S T A T E   O F   N E W   Y O R K

3774--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 29, 2013

Introduced by M. of A. HEASTIE, CAMARA, CYMBROWITZ, GIBSON, DINOWITZ, ZEBROWSKI -- Multi-Sponsored by -- M. of A. BARCLAY, CERETTO, CRESPO, CROUCH, GALEF, GLICK, GUNTHER, HIKIND, HOOPER, MAISEL, McDONOUGH, McLAUGHLIN, MONTESANO, OAKS, PRETLOW, RAIA, SCARBOROUGH, STEVENSON, TITONE, WEISENBERG -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The insurance law is amended by adding a new section 3455 to read as follows:

S 3455. CANCELLATION OF POLICY. (A) AN INSURER MAY, WITHIN THE FIRST SIXTY DAYS, RESCIND OR RETROACTIVELY CANCEL TO THE INCEPTION A NEWLY ISSUED AUTOMOBILE INSURANCE POLICY SUBJECT TO PARAGRAPH ONE OF SUBSECTION (A) OF SECTION THREE THOUSAND FOUR HUNDRED TWENTY-FIVE OF THIS ARTICLE, A NEWLY ISSUED COMMERCIAL AUTOMOBILE INSURANCE POLICY SUBJECT TO SECTION THREE THOUSAND FOUR HUNDRED TWENTY-SIX OF THIS ARTICLE, OR A POLICY ISSUED PURSUANT TO ANY PLAN ESTABLISHED UNDER ARTICLE FIFTY-THREE OF THIS CHAPTER, IF THE INITIAL PREMIUM PAYMENT IS NOT HONORED BY A FINANCIAL INSTITUTION DUE TO THE NONEXISTENCE OR THE UNAUTHORIZED USE OF A BANK ACCOUNT, OR THE INITIAL PREMIUM PAYMENT IS DENIED BY A CREDIT CARD COMPANY DUE TO THE UNAUTHORIZED USE OF A CREDIT CARD ACCOUNT. THIS SECTION SHALL NOT APPLY TO POLICIES REQUIRED UNDER ARTICLE EIGHT OF THE VEHICLE AND TRAFFIC LAW.

(B) A PERSON WHO IS INJURED DURING THIS PERIOD AND WHO WOULD ORDINARILY BE COVERED UNDER THE INSURED'S POLICY HAD IT NOT BEEN CANCELED PURSUANT TO SUBSECTION (A) OF THIS SECTION, SHALL BE ENTITLED TO RECOVER UNDER 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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CONTRACT, OR IF THE INJURED PERSON IS UNINSURED, THEY SHALL BE ENTITLED TO RECOVER UNDER THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION, PROVIDED SUCH PERSON DID NOT PARTICIPATE IN ANY FRAUDULENT ACTIVITY, INCLUDING, BUT NOT LIMITED TO, AN ACCIDENT STAGED TO DEFRAUD AN INSURER. THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION MAY NOT SUBROGATE ITS CLAIM AGAINST THE RESCINDING OR CANCELLING INSURER.

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

(2) If under a liability policy issued or delivered in this state, an insurer shall disclaim liability or deny coverage INCLUDING A DISCLAIMER OR DENIAL BECAUSE THE INSURER RESCINDED OR CANCELLED COVERAGE PURSUANT TO SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS ARTICLE, for death or bodily injury arising out of a motor vehicle accident, INCLUDING ANY CLAIM FOR PERSONAL INJURIES UNDER AN UNINSURED MOTORIST ENDORSEMENT BY ANY OCCUPANT OF A MOTOR VEHICLE OR OTHER PERSON INVOLVED IN AN ACCIDENT THAT WAS STAGED TO DEFRAUD AN INSURER WHO IS WITHOUT KNOWLEDGE OF THE STAGING OR FRAUDULENT INTENT OF THE ACCIDENT, or any other type of accident occurring within this state, it shall give written notice as soon as is reasonably possible of such disclaimer of liability or denial of coverage to the insured and the injured person or any other claimant.

