle. No payment for
56 non-economic loss shall be made under such policy provision to a covered

1 person unless such person has incurred a serious injury, as such terms
2 are defined in section five thousand one hundred two of this chapter.
3 Such policy shall not duplicate any element of basic economic loss
4 provided for under article fifty-one of this chapter. No payments of
5 first party benefits for basic economic loss made pursuant to such arti-
6 cle shall diminish the obligations of the insurer under this policy
7 provision for the payment of non-economic loss and economic loss in
8 excess of basic economic loss. Notwithstanding any inconsistent
9 provisions of section three thousand four hundred twenty-five of this
10 article, any such policy which does not contain the aforesaid provisions
11 shall be construed as if such provisions were embodied therein.

12 S 4. Paragraph 1 of subsection (b) of section 5103 of the insurance
13 law is amended to read as follows:

14 (1) Intentionally causes his own injury, EXCEPT ANY OCCUPANT OF A
15 MOTOR VEHICLE INVOLVED IN A STAGED OR ARRANGED ACCIDENT WHO IS WITHOUT
16 KNOWLEDGE OF THE STAGING OR ARRANGING OF THE ACCIDENT.

17 S 5. Paragraph 2 of subsection (a) of section 5103 of the insurance
18 law is amended to read as follows:

19 (2) The named insured and members of his household, other than occu-
20 pants of a motorcycle, for loss arising out of the use or operation of
21 (i) an uninsured motor vehicle or motorcycle, OR A VEHICLE WHOSE COVER-
22 AGE IS RESCINDED OR CANCELLED PURSUANT TO SECTION THREE THOUSAND FOUR
23 HUNDRED FIFTY-FIVE OF THIS CHAPTER, within the United States, its terri-
24 tories or possessions, or Canada; and (ii) an insured motor vehicle or
25 motorcycle outside of this state and within the United States, its
26 territories or possessions, or Canada.

27 S 6. Paragraph (a) of subdivision 1 of section 313 of the vehicle and
28 traffic law, as amended by chapter 569 of the laws of 1981, is amended
29 to read as follows:

30 (a) [No] EXCEPT AS PROVIDED FOR IN SECTION THREE THOUSAND FOUR HUNDRED
31 FIFTY-FIVE OF THE INSURANCE LAW, NO contract of insurance for which a
32 certificate of insurance has been filed with the commissioner shall be
33 terminated by cancellation by the insurer until at least twenty days
34 after mailing to the named insured at the address shown on the policy a
35 notice of termination by regular mail, with a certificate of mailing,
36 properly endorsed by the postal service to be obtained, except where the
37 cancellation is for non-payment of premium in which case fifteen days
38 notice of cancellation by the insurer shall be sufficient, provided,
39 however, if another insurance contract has been procured, such other
40 insurance contract shall, as of its effective date and hour, terminate
41 the insurance previously in effect with respect to any motor vehicles
42 designated in both contracts. No contract of insurance for which a
43 certificate of insurance has been filed with the commissioner in which a
44 natural person is the named insured and the motor vehicle is used
45 predominantly for non-business purposes shall be non-renewed by an
46 insurer unless at least forty-five, but not more than sixty days in
47 advance of the renewal date the insurer mails or delivers to the named
48 insured at the address shown on the policy a written notice of its
49 intention not to renew. No such contract of insurance in which the named
50 insured is not a natural person or the motor vehicle is used predomi-
51 nantly for business purposes shall be non-renewed by an insurer unless
52 at least twenty days in advance of the renewal date the insurer mails or
53 delivers to the named insured at the address shown on the policy a writ-
54 ten notice of its intention not to renew. All notices of non-renewal
55 shall be sent by regular mail with a certificate of mailing, properly
56 endorsed by the postal service to be obtained. Time of the effective

1 date and hour of termination stated in the notice shall become the end
2 of the policy period. Every notice or acknowledgement of termination for
3 any cause whatsoever sent to the insured shall include in type of which
4 the face shall not be smaller than twelve point a statement that proof
5 of financial security is required to be maintained continuously through-
6 out the registration period and a notice prescribed by the commissioner
7 indicating the punitive effects of failure to maintain continuous proof
8 of financial security and actions which may be taken by the insured to
9 avoid such punitive effects.
10 S 7. This act shall take effect immediately.