

# STATE OF NEW YORK

643

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

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 3457  
2 to read as follows:

3 § 3457. 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  
21 to recover under the motor vehicle accident indemnification corporation,  
22 provided such person did not participate in any fraudulent activity,  
23 including, but not limited to, an accident staged to defraud an insurer.

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

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1 The motor vehicle accident indemnification corporation may not subrogate  
2 its claim against the rescinding or cancelling insurer.

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

6 (2) If under a liability policy issued or delivered in this state, an  
7 insurer shall disclaim liability or deny coverage including a disclaimer  
8 or denial because the insurer rescinded or cancelled coverage pursuant  
9 to section three thousand four hundred fifty-seven of this article, for  
10 death or bodily injury arising out of a motor vehicle accident, includ-  
11 ing any claim for personal injuries under an uninsured motorist endorse-  
12 ment by any occupant of a motor vehicle or other person involved in an  
13 accident that was staged to defraud an insurer who is without knowledge  
14 of the staging or fraudulent intent of the accident, or any other type  
15 of accident occurring within this state, it shall give written notice as  
16 soon as is reasonably possible of such disclaimer of liability or denial  
17 of coverage to the insured and the injured person or any other claimant.

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

21 (1) No policy insuring against loss resulting from liability imposed  
22 by law for bodily injury or death suffered by any natural person arising  
23 out of the ownership, maintenance and use of a motor vehicle by the  
24 insured shall be issued or delivered by any authorized insurer upon any  
25 motor vehicle then principally garaged or principally used in this state  
26 unless it contains a provision whereby the insurer agrees that it will  
27 pay to the insured, as defined in such provision, subject to the terms  
28 and conditions set forth therein to be prescribed by the board of direc-  
29 tors of the Motor Vehicle Accident Indemnification Corporation and  
30 approved by the superintendent, all sums, not exceeding a maximum amount  
31 or limit of twenty-five thousand dollars exclusive of interest and  
32 costs, on account of injury to and all sums, not exceeding a maximum  
33 amount or limit of fifty thousand dollars exclusive of interest and  
34 costs, on account of death of one person, in any one accident, and the  
35 maximum amount or limit, subject to such limit for any one person so  
36 injured of fifty thousand dollars or so killed of one hundred thousand  
37 dollars, exclusive of interest and costs, on account of injury to, or  
38 death of, more than one person in any one accident, which the insured or  
39 his legal representative shall be entitled to recover as damages from an  
40 owner or operator of an uninsured motor vehicle, unidentified motor  
41 vehicle which leaves the scene of an accident, a motor vehicle regis-  
42 tered in this state as to which at the time of the accident there was  
43 not in effect a policy of liability insurance, a motor vehicle for which  
44 the policy of insurance has been rescinded or cancelled pursuant to  
45 section three thousand four hundred fifty-seven of this article, a  
46 stolen vehicle, a motor vehicle involved in an accident which was staged  
47 to defraud an insurer, except such vehicle owned and operated by the  
48 perpetrator or perpetrators of such accident, a motor vehicle operated  
49 without permission of the owner, an insured motor vehicle where the  
50 insurer disclaims liability or denies coverage or an unregistered vehi-  
51 cle because of bodily injury, sickness or disease, including death  
52 resulting therefrom, sustained by the insured, caused by accident occur-  
53 ring in this state and arising out of the ownership, maintenance or use  
54 of such motor vehicle. No payment for non-economic loss shall be made  
55 under such policy provision to a covered person unless such person has  
56 incurred a serious injury, as such terms are defined in section five

1 thousand one hundred two of this chapter. Such policy shall not dupli-  
2 cate any element of basic economic loss provided for under article  
3 fifty-one of this chapter. No payments of first party benefits for basic  
4 economic loss made pursuant to such article shall diminish the obli-  
5 gations of the insurer under this policy provision for the payment of  
6 non-economic loss and economic loss in excess of basic economic loss.  
7 Notwithstanding any inconsistent provisions of section three thousand  
8 four hundred twenty-five of this article, any such policy which does not  
9 contain the aforesaid provisions shall be construed as if such  
10 provisions were embodied therein.

