

1471--A

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I N S E N A T E

January 12, 2015

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 and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to 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 THIRTY DAYS, RESCIND OR RETROACTIVELY CANCEL TO THE INCEPTION A NEWLY
5 ISSUED AUTOMOBILE INSURANCE POLICY SUBJECT TO SECTIONS THREE THOUSAND
6 FOUR HUNDRED TWENTY-FIVE OR THREE THOUSAND FOUR HUNDRED TWENTY-SIX OF
7 THIS ARTICLE, IF THE INITIAL PREMIUM PAYMENT IS NOT HONORED BY A FINAN-
8 CIAL INSTITUTION DUE TO THE NONEXISTENCE OF A BANK ACCOUNT. FOR THE
9 PURPOSES OF THIS SECTION "NONEXISTENCE OF A BANK ACCOUNT" SHALL MEAN
10 THAT NO ACCOUNT WITH THE NAME AND ACCOUNT NUMBER PROVIDED WAS EVER IN
11 EXISTENCE AND SHALL NOT INCLUDE ACCOUNTS THAT MAY BE CLOSED OR OTHERWISE
12 INACTIVE. IN THE EVENT THAT SUCH INITIAL PAYMENT IS NOT HONORED BY A
13 FINANCIAL INSTITUTION DUE TO THE NONEXISTENCE OF A BANK ACCOUNT, THE
14 INSURER SHALL NOTIFY THE POLICYHOLDER BY CERTIFIED AND FIRST CLASS MAIL
15 THAT UNLESS THE POLICYHOLDER REMITS PAYMENT TO THE INSURER WITHIN TEN
16 BUSINESS DAYS, THE POLICY MAY BE RESCINDED OR CANCELLED RETROACTIVELY TO
17 THE INCEPTION OF THE POLICY. HOWEVER, IF PAYMENT IS REMITTED AFTER THE
18 TENTH BUSINESS DAY AND THE INSURED HAS NOT BEEN NOTIFIED THAT THE POLICY
19 HAS BEEN RESCINDED OR RETROACTIVELY CANCELED, THE RIGHT TO RESCIND OR

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

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1 RETROACTIVELY CANCEL SUCH POLICY PURSUANT TO THIS SECTION SHALL BE
2 DEEMED TO HAVE BEEN WAIVED AND SUCH POLICY SHALL REMAIN IN EFFECT. THIS
3 SECTION SHALL NOT APPLY TO POLICIES REQUIRED UNDER ARTICLE EIGHT OF THE
4 VEHICLE AND TRAFFIC LAW.

5 (B) A PERSON WHO IS INJURED DURING THIS PERIOD AND WHO WOULD ORDINAR-
6 ILY BE COVERED UNDER THE INSURED'S POLICY HAD IT NOT BEEN CANCELED
7 PURSUANT TO SUBSECTION (A) OF THIS SECTION, SHALL BE ENTITLED TO RECOVER
8 UNDER HIS OR HER OWN POLICY SUBJECT TO THE TERMS AND CONDITIONS OF THE
9 CONTRACT, OR IF THE INJURED PERSON IS UNINSURED, THEY SHALL BE ENTITLED
10 TO RECOVER UNDER THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION,
11 PROVIDED SUCH PERSON DID NOT PARTICIPATE IN ANY FRAUDULENT ACTIVITY,
12 INCLUDING, BUT NOT LIMITED TO, AN ACCIDENT STAGED TO DEFRAUD AN INSURER.
13 THE MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION MAY NOT SUBROGATE
14 ITS CLAIM AGAINST THE RESCINDING INSURER.

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

18 (2) If under a liability policy issued or delivered in this state, an
19 insurer shall disclaim liability [or], deny coverage, OR RESCIND COVER-
20 AGE PURSUANT TO SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS
21 ARTICLE, for death or bodily injury arising out of a motor vehicle acci-
22 dent, INCLUDING ANY CLAIM FOR PERSONAL INJURIES UNDER AN UNINSURED
23 MOTORIST ENDORSEMENT BY ANY OCCUPANT OF A MOTOR VEHICLE OR OTHER PERSON
24 INVOLVED IN AN ACCIDENT WHICH WAS STAGED TO DEFRAUD AN INSURER WHO IS
25 WITHOUT KNOWLEDGE OF THE STAGING OR FRAUDULENT INTENT OF THE ACCIDENT,
26 or any other type of accident occurring within this state, it shall give
27 written notice as soon as is reasonably possible of such disclaimer of
28 liability or denial of coverage to the insured and the injured person or
29 any other claimant.

