

AMENDED IN ASSEMBLY MAY 4, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 778

Introduced by Assembly Member Mullin

February 18, 2005

An act to amend Section 11580.1 of the Insurance Code, relating to auto insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 778, as amended, Mullin. Auto insurance: in-home supportive services.

Existing law generally regulates auto insurance. Existing law prohibits an auto liability insurance policy from containing specified provisions.

This bill would prohibit an auto liability policy from containing any provision that expressly or impliedly excludes from coverage under the policy the operation or use of an insured motor vehicle by the named insured in the performance of any in-home supportive services, as described. *The bill would allow an insurer to consider, for rating purposes, the number of miles driven in the provision of in-home supportive services if that number exceeds 2,000 miles per year.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11580.1 of the Insurance Code is
- 2 amended to read:
- 3 11580.1. (a) No policy of automobile liability insurance
- 4 described in Section 16054 of the Vehicle Code covering liability

1 arising out of the ownership, maintenance, or use of any motor
2 vehicle shall be issued or delivered in this state on or after the
3 effective date of this section unless it contains the provisions set
4 forth in subdivision (b). However, none of the requirements of
5 subdivision (b) shall apply to the insurance afforded under the
6 policy (1) to the extent that the insurance exceeds the limits
7 specified in subdivision (a) of Section 16056 of the Vehicle
8 Code, or (2) if the policy contains an underlying insurance
9 requirement, or provides for a retained limit of self-insurance,
10 equal to or greater than the limits specified in subdivision (a) of
11 Section 16056 of the Vehicle Code.

12 (b) Every policy of automobile liability insurance to which
13 subdivision (a) applies shall contain all of the following
14 provisions:

15 (1) Coverage limits not less than the limits specified in
16 subdivision (a) of Section 16056 of the Vehicle Code.

17 (2) Designation by explicit description of, or appropriate
18 reference to, the motor vehicles or class of motor vehicles to
19 which coverage is specifically granted.

20 (3) Designation by explicit description of the purposes for
21 which coverage for those motor vehicles is specifically excluded.

22 (4) Provision affording insurance to the named insured with
23 respect to any owned or leased motor vehicle covered by the
24 policy, and to the same extent that insurance is afforded to the
25 named insured, to any other person using the motor vehicle,
26 provided the use is by the named insured or with his or her
27 permission, express or implied, and within the scope of that
28 permission, except that: (i) with regard to insurance afforded for
29 the loading or unloading of the motor vehicle, the insurance may
30 be limited to apply only to the named insured, a relative of the
31 named insured who is a resident of the named insured's
32 household, a lessee or bailee of the motor vehicle, or an
33 employee of any of those persons; and (ii) the insurance afforded
34 to any person other than the named insured need not apply to:

35 (A) any employee with respect to bodily injury sustained by a
36 fellow employee injured in the scope and course of his or her
37 employment, or (B) any person, or to any agent or employee
38 thereof, employed or otherwise engaged in the business of
39 selling, repairing, servicing, delivering, testing, road-testing,
40 parking, or storing automobiles with respect to any accident

1 arising out of the maintenance or use of a motor vehicle in
2 connection therewith. As used in this chapter, “owned motor
3 vehicle” includes all motor vehicles described and rated in the
4 policy.

5 (c) In addition to any exclusion provided in paragraph (3) of
6 subdivision (b), the insurance afforded by any policy of
7 automobile liability insurance to which subdivision (a) applies,
8 including the insurer’s obligation to defend, may, by appropriate
9 policy provision, be made inapplicable to any or all of the
10 following:

- 11 (1) Liability assumed by the insured under contract.
- 12 (2) Liability for bodily injury or property damage caused
13 intentionally by or at the direction of the insured.
- 14 (3) Liability imposed upon or assumed by the insured under
15 any workers’ compensation law.
- 16 (4) Liability for bodily injury to any employee of the insured
17 arising out of and in the course of his or her employment.
- 18 (5) Liability for bodily injury to an insured or liability for
19 bodily injury to an insured whenever the ultimate benefits of that
20 indemnification accrue directly or indirectly to an insured.
- 21 (6) Liability for damage to property owned, rented to,
22 transported by, or in the charge of, an insured. A motor vehicle
23 operated by an insured shall be considered to be property in the
24 charge of an insured.
- 25 (7) Liability for any bodily injury or property damage with
26 respect to which insurance is or can be afforded under a nuclear
27 energy liability policy.
- 28 (8) Any motor vehicle or class of motor vehicles, as described
29 or designated in the policy, with respect to which coverage is
30 explicitly excluded, in whole or in part.

