

STATE OF NEW YORK

502

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

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.

LBD03746-01-1

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 section 19 of part III of chapter 59 of the laws of
20 2019, is amended to read 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 or an
24 altered motor vehicle commonly referred to as a "stretch limousine"
25 having a seating capacity of eight or more passengers used in the busi-
26 ness of carrying or transporting passengers for hire, by the insured
27 shall be issued or delivered by any authorized insurer upon any motor
28 vehicle or an altered motor vehicle commonly referred to as a "stretch
29 limousine" having a seating capacity of eight or more passengers used in
30 the business of carrying or transporting passengers for hire, then prin-
31 cipally garaged or principally used in this state unless it contains a
32 provision whereby the insurer agrees that it will pay to the insured, as
33 defined in such provision, subject to the terms and conditions set forth
34 therein to be prescribed by the board of directors of the Motor Vehicle
35 Accident Indemnification Corporation and approved by the superintendent,
36 all sums, not exceeding a maximum amount or limit of twenty-five thou-
37 sand dollars exclusive of interest and costs, on account of injury to
38 and all sums, not exceeding a maximum amount or limit of fifty thousand
39 dollars exclusive of interest and costs, on account of death of one
40 person, in any one accident, and the maximum amount or limit, subject to
41 such limit for any one person so injured of fifty thousand dollars or so
42 killed of one hundred thousand dollars, exclusive of interest and costs,
43 on account of injury to, or death of, more than one person in any one
44 accident, which the insured or his legal representative shall be enti-
45 tled to recover as damages from an owner or operator of an uninsured
46 motor vehicle, unidentified motor vehicle which leaves the scene of an
47 accident, a motor vehicle registered in this state as to which at the
48 time of the accident there was not in effect a policy of liability
49 insurance, a motor vehicle for which the policy of insurance has been
50 rescinded or cancelled pursuant to section three thousand four hundred
51 fifty-seven of this article, a stolen vehicle, a motor vehicle involved
52 in an accident which was staged to defraud an insurer, except such vehi-
53 cle owned and operated by the perpetrator or perpetrators of such acci-
54 dent, a motor vehicle operated without permission of the owner, an
55 insured motor vehicle where the insurer disclaims liability or denies
56 coverage or an unregistered vehicle because of bodily injury, sickness

1 or disease, including death resulting therefrom, sustained by the
2 insured, caused by accident occurring in this state and arising out of
3 the ownership, maintenance or use of such motor vehicle. No payment for
4 non-economic loss shall be made under such policy provision to a covered
5 person unless such person has incurred a serious injury, as such terms
6 are defined in section five thousand one hundred two of this chapter.
7 Such policy shall not duplicate any element of basic economic loss
8 provided for under article fifty-one of this chapter. No payments of
9 first party benefits for basic economic loss made pursuant to such arti-
10 cle shall diminish the obligations of the insurer under this policy
11 provision for the payment of non-economic loss and economic loss in
12 excess of basic economic loss. Notwithstanding any inconsistent
13 provisions of section three thousand four hundred twenty-five of this
14 article, any such policy which does not contain the aforesaid provisions
15 shall be construed as if such provisions were embodied therein.

16 § 4. Subparagraph (A) of paragraph 2 of subsection (f) of section 3420
17 of the insurance law, as amended by section 19 of part III of chapter 59
18 of the laws of 2019, is amended to read as follows:

19 (A) Any such policy shall, at the option of the insured, also provide
20 supplementary uninsured/underinsured motorists insurance for bodily
21 injury, in an amount up to the bodily injury liability insurance limits
22 of coverage provided under such policy, subject to a maximum of two
23 hundred fifty thousand dollars because of bodily injury to or death of
24 one person in any one accident and, subject to such limit for one
25 person, up to five hundred thousand dollars because of bodily injury to
26 or death of two or more persons in any one accident, or a combined
27 single limit policy of five hundred thousand dollars because of bodily
28 injury to or death of one or more persons in any one accident; and any
29 such policy insuring against loss resulting from liability imposed by
30 law for bodily injury or death suffered by any natural person arising
31 out of the ownership, maintenance, and use of an altered motor vehicle
32 commonly referred to as a "stretch limousine" having a seating capacity
33 of eight or more passengers used in the business of carrying or trans-
34 porting passengers for hire, shall provide supplementary
35 uninsured/underinsured motorists insurance for bodily injury, in an
36 amount of a combined single limit of one million five hundred thousand
37 dollars because of bodily injury or death of one or more persons in any
38 one accident. Provided however, an insurer issuing any such policy,
39 except a policy insuring against loss resulting from liability imposed
40 by law for bodily injury or death suffered by any natural person arising
41 out of the ownership, maintenance, and use of an altered motor vehicle
42 commonly referred to as a "stretch limousine" having a seating capacity
43 of eight or more passengers used in the business of carrying or trans-
44 porting passengers for hire, in lieu of offering to the insured the
45 coverages stated above, may provide supplementary uninsured/underinsured
46 motorists insurance for bodily injury, in an amount up to the bodily
47 injury liability insurance limits of coverage provided under such poli-
48 cy, subject to a maximum of one hundred thousand dollars because of
49 bodily injury to or death of one person in any one accident and, subject
50 to such limit for one person, up to three hundred thousand dollars
51 because of bodily injury to or death of two or more persons in any one
52 accident, or a combined single limit policy of three hundred thousand
53 dollars because of bodily injury to or death of one or more persons in
54 any one accident, if such insurer also makes available a personal
55 umbrella policy with liability coverage limits up to at least five
56 hundred thousand dollars which also provides coverage for supplementary

1 uninsured/underinsured motorists claims. Supplementary
2 uninsured/underinsured motorists insurance shall provide coverage, in
3 any state or Canadian province, if the limits of liability under all
4 bodily injury liability bonds and insurance policies of another motor
5 vehicle liable for damages including, but not limited to a vehicle for
6 which the policy of insurance has been rescinded or cancelled pursuant
7 to section three thousand four hundred fifty-seven of this article, a
8 motor vehicle involved in an accident which was staged to defraud an
9 insurer, except such vehicle owned and operated by the perpetrator or
10 perpetrators of such accident, are in a lesser amount than the bodily
11 injury liability insurance limits of coverage provided by such policy.
12 Upon written request by any insured covered by supplemental
13 uninsured/underinsured motorists insurance or his duly authorized repre-
14 sentative and upon disclosure by the insured of the insured's bodily
15 injury and supplemental uninsured/underinsured motorists insurance
16 coverage limits, the insurer of any other owner or operator of another
17 motor vehicle against which a claim has been made for damages to the
18 insured shall disclose, within forty-five days of the request, the bodi-
19 ly injury liability insurance limits of its coverage provided under the
20 policy or all bodily injury liability bonds. The time of the insured to
21 make any supplementary uninsured/underinsured motorist claim, shall be
22 tolled during the period the insurer of any other owner or operator of
23 another motor vehicle that may be liable for damages to the insured,
24 fails to so disclose its coverage. As a condition precedent to the obli-
25 gation of the insurer to pay under the supplementary
26 uninsured/underinsured motorists insurance coverage, the limits of
27 liability of all bodily injury liability bonds or insurance policies
28 applicable at the time of the accident shall be exhausted by payment of
29 judgments or settlements.

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

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

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

38 (2) The named insured and members of his household, other than occu-
39 pants of a motorcycle, for loss arising out of the use or operation of
40 (i) an uninsured motor vehicle or motorcycle, or a vehicle whose cover-
41 age is rescinded or cancelled pursuant to section three thousand four
42 hundred fifty-seven of this chapter, within the United States, its
43 territories or possessions, or Canada; and (ii) an insured motor vehicle
44 or motorcycle outside of this state and within the United States, its
45 territories or possessions, or Canada.

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

49 (a) [~~No~~] Except as provided for in section three thousand four hundred
50 fifty-seven of the insurance law, no contract of insurance for which a
51 certificate of insurance has been filed with the commissioner shall be
52 terminated by cancellation by the insurer until at least twenty days
53 after mailing to the named insured at the address shown on the policy a
54 notice of termination by regular mail, with a certificate of mailing,
55 properly endorsed by the postal service to be obtained, except where the
56 cancellation is for non-payment of premium in which case fifteen days

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

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

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

34 (7) unregistered motor vehicles[~~+~~], and

35 (8) an accident staged to defraud an insurer.

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