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

(1) No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any natural person arising out of the ownership, maintenance and use of a motor vehicle by the insured shall be issued or delivered by any authorized insurer upon any motor vehicle then principally garaged or principally used in this state unless it contains a provision whereby the insurer agrees that it will pay to the insured, as defined in such provision, subject to the terms and conditions set forth therein to be prescribed by the board of directors of the Motor Vehicle Accident Indemnification Corporation and approved by the superintendent, all sums, not exceeding a maximum amount or limit of twenty-five thousand dollars exclusive of interest and costs, on account of injury to and all sums, not exceeding a maximum amount or limit of fifty thousand dollars exclusive of interest and costs, on account of death of one person, in any one accident, and the maximum amount or limit, subject to such limit for any one person so injured of fifty thousand dollars or so killed of one hundred thousand dollars, exclusive of interest and costs, on account of injury to, or death of, more than one person in any one accident, which the insured or his legal representative shall be entitled to recover as damages from an owner or operator of an uninsured motor vehicle, unidentified motor vehicle which leaves the scene of an accident, a motor vehicle registered in this state as to which at the time of the accident there was not in effect a policy of liability insurance, A MOTOR VEHICLE FOR WHICH THE POLICY OF INSURANCE HAS BEEN RESCINDED OR CANCELLED PURSUANT TO SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS ARTICLE, a stolen vehicle, A MOTOR VEHICLE INVOLVED IN AN ACCIDENT WHICH WAS STAGED TO DEFRAUD AN INSURER, EXCEPT SUCH VEHICLE OWNED AND OPERATED BY THE PERPETRATOR OR PERPETRATORS OF SUCH ACCIDENT, a motor vehicle operated without permission of the owner, an insured motor vehicle where the insurer disclaims liability or denies coverage or an unregistered vehicle because of bodily injury, sickness or disease, including death resulting therefrom, sustained by the insured, caused by accident occurring in

this state and arising out of the ownership, maintenance or use of such motor vehicle. No payment for non-economic loss shall be made under such policy provision to a covered person unless such person has incurred a serious injury, as such terms are defined in section five thousand one hundred two of this chapter. Such policy shall not duplicate any element of basic economic loss provided for under article fifty-one of this chapter. No payments of first party benefits for basic economic loss made pursuant to such article shall diminish the obligations of the insurer under this policy provision for the payment of non-economic loss and economic loss in excess of basic economic loss. Notwithstanding any inconsistent provisions of section three thousand four hundred twenty-five of this article, any such policy which does not contain the aforesaid provisions shall be construed as if such provisions were embodied therein.