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

33 (1) No policy insuring against loss resulting from liability imposed
34 by law for bodily injury or death suffered by any natural person arising
35 out of the ownership, maintenance and use of a motor vehicle by the
36 insured shall be issued or delivered by any authorized insurer upon any
37 motor vehicle then principally garaged or principally used in this state
38 unless it contains a provision whereby the insurer agrees that it will
39 pay to the insured, as defined in such provision, subject to the terms
40 and conditions set forth therein to be prescribed by the board of direc-
41 tors of the Motor Vehicle Accident Indemnification Corporation and
42 approved by the superintendent, all sums, not exceeding a maximum amount
43 or limit of twenty-five thousand dollars exclusive of interest and
44 costs, on account of injury to and all sums, not exceeding a maximum
45 amount or limit of fifty thousand dollars exclusive of interest and
46 costs, on account of death of one person, in any one accident, and the
47 maximum amount or limit, subject to such limit for any one person so
48 injured of fifty thousand dollars or so killed of one hundred thousand
49 dollars, exclusive of interest and costs, on account of injury to, or
50 death of, more than one person in any one accident, which the insured or
51 his legal representative shall be entitled to recover as damages from an
52 owner or operator of an uninsured motor vehicle, unidentified motor
53 vehicle which leaves the scene of an accident, a motor vehicle regis-
54 tered in this state as to which at the time of the accident there was
55 not in effect a policy of liability insurance, A MOTOR VEHICLE FOR WHICH
56 THE POLICY OF INSURANCE HAS BEEN RESCINDED OR CANCELLED PURSUANT TO

1 SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS ARTICLE, a stolen
2 vehicle, A MOTOR VEHICLE INVOLVED IN AN ACCIDENT WHICH WAS STAGED TO
3 DEFRAUD AN INSURER, EXCEPT SUCH VEHICLE OWNED AND OPERATED BY THE PERPE-
4 TRATOR OR PERPETRATORS OF SUCH ACCIDENT, a motor vehicle operated with-
5 out permission of the owner, an insured motor vehicle where the insurer
6 disclaims liability or denies coverage or an unregistered vehicle
7 because of bodily injury, sickness or disease, including death resulting
8 therefrom, sustained by the insured, caused by accident occurring in
9 this state and arising out of the ownership, maintenance or use of such
10 motor vehicle. No payment for non-economic loss shall be made under such
11 policy provision to a covered person unless such person has incurred a
12 serious injury, as such terms are defined in section five thousand one
13 hundred two of this chapter. Such policy shall not duplicate any element
14 of basic economic loss provided for under article fifty-one of this
15 chapter. No payments of first party benefits for basic economic loss
16 made pursuant to such article shall diminish the obligations of the
17 insurer under this policy provision for the payment of non-economic loss
18 and economic loss in excess of basic economic loss. Notwithstanding any
19 inconsistent provisions of section three thousand four hundred twenty-
20 five of this article, any such policy which does not contain the afore-
21 said provisions shall be construed as if such provisions were embodied
22 therein.

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

26 (A) Any such policy shall, at the option of the insured, also provide
27 supplementary uninsured/underinsured motorists insurance for bodily
28 injury, in an amount up to the bodily injury liability insurance limits
29 of coverage provided under such policy, subject to a maximum of two
30 hundred fifty thousand dollars because of bodily injury to or death of
31 one person in any one accident and, subject to such limit for one
32 person, up to five hundred thousand dollars because of bodily injury to
33 or death of two or more persons in any one accident, or a combined
34 single limit policy of five hundred thousand dollars because of bodily
35 injury to or death of one or more persons in any one accident. Provided
36 however, an insurer issuing such policy, in lieu of offering to the
37 insured the coverages stated above, may provide supplementary
38 uninsured/underinsured motorists insurance for bodily injury, in an
39 amount up to the bodily injury liability insurance limits of coverage
40 provided under such policy, subject to a maximum of one hundred thousand
41 dollars because of bodily injury to or death of one person in any one
42 accident and, subject to such limit for one person, up to three hundred
43 thousand dollars because of bodily injury to or death of two or more
44 persons in any one accident, or a combined single limit policy of three
45 hundred thousand dollars because of bodily injury to or death of one or
46 more persons in any one accident, if such insurer also makes available a
47 personal umbrella policy with liability coverage limits up to at least
48 five hundred thousand dollars which also provides coverage for supple-
49 mentary uninsured/underinsured motorists claims. Supplementary
50 uninsured/underinsured motorists insurance shall provide coverage, in
51 any state or Canadian province, if the limits of liability under all
52 bodily injury liability bonds and insurance policies of another motor
53 vehicle liable for damages INCLUDING BUT NOT LIMITED TO A VEHICLE FOR
54 WHICH THE POLICY OF INSURANCE HAS BEEN RESCINDED OR CANCELLED PURSUANT
55 TO SECTION THREE THOUSAND FOUR HUNDRED FIFTY-FIVE OF THIS ARTICLE, A
56 MOTOR VEHICLE INVOLVED IN AN ACCIDENT WHICH WAS STAGED TO DEFRAUD AN

