

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

s20 Adams	s22 Golden	s39 Larkin	s11 Padavan	s14 Smith
s55 Alessi	s33 Gonzalez	s01 LaValle	s21 Parker	s58 Stachowski
s42 Bonacic	s47 Griffo	s40 Leibell	s30 Perkins	s16 Stavisky
s46 Breslin	s06 Hannon	s52 Libous	s61 Rath	s35 Stewart-
s43 Bruno	s36 Hassell-	s45 Little	s56 Robach	Cousins
s25 Connor	Thompson	s15 Maltese	s13 Sabini	s60 Thompson
s50 DeFrancisco	s10 Huntley	s05 Marcellino	s41 Saland	s03 Trunzo
s32 Diaz	s07 Johnson, C.	s62 Maziarz	s19 Sampson	s49 Valesky
s17 Dilan	s04 Johnson, O.	s18 Montgomery	s23 Savino	s59 Volker
s29 Duane	s34 Klein	s38 Morehan	s31 Schneiderman	s53 Winner
s44 Farley	s26 Krueger	s54 Nozzolio	s28 Serrano	s48 Wright
s02 Flanagan	s27 Kruger	s12 Onorato	s51 Seward	s57 Young
s08 Fuschillo	s24 Lanza	s37 Oppenheimer	s09 Skelos	

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

CIVPRLA

(Provides for a declaratory judgment
action against an insurer directly
where a claim is brought for
personal injury or wrongful death
against another)

CPLR. pers inj death:insurer liab

AN ACT

to amend the civil practice law and
rules and the insurance law, in
relation to liability insurance
policies

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

a049 Abbate	a047 Colton	a098 Gunther	a030 Markey	a080 Rivera, N.
a001 Alessi	a010 Conte	a139 Hawley	a027 Mayersohn	a076 Rivera, P.
a021 Alfano	a032 Cook	a148 Hayes	a112 McDonald	a056 Robinson
a105 Amedore	a107 Crouch	a083 Heastie	a019 McDonough	a067 Rosenthal
a084 Arroyo	a063 Cusick	a028 Hevesi	a104 McEneny	a012 Saladino
a118 Aubertine	a045 Cymbrowitz	a048 Hikind	a017 McKeivitt	a113 Sayward
a035 Aubry	a138 DelMonte	a018 Hooper	a102 Miller	a029 Scarborough
a136 Bacalles	a116 Destito	a144 Hoyt	a052 Millman	a016 Schimel
a099 Ball	a086 Diaz, L.	a060 Hyer-Spencer	a103 Molinaro	a140 Schimlinger
a124 Barclay	a085 Diaz, R.	a042 Jacobs	a132 Morelle	a145 Schroeder
a014 Barra	a081 Dinowitz	a095 Jaffee	a037 Nolan	a122 Scozzafava
a082 Benedetto	a114 Duprey	a057 Jeffries	a128 Oaks	a038 Seminerio
a079 Benjamin	a003 Eddington	a131 John	a069 O'Donnell	a064 Silver
a073 Bing	a004 Englebright	a074 Kavanagh	a137 O'Mara	a093 Spano
a055 Boyland	a130 Errigo	a065 Kellner	a051 Ortiz	a121 Stirpe
a008 Boyle	a072 Espaillet	a100 Kirwan	a150 Parment	a011 Sweeney
a089 Bradley	a071 Farrell	a129 Kolb	a088 Paulin	a110 Tedisco
a044 Brennan	a005 Fields	a135 Koon	a141 Peoples	a002 Thiele
a092 Brodsky	a123 Finch	a034 Lafayette	a039 Peralta	a061 Titone
a046 Brook-Krasny	a007 Fitzpatrick	a025 Lancman	a058 Perry	a031 Titus
a147 Burling	a143 Gabryszak	a091 Latimer	a023 Pheffer	a062 Tobacco
a117 Butler	a090 Gaief	a013 Lavine	a068 Powell	a054 Towns
a101 Cahill	a133 Gantt	a050 Lentol	a087 Pretlow	a115 Townsend
a096 Calhoun	a036 Gianaris	a125 Lifton	a146 Quinn	a015 Walker
a043 Camara	a149 Giglio	a127 Lopez, P.	a097 Rabbitt	a041 Weinstein
a106 Canestrari	a066 Glick	a053 Lopez, V.	a009 Raia	a020 Weisenberg
a026 Carrozza	a040 Gordon, D.	a126 Lupardo	a006 Ramos	a024 Weprin
a119 Christensen	a108 Gordon, T.	a111 Magee	a134 Reilich	a070 Wright
a033 Clark	a075 Gottfried	a120 Magnarelli	a109 Reilly	a022 Young
a142 Cole	a077 Greene	a059 Maisel	a078 Rivera, J.	a094 Zebrowski, X

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. Section 3001 of the civil practice law and rules is amended
2 to read as follows:

3 § 3001. Declaratory judgment. The supreme court may render a declara-
4 tory judgment having the effect of a final judgment as to the rights and
5 other legal relations of the parties to a justiciable controversy wheth-
6 er or not further relief is or could be claimed. If the court declines
7 to render such a judgment it shall state its grounds. A party who has
8 brought a claim for personal injury or wrongful death against another
9 party may maintain a declaratory judgment action directly against the
10 insurer of such other party, as provided in section three thousand four
11 hundred twenty of the insurance law.