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

14 (A) Any such policy shall, at the option of the insured, also provide  
15 supplementary uninsured/underinsured motorists insurance for bodily  
16 injury, in an amount up to the bodily injury liability insurance limits  
17 of coverage provided under such policy, subject to a maximum of two  
18 hundred fifty thousand dollars because of bodily injury to or death of  
19 one person in any one accident and, subject to such limit for one  
20 person, up to five hundred thousand dollars because of bodily injury to  
21 or death of two or more persons in any one accident, or a combined  
22 single limit policy of five hundred thousand dollars because of bodily  
23 injury to or death of one or more persons in any one accident. Provided  
24 however, an insurer issuing such policy, in lieu of offering to the  
25 insured the coverages stated above, may provide supplementary  
26 uninsured/underinsured motorists insurance for bodily injury, in an  
27 amount up to the bodily injury liability insurance limits of coverage  
28 provided under such policy, subject to a maximum of one hundred thousand  
29 dollars because of bodily injury to or death of one person in any one  
30 accident and, subject to such limit for one person, up to three hundred  
31 thousand dollars because of bodily injury to or death of two or more  
32 persons in any one accident, or a combined single limit policy of three  
33 hundred thousand dollars because of bodily injury to or death of one or  
34 more persons in any one accident, if such insurer also makes available a  
35 personal umbrella policy with liability coverage limits up to at least  
36 five hundred thousand dollars which also provides coverage for supple-  
37 mentary uninsured/underinsured motorists claims. Supplementary  
38 uninsured/underinsured motorists insurance shall provide coverage, in  
39 any state or Canadian province, if the limits of liability under all  
40 bodily injury liability bonds and insurance policies of another motor  
41 vehicle liable for damages including, but not limited to a vehicle for  
42 which the policy of insurance has been rescinded or cancelled pursuant  
43 to section three thousand four hundred fifty-seven of this article, a  
44 motor vehicle involved in an accident which was staged to defraud an  
45 insurer, except such vehicle owned and operated by the perpetrator or  
46 perpetrators of such accident, are in a lesser amount than the bodily  
47 injury liability insurance limits of coverage provided by such policy.  
48 Upon written request by any insured covered by supplemental  
49 uninsured/underinsured motorists insurance or his duly authorized repre-  
50 sentative and upon disclosure by the insured of the insured's bodily  
51 injury and supplemental uninsured/underinsured motorists insurance  
52 coverage limits, the insurer of any other owner or operator of another  
53 motor vehicle against which a claim has been made for damages to the  
54 insured shall disclose, within forty-five days of the request, the bodi-  
55 ly injury liability insurance limits of its coverage provided under the  
56 policy or all bodily injury liability bonds. The time of the insured to

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

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

12 (1) Intentionally causes his own injury, except any occupant of a  
13 motor vehicle or other person involved in an accident staged to defraud  
14 an insurer who is without knowledge of the staging or fraudulent intent  
15 of such accident.

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

18 (2) The named insured and members of his household, other than occu-  
19 pants of a motorcycle, for loss arising out of the use or operation of  
20 (i) an uninsured motor vehicle or motorcycle, or a vehicle whose cover-  
21 age is rescinded or cancelled pursuant to section three thousand four  
22 hundred fifty-seven of this chapter, within the United States, its  
23 territories or possessions, or Canada; and (ii) an insured motor vehicle  
24 or motorcycle outside of this state and within the United States, its  
25 territories or possessions, or Canada.

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

29 (a) [~~No~~] Except as provided for in section three thousand four hundred  
30 fifty-seven of the insurance law, no contract of insurance for which a  
31 certificate of insurance has been filed with the commissioner shall be  
32 terminated by cancellation by the insurer until at least twenty days  
33 after mailing to the named insured at the address shown on the policy a  
34 notice of termination by regular mail, with a certificate of mailing,  
35 properly endorsed by the postal service to be obtained, except where the  
36 cancellation is for non-payment of premium in which case fifteen days  
37 notice of cancellation by the insurer shall be sufficient, provided,  
38 however, if another insurance contract has been procured, such other  
39 insurance contract shall, as of its effective date and hour, terminate  
40 the insurance previously in effect with respect to any motor vehicles  
41 designated in both contracts. No contract of insurance for which a  
42 certificate of insurance has been filed with the commissioner in which a  
43 natural person is the named insured and the motor vehicle is used  
44 predominantly for non-business purposes shall be non-renewed by an  
45 insurer unless at least forty-five, but not more than sixty days in  
46 advance of the renewal date the insurer mails or delivers to the named  
47 insured at the address shown on the policy a written notice of its  
48 intention not to renew. No such contract of insurance in which the named  
49 insured is not a natural person or the motor vehicle is used predomi-  
50 nantly for business purposes shall be non-renewed by an insurer unless  
51 at least twenty days in advance of the renewal date the insurer mails or  
52 delivers to the named insured at the address shown on the policy a writ-  
53 ten notice of its intention not to renew. All notices of non-renewal  
54 shall be sent by regular mail with a certificate of mailing, properly  
55 endorsed by the postal service to be obtained. Time of the effective  
56 date and hour of termination stated in the notice shall become the end

1 of the policy period. Every notice or acknowledgement of termination for  
2 any cause whatsoever sent to the insured shall include in type of which  
3 the face shall not be smaller than twelve point a statement that proof  
4 of financial security is required to be maintained continuously through-  
5 out the registration period and a notice prescribed by the commissioner  
6 indicating the punitive effects of failure to maintain continuous proof  
7 of financial security and actions which may be taken by the insured to  
8 avoid such punitive effects.

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

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

14 (7) unregistered motor vehicles[~~-,~~ and  
15 (8) an accident staged to defraud an insurer.

16 § 9. This act shall take effect on the two hundred seventieth day  
17 after it shall have become a law.