1 INSURER, EXCEPT SUCH VEHICLE OWNED AND OPERATED BY THE PERPETRATOR OR
2 PERPETRATORS OF SUCH ACCIDENT, are in a lesser amount than the bodily
3 injury liability insurance limits of coverage provided by such policy.
4 Upon written request by any insured covered by supplemental
5 uninsured/underinsured motorists insurance or his duly authorized repre-
6 sentative and upon disclosure by the insured of the insured's bodily
7 injury and supplemental uninsured/underinsured motorists insurance
8 coverage limits, the insurer of any other owner or operator of another
9 motor vehicle against which a claim has been made for damages to the
10 insured shall disclose, within forty-five days of the request, the bodi-
11 ly injury liability insurance limits of its coverage provided under the
12 policy or all bodily injury liability bonds. The time of the insured to
13 make any supplementary uninsured/underinsured motorist claim, shall be
14 tolled during the period the insurer of any other owner or operator of
15 another motor vehicle that may be liable for damages to the insured,
16 fails to so disclose its coverage. As a condition precedent to the obli-
17 gation of the insurer to pay under the supplementary
18 uninsured/underinsured motorists insurance coverage, the limits of
19 liability of all bodily injury liability bonds or insurance policies
20 applicable at the time of the accident shall be exhausted by payment of
21 judgments or settlements.

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

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

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

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

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

41 (a) [No] EXCEPT AS PROVIDED FOR IN SECTION THREE THOUSAND FOUR HUNDRED
42 FIFTY-FIVE OF THE INSURANCE LAW, NO contract of insurance for which a
43 certificate of insurance has been filed with the commissioner shall be
44 terminated by cancellation by the insurer until at least twenty days
45 after mailing to the named insured at the address shown on the policy a
46 notice of termination by regular mail, with a certificate of mailing,
47 properly endorsed by the postal service to be obtained, except where the
48 cancellation is for non-payment of premium in which case fifteen days
49 notice of cancellation by the insurer shall be sufficient, provided,
50 however, if another insurance contract has been procured, such other
51 insurance contract shall, as of its effective date and hour, terminate
52 the insurance previously in effect with respect to any motor vehicles
53 designated in both contracts. No contract of insurance for which a
54 certificate of insurance has been filed with the commissioner in which a
55 natural person is the named insured and the motor vehicle is used
56 predominantly for non-business purposes shall be non-renewed by an

1 insurer unless at least forty-five, but not more than sixty days in
2 advance of the renewal date the insurer mails or delivers to the named
3 insured at the address shown on the policy a written notice of its
4 intention not to renew. No such contract of insurance in which the named
5 insured is not a natural person or the motor vehicle is used predomi-
6 nantly for business purposes shall be non-renewed by an insurer unless
7 at least twenty days in advance of the renewal date the insurer mails or
8 delivers to the named insured at the address shown on the policy a writ-
9 ten notice of its intention not to renew. All notices of non-renewal
10 shall be sent by regular mail with a certificate of mailing, properly
11 endorsed by the postal service to be obtained. Time of the effective
12 date and hour of termination stated in the notice shall become the end
13 of the policy period. Every notice or acknowledgement of termination for
14 any cause whatsoever sent to the insured shall include in type of which
15 the face shall not be smaller than twelve point a statement that proof
16 of financial security is required to be maintained continuously through-
17 out the registration period and a notice prescribed by the commissioner
18 indicating the punitive effects of failure to maintain continuous proof
19 of financial security and actions which may be taken by the insured to
20 avoid such punitive effects.

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

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

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

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

28 S 9. This act shall take effect one year after it shall have become a
29 law.