

4507--B

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I N S E N A T E

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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 -- again 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17 INSURER WITHIN TEN DAYS, THE POLICY MAY BE RESCINDED OR CANCELLED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

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

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

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

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

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

23 (1) No policy insuring against loss resulting from liability imposed
24 by law for bodily injury or death suffered by any natural person arising
25 out of the ownership, maintenance and use of a motor vehicle by the
26 insured shall be issued or delivered by any authorized insurer upon any
27 motor vehicle then principally garaged or principally used in this state
28 unless it contains a provision whereby the insurer agrees that it will
29 pay to the insured, as defined in such provision, subject to the terms
30 and conditions set forth therein to be prescribed by the board of direc-
31 tors of the Motor Vehicle Accident Indemnification Corporation and
32 approved by the superintendent, all sums, not exceeding a maximum amount
33 or limit of twenty-five thousand dollars exclusive of interest and
34 costs, on account of injury to and all sums, not exceeding a maximum
35 amount or limit of fifty thousand dollars exclusive of interest and
36 costs, on account of death of one person, in any one accident, and the
37 maximum amount or limit, subject to such limit for any one person so
38 injured of fifty thousand dollars or so killed of one hundred thousand
39 dollars, exclusive of interest and costs, on account of injury to, or
40 death of, more than one person in any one accident, which the insured or
41 his legal representative shall be entitled to recover as damages from an
42 owner or operator of an uninsured motor vehicle, unidentified motor
43 vehicle which leaves the scene of an accident, a motor vehicle regis-
44 tered in this state as to which at the time of the accident there was
45 not in effect a policy of liability insurance, A MOTOR VEHICLE FOR WHICH
46 THE POLICY OF INSURANCE HAS BEEN RESCINDED OR CANCELLED PURSUANT TO
47 SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS ARTICLE, a stolen
48 vehicle, A MOTOR VEHICLE INVOLVED IN AN INTENTIONAL AND/OR FRAUDULENT
49 AND/OR STAGED ACCIDENT, EXCEPT SUCH VEHICLE OR THOSE VEHICLES OWNED
50 AND/OR OPERATED BY THE PERPETRATOR OR PERPETRATORS OF THE INTENTIONAL
51 AND/OR FRAUDULENT AND/OR STAGED ACCIDENT, a motor vehicle operated with-
52 out permission of the owner, an insured motor vehicle where the insurer
53 disclaims liability or denies coverage or an unregistered vehicle
54 because of bodily injury, sickness or disease, including death resulting
55 therefrom, sustained by the insured, caused by accident occurring in
56 this state and arising out of the ownership, maintenance or use of such

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

14 S 4. Subparagraph (A) of paragraph 2 of subsection (f) of section 3420
15 of the insurance law, as separately amended by chapters 547 and 568 of
16 the laws of 1997, is amended to read as follows:

17 (A) Any such policy shall, at the option of the insured, also provide
18 supplementary uninsured/underinsured motorists insurance for bodily
19 injury, in an amount up to the bodily injury liability insurance limits
20 of coverage provided under such policy, subject to a maximum of two
21 hundred fifty thousand dollars because of bodily injury to or death of
22 one person in any one accident and, subject to such limit for one
23 person, up to five hundred thousand dollars because of bodily injury to
24 or death of two or more persons in any one accident, or a combined
25 single limit policy of five hundred thousand dollars because of bodily
26 injury to or death of one or more persons in any one accident. Provided
27 however, an insurer issuing such policy, in lieu of offering to the
28 insured the coverages stated above, may provide supplementary
29 uninsured/underinsured motorists insurance for bodily injury, in an
30 amount up to the bodily injury liability insurance limits of coverage
31 provided under such policy, subject to a maximum of one hundred thousand
32 dollars because of bodily injury to or death of one person in any one
33 accident and, subject to such limit for one person, up to three hundred
34 thousand dollars because of bodily injury to or death of two or more
35 persons in any one accident, or a combined single limit policy of three
36 hundred thousand dollars because of bodily injury to or death of one or
37 more persons in any one accident, if such insurer also makes available a
38 personal umbrella policy with liability coverage limits up to at least
39 five hundred thousand dollars which also provides coverage for supple-
40 mentary uninsured/underinsured motorists claims. Supplementary
41 uninsured/underinsured motorists insurance shall provide coverage, in
42 any state or Canadian province, if the limits of liability under all
43 bodily injury liability bonds and insurance policies of another motor
44 vehicle liable for damages INCLUDING BUT NOT LIMITED TO A VEHICLE FOR
45 WHICH THE POLICY OF INSURANCE HAS BEEN RESCINDED OR CANCELLED PURSUANT
46 TO SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS ARTICLE, A
47 MOTOR VEHICLE INVOLVED IN AN INTENTIONAL AND/OR FRAUDULENT AND/OR STAGED
48 ACCIDENT, EXCEPT THAT VEHICLE OR THOSE VEHICLES OWNED AND/OR OPERATED BY
49 THE PERPETRATOR OR PERPETRATORS OF THE INTENTIONAL AND/OR FRAUDULENT
50 AND/OR STAGED ACCIDENT, are in a lesser amount than the bodily injury
51 liability insurance limits of coverage provided by such policy. Upon
52 written request by any insured covered by supplemental
53 uninsured/underinsured motorists insurance or his duly authorized repre-
54 sentative and upon disclosure by the insured of the insured's bodily
55 injury and supplemental uninsured/underinsured motorists insurance
56 coverage limits, the insurer of any other owner or operator of another

1 motor vehicle against which a claim has been made for damages to the
2 insured shall disclose, within forty-five days of the request, the bodily
3 injury liability insurance limits of its coverage provided under the
4 policy or all bodily injury liability bonds. The time of the insured to
5 make any supplementary uninsured/underinsured motorist claim, shall be
6 tolled during the period the insurer of any other owner or operator of
7 another motor vehicle that may be liable for damages to the insured,
8 fails to so disclose its coverage. As a condition precedent to the obligation
9 of the insurer to pay under the supplementary
10 uninsured/underinsured motorists insurance coverage, the limits of
11 liability of all bodily injury liability bonds or insurance policies
12 applicable at the time of the accident shall be exhausted by payment of
13 judgments or settlements.

14 S 5. Paragraph 1 of subsection (b) of section 5103 of the insurance
15 law is amended to read as follows:

16 (1) Intentionally causes his own injury, EXCEPT ANY OCCUPANT OF A
17 MOTOR VEHICLE OR OTHER PERSON INVOLVED IN AN INTENTIONAL AND/OR STAGED
18 AND/OR FRAUDULENT ACCIDENT WHO IS WITHOUT KNOWLEDGE OF THE STAGING OR
19 ARRANGING OF THE ACCIDENT.

20 S 6. Paragraph 2 of subsection (a) of section 5103 of the insurance
21 law is amended to read as follows:

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

30 S 7. Paragraph (a) of subdivision 1 of section 313 of the vehicle and
31 traffic law, as amended by chapter 569 of the laws of 1981, is amended
32 to read as follows:

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

1 ten notice of its intention not to renew. All notices of non-renewal
2 shall be sent by regular mail with a certificate of mailing, properly
3 endorsed by the postal service to be obtained. Time of the effective
4 date and hour of termination stated in the notice shall become the end
5 of the policy period. Every notice or acknowledgement of termination for
6 any cause whatsoever sent to the insured shall include in type of which
7 the face shall not be smaller than twelve point a statement that proof
8 of financial security is required to be maintained continuously through-
9 out the registration period and a notice prescribed by the commissioner
10 indicating the punitive effects of failure to maintain continuous proof
11 of financial security and actions which may be taken by the insured to
12 avoid such punitive effects.

13 S 8. This act shall take effect immediately.