31 The term “the insured” as used in paragraphs (1), (2), (3), and
32 (4) shall mean only that insured under the policy against whom
33 the particular claim is made or suit brought. The term “an
34 insured” as used in paragraphs (5) and (6) shall mean any insured
35 under the policy including those persons who would have
36 otherwise been included within the policy’s definition of an
37 insured but, by agreement, are subject to the limitations of
38 paragraph (1) of subdivision (d).

39 (d) Notwithstanding the provisions of paragraph (4) of
40 subdivision (b), or the provisions of Article 2 (commencing with

1 Section 16450) of Chapter 3 of Division 7 of, or Article 2
2 (commencing with Section 17150) of Chapter 1 of Division 9 of,
3 the Vehicle Code, the insurer and any named insured may, by the
4 terms of any policy of automobile liability insurance to which
5 subdivision (a) applies, or by a separate writing relating thereto,
6 agree as to either or both of the following limitations, the
7 agreement to be binding upon every insured to whom the policy
8 applies and upon every third-party claimant:

9 (1) That coverage and the insurer's obligation to defend under
10 the policy shall not apply nor accrue to the benefit of any insured
11 or any third-party claimant while any motor vehicle is being used
12 or operated by a natural person or persons designated by name.
13 These limitations shall apply to any use or operation of a motor
14 vehicle, including the negligent or alleged negligent entrustment
15 of a motor vehicle to that designated person or persons. This
16 agreement applies to all coverage provided by that policy and is
17 sufficient to comply with the requirements of paragraph (2) of
18 subdivision (a) of Section 11580.2 to delete coverage when a
19 motor vehicle is operated by a natural person or persons
20 designated by name. The insurer shall have an obligation to
21 defend the named insured when all of the following apply to that
22 designated natural person:

23 (A) He or she is a resident of the same household as the named
24 insured.

25 (B) As a result of operating the insured motor vehicle of the
26 named insured, he or she is jointly sued with the named insured.

27 (C) He or she is an insured under a separate automobile
28 liability insurance policy issued to him or her as a named insured,
29 which policy does not provide a defense to the named insured.

30 An agreement made by the insurer and any named insured
31 more than 60 days following the inception of the policy
32 excluding a designated person by name shall be effective from
33 the date of the agreement and shall, with the signature of a named
34 insured, be conclusive evidence of the validity of the agreement.

35 That agreement shall remain in force as long as the policy
36 remains in force, and shall apply to any continuation, renewal, or
37 replacement of the policy by the named insured, or reinstatement
38 of the policy within 30 days of any lapse thereof.

39 (2) That with regard to a policy issued to a named insured
40 engaged in the business of leasing vehicles for those vehicles that

1 are leased for a term in excess of six months, or selling,
2 repairing, servicing, delivering, testing, road-testing, parking, or
3 storing automobiles, coverage shall not apply to any person other
4 than the named insured or his or her agent or employee, except to
5 the extent that the limits of liability of any other valid and
6 collectible insurance available to that person are not equal to the
7 limits of liability specified in subdivision (a) of Section 16056 of
8 the Vehicle Code. If the policy is issued to a named insured
9 engaged in the business of leasing vehicles, which business
10 includes the lease of vehicles for a term in excess of six months,
11 and the lessor includes in the lease automobile liability insurance,
12 the terms and limits of which are not otherwise specified in the
13 lease, the named insured shall incorporate a provision in each
14 vehicle lease contract advising the lessee of the provisions of this
15 subdivision and the fact that this limitation is applicable except
16 as otherwise provided for by statute or federal law.

