

1471--A

Cal. No. 120

2015-2016 Regular Sessions

I N   S E N A T E

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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 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16    BUSINESS DAYS, THE POLICY MAY BE RESCINDED OR CANCELLED RETROACTIVELY TO  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19    HAS BEEN RESCINDED OR RETROACTIVELY CANCELED, THE RIGHT TO RESCIND OR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.