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

(A) Any such policy shall, at the option of the insured, also provide supplementary uninsured/underinsured motorists insurance for bodily injury, in an amount up to the bodily injury liability insurance limits of coverage provided under such policy, subject to a maximum of two hundred fifty thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, up to five hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident, or a combined single limit policy of five hundred thousand dollars because of bodily injury to or death of one or more persons in any one accident. Provided however, an insurer issuing such policy, in lieu of offering to the insured the coverages stated above, may provide supplementary uninsured/underinsured motorists insurance for bodily injury, in an amount up to the bodily injury liability insurance limits of coverage provided under such policy, subject to a maximum of one hundred thousand dollars because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, up to three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident, or a combined single limit policy of three hundred thousand dollars because of bodily injury to or death of one or more persons in any one accident, if such insurer also makes available a personal umbrella policy with liability coverage limits up to at least five hundred thousand dollars which also provides coverage for supplementary uninsured/underinsured motorists claims. Supplementary uninsured/underinsured motorists insurance shall provide coverage, in any state or Canadian province, if the limits of liability under all bodily injury liability bonds and insurance policies of another motor vehicle liable for damages INCLUDING, BUT NOT LIMITED TO A VEHICLE FOR WHICH THE POLICY OF INSURANCE HAS BEEN RESCINDED OR CANCELLED PURSUANT TO SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS ARTICLE, A MOTOR VEHICLE INVOLVED IN AN ACCIDENT WHICH WAS STAGED TO DEFRAUD AN INSURER, EXCEPT SUCH VEHICLE OWNED AND OPERATED BY THE PERPETRATOR OR PERPETRATORS OF SUCH ACCIDENT, are in a lesser amount than the bodily injury liability insurance limits of coverage provided by such policy. Upon written request by any insured covered by supplemental uninsured/underinsured motorists insurance or his duly authorized representative and upon disclosure by the insured of the insured's bodily injury and supplemental uninsured/underinsured motorists insurance coverage limits, the insurer of any other owner or operator of another motor vehicle against which a claim has been made for damages to the insured shall disclose, within forty-five days of the request, the bodily injury liability insurance limits of its coverage provided under the policy or all bodily injury liability bonds. The time of the insured to make any supplementary uninsured/underinsured motorist claim, shall be tolled during the period the insurer of any other owner or operator of another motor vehicle that may be liable for damages to the insured, fails to so disclose its coverage. As a condition precedent to the obligation of the insurer to pay under the supplementary uninsured/underinsured motorists insurance coverage, the limits of liability of all bodily injury liability bonds or insurance policies applicable at the time of the accident shall be exhausted by payment of judgments or settlements.

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

(1) Intentionally causes his own injury, EXCEPT ANY OCCUPANT OF A MOTOR VEHICLE OR OTHER PERSON INVOLVED IN AN ACCIDENT STAGED TO DEFRAUD AN INSURER WHO IS WITHOUT KNOWLEDGE OF THE STAGING OR FRAUDULENT INTENT OF SUCH ACCIDENT.

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

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

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

(a) [No] EXCEPT AS PROVIDED FOR IN SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THE INSURANCE LAW, NO contract of insurance for which a certificate of insurance has been filed with the commissioner shall be terminated by cancellation by the insurer until at least twenty days after mailing to the named insured at the address shown on the policy a notice of termination by regular mail, with a certificate of mailing, properly endorsed by the postal service to be obtained, except where the cancellation is for non-payment of premium in which case fifteen days notice of cancellation by the insurer shall be sufficient, provided, however, if another insurance contract has been procured, such other insurance contract shall, as of its effective date and hour, terminate the insurance previously in effect with respect to any motor vehicles designated in both contracts. No contract of insurance for which a certificate of insurance has been filed with the commissioner in which a natural person is the named insured and the motor vehicle is used predominantly for non-business purposes shall be non-renewed by an insurer unless at least forty-five, but not more than sixty days in advance of the renewal date the insurer mails or delivers to the named insured at the address shown on the policy a written notice of its intention not to renew. No such contract of insurance in which the named insured is not a natural person or the motor vehicle is used predominantly for business purposes shall be non-renewed by an insurer unless at least twenty days in advance of the renewal date the insurer mails or delivers to the named insured at the address shown on the policy a written notice of its intention not to renew. All notices of non-renewal shall be sent by regular mail with a certificate of mailing, properly endorsed by the postal service to be obtained. Time of the effective date and hour of termination stated in the notice shall become the end of the policy period. Every notice or acknowledgement of termination for any cause whatsoever sent to the insured shall include in type of which the face shall not be smaller than twelve point a statement that proof of financial security is required to be maintained continuously throughout the registration period and a notice prescribed by the commissioner indicating the punitive effects of failure to maintain continuous proof of financial security and actions which may be taken by the insured to avoid such punitive effects.

S 8. Paragraphs 6 and 7 of subsection (b) of section 5201 of the insurance law are amended and a new paragraph 8 is added to read as follows:

(6) insured motor vehicles where the insurer disclaims liability or denies coverage, [and]

(7) unregistered motor vehicles[.], AND

(8) AN ACCIDENT STAGED TO DEFRAUD AN INSURER.

S 9. This act shall take effect two hundred seventy days after it shall have become a law.