

RE: A10456

Submitted by: New York State Law Revision Commission

A _____ MEMORANDUM OF SUPPORT:

TITLE OF BILL: An act to amend the insurance law and the vehicle and traffic law, in relation to the requirements of motor vehicle liability insurance policies relating to spouses who are injured as a result of their spouse's negligence.

PURPOSE: This bill would require insurers to provide notice to insureds of certain statutory limitations on excess liability coverage for injuries caused by an insured to his or her spouse, and make available, at the request of the insured, supplemental liability coverage for injuries to an insured's spouse caused by the insured. Such coverage would be referred to as "supplemental spousal liability insurance."

SUMMARY OF SPECIFIC PROVISIONS:

Section 1. Amends Insurance Law § 3420(a) to introduce modifications to the spousal exception of required terms in automobile insurance liability policies set forth in Insurance Law § 3420(g).

Section 2. Amends Insurance Law § 3420(g) by requiring insurers to make available to an insured, upon request and payment of a premium, supplemental liability coverage in excess of no-fault coverage against injuries to the spouse of the insured caused by the insured's negligence. Such coverage is called "supplemental spousal liability insurance." Subsection (g) is further amended to require insurers to provide notice in every motor vehicle liability insurance policy that the terms of the policy do not include coverage for injuries or death of a spouse caused by the insured spouse's negligence and that supplemental spousal liability insurance is available to provide such coverage.

Section 3. Amends subsection (e) of section 345 of the Motor Vehicle and Traffic Law to recognize the notice and availability requirements relating to supplemental spousal liability insurance.

Section 4. Amends subsection (4) of section 388 of the Vehicle and Traffic Law to recognize the notice and availability requirements relating to supplemental spousal liability insurance.

STATEMENT IN SUPPORT: This bill has been introduced at the request of the New York State Law Revision Commission. After extensive study, the Commission determined that, as a matter of public policy, New York requires liability insurance coverage against injury to every person who suffers injury as a result of the insured's culpable conduct, unless the victim is the spouse of the insured. Insurance Law § 3420(g) specifically permits an insurer to deny, without notice, coverage against any liability of an insured "because of death of or injuries to his or her spouse . . . where the injured spouse, to be entitled to recover, must prove the culpable conduct

of the insured spouse.” In operation, subsection (g) precludes both direct actions between spouses and vicarious liability actions against owners where the culpable conduct of a spouse is a cause of the injury. The lone purpose of the provision, which was enacted in 1937, is to protect insurers from collusive and fraudulent actions between spouses. No similar exclusion exists for any other family relationship.

The operation and effect of Insurance Law § 3420(g) was recently highlighted in Black v. Allstate Ins. Co.¹ In that case, Mrs. Powell was driving the family car, her husband was riding in the passenger seat and her young son was in the back seat. The Powells’ car collided with another car that was being pursued by the police. Mr. Powell was killed, Mrs. Powell suffered severe and permanent brain damage rendering her incompetent, and their son was seriously injured. Mr. Powell’s estate sought coverage under his wife’s automobile liability policy with Allstate Insurance Company. Allstate denied coverage, claiming that it was not required to provide coverage pursuant to Insurance Law § 3420(g). In the estate’s declaratory judgment action against Allstate, the First Department reluctantly ruled in favor of Allstate, citing Insurance Law § 3420(g). However, the court emphasized the “unlikelihood of collusion between decedent husband and his widow, who was rendered incompetent as a result of injuries incurred in the same accident, and the anachronistic nature of 3420(g).”² The court explicitly called upon the Legislature to reconsider the merits of the provision, noting that:

As a result of the now 61-year old statute, literally millions of married New Yorkers are unaware that their automobile liability insurance policy, while providing coverage for every other passenger or person injured in an accident caused by the driver’s negligence, does not provide any coverage when the injured passenger is their spouse.³

Based on its study of Insurance Law § 3420(g), the Commission concludes:

1. Under current law, recovery for automobile-related injuries suffered by a spouse as a result of the culpable conduct of his or her spouse is limited to mandatory No-Fault coverage.
2. Because the exclusion is statutory, insurers are not required to disclose it. Thus, the vast majority of insureds are unaware that their spouse will not be afforded coverage for injuries caused by the insured’s negligence.
3. Although the section provides that an insured may contract for spousal coverage to avoid the operation of the exclusion, no New York insurer offers this endorsement.

¹ 274 AD2d 346 (1st Dept. 2000).

² Id., at 346.

³ Id., at 347.

4. The exclusion will operate even where it is evident that no fraud or collusion exists.
5. The danger of collusion argument has been specifically rejected by the Court of Appeals in regard to the former common-law rule barring suits between other family members. All but two other states, Louisiana and Georgia, have rejected the collusion argument with regard to interspousal torts.
6. New York is the only state with a specific statute authorizing insurers to deny excess liability coverage against claims by spouses of negligent insureds without notice or a written exclusion in the policy.

Based on these conclusions, the Commission recommends that the exception set forth in Insurance Law § 3420(g) be amended in two ways. First, the provision should be modified to include a provision requiring licensed insurers to provide supplemental liability coverage to injured spouses when it is (1) requested by the insured and (2) a premium is paid for such coverage. Second, insurers must be required to provide a notice in every motor vehicle liability policy explaining that the liability terms of the policy are not applicable to claims for bodily injury or deaths suffered by the spouse of the insured and caused by the negligence of the insured. These amendments are loosely modeled after the statutes governing supplemental uninsured and underinsured motorist insurance.

This initiative would not place an unrealistic burden on the insurance industry. Although insurers would have to make the coverage available and provide notice, a premium will be required to offset the associated cost and exposure. At the same time, married persons will benefit as they will be able to choose whether the additional coverage and cost is appropriate to their individual circumstances. Moreover, this approach is completely consistent with the Legislature's original intent to permit spouses to contract for spousal coverage. For these reasons, it is the Commission's conclusion that mandatory optional supplemental coverage will be beneficial to the people of New York.

FISCAL IMPLICATION: None

EFFECTIVE DATE: January 1, 2003