12 § 2. Subsection (a) of section 3420 of the insurance law, the opening
13 paragraph as amended by chapter 584 of the laws of 2002, is amended to
14 read as follows:

15 (a) No policy or contract insuring against liability for injury to
16 person, except as provided in subsection (g) hereof, or against liabil-
17 ity for injury to, or destruction of, property shall be issued or deliv-
18 ered in this state, unless it contains in substance the following
19 provisions or provisions [which] that are equally or more favorable to
20 the insured and to judgment creditors so far as such provisions relate
21 to judgment creditors:

22 (1) A provision that the insolvency or bankruptcy of the person
23 insured, or the insolvency of [his] the insured's estate, shall not
24 release the insurer from the payment of damages for injury sustained or
25 loss occasioned during the life of and within the coverage of such poli-
26 cy or contract.

27 (2) A provision that in case judgment against the insured or [his] the
28 insured's personal representative in an action brought to recover

1 damages for injury sustained or loss or damage occasioned during the
2 life of the policy or contract shall remain unsatisfied at the expira-
3 tion of thirty days from the serving of notice of entry of judgment upon
4 the attorney for the insured, or upon the insured, and upon the insurer,
5 then an action may, except during a stay or limited stay of execution
6 against the insured on such judgment, be maintained against the insurer
7 under the terms of the policy or contract for the amount of such judg-
8 ment not exceeding the amount of the applicable limit of coverage under
9 such policy or contract.

10 (3) A provision that notice given by or on behalf of the insured, or
11 written notice by or on behalf of the injured person or any other claim-
12 ant, to any licensed agent of the insurer in this state, with partic-
13 ulars sufficient to identify the insured, shall be deemed notice to the
14 insurer.

15 (4) A provision that failure to give any notice required to be given
16 by such policy within the time prescribed therein shall not invalidate
17 any claim made by the insured, an injured person or [by] any other
18 claimant if it shall be shown not to have been reasonably possible to
19 give such notice within the prescribed time and that notice was given as
20 soon as was reasonably possible thereafter.

21 (5) A provision that failure to give any notice required to be given
22 by such policy within the time prescribed therein shall not invalidate
23 any claim made by the insured, injured person or any other claimant,
24 unless the failure to provide timely notice has prejudiced the insurer,
25 except as provided in paragraph four of this subsection. With respect to
26 a claims-made policy, however, the policy may provide that the failure
27 to provide timely notice within the claims-made relationship and the
28 extended reporting period, if any, shall invalidate the claim, except as

1 provided in paragraph four of this subsection. As used in this para-
2 graph, the terms "claims-made policy", "claims-made relationship", and
3 "extended reporting period" shall have their respective meanings as
4 provided in a regulation promulgated by the superintendent.

5 (6) A provision that, with respect to a claim arising out of death or
6 injury of any person, if the insurer disclaims liability or denies
7 coverage based upon the failure to provide timely notice, then the
8 injured person or other claimant may maintain an action directly against
9 such insurer, in which the sole question is the insurer's disclaimer or
10 denial based on the failure to provide timely notice, unless within
11 sixty days following such disclaimer or denial, the insured or the
12 insurer: (A) initiates an action to declare the rights of the parties
13 under the insurance policy; and (B) names the injured person or other
14 claimant as a party to the action.

15 § 3. Subsection (b) of section 3420 of the insurance law is amended to
16 read as follows:

17 (b) Subject to the limitations and conditions of paragraph two of
18 subsection (a) hereof, an action may be maintained by the following
19 persons against the insurer upon any policy or contract of liability
20 insurance [which] that is governed by such paragraph, to recover the
21 amount of a judgment against the insured or his personal representative:

22 (1) any person who, or the personal representative of any person who,
23 has obtained a judgment against the insured or [his] the insured's
24 personal representative, for damages for injury sustained or loss or
25 damage occasioned during the life of the policy or contract;

26 (2) any person who, or the personal representative of any person who,
27 has obtained a judgment against the insured or [his] the insured's
28 personal representative to enforce a right of contribution or indemnity,

1 or any person subrogated to the judgment creditor's rights under such
2 judgment; and

3 (3) any assignee of a judgment obtained as specified in paragraph one
4 or paragraph two of this subsection, subject further to the limitation
5 contained in section 13-103 of the general obligations law.

