§ 3440. Insurance covering private passenger motor vehicles; rental vehicle coverage. (a) For the purposes of this section, a "private passenger motor vehicle" is a motor vehicle: (1) of the private passenger or station wagon type that is owned or hired by an individual or by husband and wife under a long-term contract and is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or

(2) with a pick-up body, a delivery sedan, panel truck or van, owned by an individual or by husband and wife who are residents of the same household or by a family farm co-partnership or a family farm corporation, and not customarily used in the occupation, profession or business of the insured other than farming or ranching, whether or not used in the course of driving to or from work.

(b) Subject to subsection (d) of this section, every motor vehicle liability insurance policy which insures less than five private passenger motor vehicles registered in this state shall by endorsement, provide coverage for the obligation of the insured for actual damage to, or loss of, vehicles (including loss of use) rented by an insured in the United States, its territories or possessions and Canada under a rental agreement with a term of thirty continuous days or less, regardless of where within those areas such rental vehicle is registered, rented, or operated, subject to such maximum coverage limitations as the superintendent may by regulation prescribe or any other applicable limits in the policy, whichever is higher. The term "rental vehicle" shall be used as defined in section one hundred thirty-seven-a of the vehicle and traffic law, if a private passenger motor vehicle and not used for the transportation of persons or property for hire.

(c) In no event shall payment be made by more than one insurer or under more than one policy, and where a person is insured under more than one policy, such coverage shall apply in the following order of priority: (1) the policy or policies with respect to which the person is a named insured; (2) if the person is not a named insured on any policy, the policy with respect to which the person is an insured; (3) where two or more policies provide coverage of equal priority, the insurer to which the claim is first submitted.

(d) (1) Every policy to which this section applies shall, either upon issuance or upon the first renewal after April first, nineteen hundred

eighty-nine, be accompanied or supplemented by a notice, in a form prescribed or approved by the superintendent, advising the insured of the rental vehicle coverage provided pursuant to this section.

(2) In the event that a separate charge based upon rental vehicle coverage experience is included in the rate or policy premium, the insurer shall thereafter advise each new insured and with the initial renewal notice for policies thereafter renewed of the insured's opportunity to reject such coverage within ten days following such notice.

(e) Nothing in this section shall be construed to require an insurer to make payment under the coverage herein for damage to, or loss of, a rental vehicle (including loss of use) which the rental vehicle company is precluded from recovering from the insured whether pursuant to the terms of the rental agreement or due to the prohibitions of section three hundred ninety-six-z of the general business law or similar statutory provisions of other jurisdictions; or which is not otherwise recoverable under the applicable insurance policy or policies.

(f) Nothing in this section shall preclude an insurer from pursuing subrogation rights in connection with claims involving rental vehicle coverage.