

# 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.

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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 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.