6 § 4. Subsection (c) of section 3420 of the insurance law is amended to
7 read as follows:

8 (c) (1) If an action is maintained against an insurer under the
9 provisions of paragraph two of subsection (a) of this section and the
10 insurer alleges in defense that the insured failed or refused to cooper-
11 ate with the insurer in violation of any provision in the policy or
12 contract requiring such cooperation, then the burden shall be upon the
13 insurer to prove such alleged failure or refusal to cooperate.

14 (2)(A) In any action in which an insurer alleges that it was preju-
15 diced as a result of a failure to provide timely notice, the burden of
16 proof shall be on: (i) the insurer to prove that it has been prejudiced,
17 if the notice was provided within two years of the time required under
18 the policy; or (ii) the insured, injured person or other claimant to
19 prove that the insurer has not been prejudiced, if the notice was
20 provided more than two years after the time required under the policy.

21 (B) Notwithstanding subparagraph (A) of this paragraph, an irrebutta-
22 ble presumption of prejudice shall apply if, prior to notice, the
23 insured's liability has been determined by a court of competent juris-
24 diction or by binding arbitration; or if the insured has resolved the
25 claim or suit by settlement or other compromise.

26 (C) The insurer's rights shall not be deemed prejudiced unless the
27 failure to timely provide notice impairs a significant interest of the

1 insurer, including, but not limited to, its ability to: investigate the
2 claim; negotiate a settlement; or defend the claim.

3 § 5. Subsection (d) of section 3420 of the insurance law is amended to
4 read as follows:

5 (d)(1)(A) This paragraph applies with respect to a liability policy
6 that provides coverage with respect to a claim arising out of the death
7 or injury of any person.

8 (B) Upon an insurer's receipt of a written request by an injured
9 person who has filed a notice of claim, or any other claimant, an insur-
10 er shall, within sixty days of receipt of the written request, confirm
11 to the injured person or other claimant in writing whether the insured
12 had a liability insurance policy in effect with the insurer on the date
13 of the alleged occurrence and specify the liability insurance limits of
14 the coverage provided under the policy.

15 (C) If the injured person or other claimant fails to provide suffi-
16 cient identifying information to allow the insurer, in the exercise of
17 reasonable diligence, to identify a liability insurance policy that may
18 be relevant to the claim, the insurer shall so advise the claimant in
19 writing and identify for the injured person or other claimant the addi-
20 tional information needed. Within forty-five days of receipt of the
21 additional information, the insurer shall provide the information
22 required under subparagraph (B) of this paragraph.

23 (2) If under a liability policy issued or delivered [or issued for
24 delivery] in this state, an insurer shall disclaim liability or deny
25 coverage for death or bodily injury arising out of a motor vehicle acci-
26 dent or any other type of accident occurring within this state, it shall
27 give written notice as soon as is reasonably possible of such disclaimer

1 of liability or denial of coverage to the insured and the injured person
2 or any other claimant.

3 § 6. Paragraph 1 of subsection (j) of section 3420 of the insurance
4 law, as added by chapter 540 of the laws of 1984, is amended to read as
5 follows:

6 (1) Notwithstanding any other provision of this chapter or any other
7 law to the contrary, every policy providing comprehensive personal
8 liability insurance on a one, two, three or four family owner-occupied
9 dwelling, issued or [renewed] delivered in this state on and after [the
10 effective date of this subsection] the first of March, nineteen eighty-
11 four, shall provide for coverage against liability for the payment of
12 any obligation, which the policyholder may incur pursuant to the
13 provisions of the workers' compensation law, to an employee arising out
14 of and in the course of employment of less than forty hours per week, in
15 and about such residences of the policyholder in this state. Such cover-
16 age shall provide for the benefits in the standard workers' compensation
17 policy issued in this state. No one who purchases a policy providing
18 comprehensive personal liability insurance shall be deemed to have
19 elected to cover under the workers' compensation law any employee who is
20 not required, under the provisions of such law, to be covered.

21 § 7. Paragraph 6 of subsection (a) of section 2601 of the insurance
22 law, as added by chapter 547 of the laws of 1997, is amended to read as
23 follows:

24 (6) failing to promptly disclose coverage pursuant to subsection (d)
25 or subparagraph (A) of paragraph two of subsection (f) of section three
26 thousand four hundred twenty of this chapter.

27 § 8. This act shall take effect on the one hundred eightieth day after
28 it shall have become a law, and shall apply to policies issued or deliv-

1 ered in this state on or after such date and to any action maintained
2 under such a policy; effective immediately, the addition, amendment
3 and/or repeal of any rule or regulation necessary for the implementation
4 of this act on its effective date are authorized and directed to be
5 made and completed by the superintendent of insurance on or before such
6 effective date.