

1959--A

Cal. No. 52

2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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

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 A NEWLY  
5     ISSUED AUTOMOBILE INSURANCE POLICY SUBJECT TO PARAGRAPH ONE OF  
6     SUBSECTION (A) OF SECTION THREE THOUSAND FOUR HUNDRED TWENTY-FIVE OF  
7     THIS ARTICLE, A NEWLY ISSUED COMMERCIAL AUTOMOBILE INSURANCE POLICY  
8     SUBJECT TO SECTION THREE THOUSAND FOUR HUNDRED TWENTY-SIX OF THIS ARTI-  
9     CLE, OR A POLICY ISSUED PURSUANT TO ANY PLAN ESTABLISHED UNDER ARTICLE  
10    FIFTY-THREE OF THIS CHAPTER, IF THE INITIAL PREMIUM PAYMENT IS NOT  
11    HONORED BY A FINANCIAL INSTITUTION DUE TO THE NONEXISTENCE OR THE UNAU-  
12    THORIZED USE OF A BANK ACCOUNT, OR THE INITIAL PREMIUM PAYMENT IS DENIED  
13    BY A CREDIT CARD COMPANY DUE TO THE UNAUTHORIZED USE OF A CREDIT CARD  
14    ACCOUNT. THIS SECTION SHALL NOT APPLY TO POLICIES REQUIRED UNDER ARTICLE  
15    EIGHT OF THE VEHICLE AND TRAFFIC LAW.  
16    (B) A PERSON WHO IS INJURED DURING THIS PERIOD AND WHO WOULD ORDINAR-  
17    ILY BE COVERED UNDER THE INSURED'S POLICY HAD IT NOT BEEN CANCELED  
18    PURSUANT TO SUBSECTION (A) OF THIS SECTION, SHALL BE ENTITLED TO RECOVER  
19    UNDER HIS OR HER OWN POLICY SUBJECT TO THE TERMS AND CONDITIONS OF THE  
20    CONTRACT, OR IF THE INJURED PERSON IS UNINSURED, THEY SHALL BE ENTITLED

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

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1 TO RECOVER UNDER THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,  
2 PROVIDED SUCH PERSON DID NOT PARTICIPATE IN ANY FRAUDULENT ACTIVITY,  
3 INCLUDING, BUT NOT LIMITED TO, AN ACCIDENT STAGED TO DEFRAUD AN INSURER.  
4 THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION MAY NOT SUBROGATE  
5 ITS CLAIM AGAINST THE RESCINDING OR CANCELLING 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 INCLUDING A DISCLAIMER  
11 OR DENIAL BECAUSE THE INSURER RESCINDED OR CANCELLED COVERAGE PURSUANT  
12 TO SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS ARTICLE, for  
13 death or bodily injury arising out of a motor vehicle accident, INCLUD-  
14 ING ANY CLAIM FOR PERSONAL INJURIES UNDER AN UNINSURED MOTORIST ENDORSE-  
15 MENT BY ANY OCCUPANT OF A MOTOR VEHICLE OR OTHER PERSON INVOLVED IN AN  
16 ACCIDENT THAT WAS STAGED TO DEFRAUD AN INSURER WHO IS WITHOUT KNOWLEDGE  
17 OF THE STAGING OR FRAUDULENT INTENT OF THE ACCIDENT, or any other type  
18 of accident occurring within this state, it shall give written notice as  
19 soon as is reasonably possible of such disclaimer of liability or denial  
20 of coverage to the insured and the injured person or any other claimant.

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

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

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

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

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

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

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

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

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

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

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

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

17 (7) unregistered motor vehicles[.], AND

18 (8) AN ACCIDENT STAGED TO DEFRAUD AN INSURER.

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