17 (e) Nothing in this section or in Section 16054 or 16450 of the
18 Vehicle Code shall be construed to constitute a homeowner's
19 policy, personal and residence liability policy, personal and farm
20 liability policy, general liability policy, comprehensive personal
21 liability policy, manufacturers' and contractors' policy, premises
22 liability policy, special multiperil policy, or any policy or
23 endorsement where automobile liability coverage is offered as
24 incidental to some other basic coverage as an "automobile
25 liability policy" within the meaning of Section 16054 of the
26 Vehicle Code, or as a "motor vehicle liability policy" within the
27 meaning of Section 16450 of the Vehicle Code, nor shall any
28 provision of this section apply to a policy that provides insurance
29 covering liability arising out of the ownership, maintenance, or
30 use of any motor vehicle in the Republic of Mexico issued or
31 delivered in this state by a nonadmitted Mexican insurer,
32 notwithstanding that the policy may provide automobile or motor
33 vehicle liability coverage on insured premises or the ways
34 immediately adjoining.

35 (f) On and after January 1, 1976, no policy of automobile
36 liability insurance described in subdivision (a) shall be issued,
37 amended, or renewed in this state if it contains any provision that
38 expressly or impliedly excludes from coverage under the policy
39 the operation or use of an insured motor vehicle by the named
40 insured in the performance of volunteer services for a nonprofit

1 charitable organization or governmental agency by providing
2 social service transportation. This subdivision shall not apply in
3 any case in which the named insured receives any remuneration
4 of any kind other than reimbursement for actual mileage driven
5 in the performance of those services at a rate not to exceed the
6 following:

7 (1) For the 1980–81 fiscal year, the maximum rate authorized
8 by the State Board of Control, which shall also be known as the
9 “base rate.”

10 (2) For each fiscal year thereafter, the greater of either (A) the
11 maximum rate authorized by the State Board of Control or (B)
12 the base rate as adjusted by the California Consumer Price Index.

13 No policy of insurance issued under this section may be
14 canceled by an insurer solely for the reason that the named
15 insured is performing volunteer services for a nonprofit
16 charitable organization or governmental agency consisting of
17 providing social service transportation.

18 For the purposes of this section, “social service transportation”
19 means transportation services provided by private nonprofit
20 organizations or individuals to either individuals who are senior
21 citizens or individuals or groups of individuals who have special
22 transportation needs because of physical or mental conditions
23 and supported in whole or in part by funding from private or
24 public agencies.

25 (g) Notwithstanding the provisions of paragraph (4) of
26 subdivision (b) of this section, or the provisions of Article 2
27 (commencing with Section 16450) of Chapter 3 of Division 7 of,
28 or Article 2 (commencing with Section 17150) of Chapter 1 of
29 Division 9 of, the Vehicle Code, a Mexican nonadmitted insurer
30 and any named insured may, by the terms of any policy of
31 automobile insurance for use solely in the Republic of Mexico to
32 which subdivision (a) applies, or by a separate writing relating
33 thereto, agree to the limitation that coverage under that policy
34 shall not apply to any person riding in or occupying a vehicle
35 owned by the insured or driven by another person with the
36 permission of the insured. The agreement shall be binding upon
37 every insured to whom the policy applies and upon any
38 third-party claimant.

39 (h) No policy of automobile insurance that provides insurance
40 covering liability arising out of the ownership, maintenance or

1 use of any motor vehicle solely in the Republic of Mexico issued
2 by a nonadmitted Mexican insurance company, shall be subject
3 to, or provide coverage for, those coverages provided in Section
4 11580.2.

5 (i) On and after January 1, 2006, no policy of automobile
6 liability insurance described in subdivision (a) shall be issued,
7 amended, or renewed in this state if it contains any provision that
8 expressly or impliedly excludes from coverage under the policy
9 the operation or use of an insured motor vehicle by the named
10 insured in the performance of any in-home supportive services
11 described in Article 7 (commencing with Section 12300) of
12 Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions
13 Code. No policy of insurance issued under this section may be
14 rated or canceled by an insurer solely for the reason that the
15 named insured is operating or using an insured motor vehicle to
16 provide transportation incident to the provision of in-home
17 supportive services. *This subdivision shall not prohibit an insurer*
18 *from considering, for the purposes of rating, the number of miles*
19 *driven in the provision of in-home supportive services if that*
20 *number exceeds 2,000 miles per year.*