

**ASSEMBLY BILL**

**No. 2139**

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**Introduced by Assembly Member De La Torre**

February 20, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2139, as introduced, De La Torre. 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 prohibit a vehicle covered under an auto liability policy from being classified as a common carrier, livery, or for-hire vehicle solely for the reason that the named insured or applicant is operating or using the insured vehicle to provide transportation incidental to the provision of in-home supportive services.

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:

1 11580.1. (a) No policy of automobile liability insurance  
2 described in Section 16054 of the Vehicle Code covering liability  
3 arising out of the ownership, maintenance, or use of any motor  
4 vehicle shall be issued or delivered in this state on or after the  
5 effective date of this section unless it contains the provisions set  
6 forth in subdivision (b). However, none of the requirements of  
7 subdivision (b) shall apply to the insurance afforded under the  
8 policy (1) to the extent that the insurance exceeds the limits  
9 specified in subdivision (a) of Section 16056 of the Vehicle Code,  
10 or (2) if the policy contains an underlying insurance requirement,  
11 or provides for a retained limit of self-insurance, equal to or greater  
12 than the limits specified in subdivision (a) of Section 16056 of the  
13 Vehicle Code.

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

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

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

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

23 (4) Provision affording insurance to the named insured with  
24 respect to any owned or leased motor vehicle covered by the policy,  
25 and to the same extent that insurance is afforded to the named  
26 insured, to any other person using the motor vehicle, provided the  
27 use is by the named insured or with his or her permission, express  
28 or implied, and within the scope of that permission, except that:  
29 (A) with regard to insurance afforded for the loading or unloading  
30 of the motor vehicle, the insurance may be limited to apply only  
31 to the named insured, a relative of the named insured who is a  
32 resident of the named insured's household, a lessee or bailee of  
33 the motor vehicle, or an employee of any of those persons; and  
34 (B) the insurance afforded to any person other than the named  
35 insured need not apply to: (i) any employee with respect to bodily  
36 injury sustained by a fellow employee injured in the scope and  
37 course of his or her employment, or (ii) any person, or to any agent  
38 or employee thereof, employed or otherwise engaged in the  
39 business of selling, repairing, servicing, delivering, testing,  
40 road-testing, parking, or storing automobiles with respect to any

1 accident arising out of the maintenance or use of a motor vehicle  
2 in 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 automobile  
7 liability insurance to which subdivision (a) applies, including the  
8 insurer’s obligation to defend, may, by appropriate policy  
9 provision, be made inapplicable to any or all of the following:

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

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

37 (d) Notwithstanding paragraph (4) of subdivision (b), or Article  
38 2 (commencing with Section 16450) of Chapter 3 of Division 7  
39 of, or Article 2 (commencing with Section 17150) of Chapter 1 of  
40 Division 9 of, the Vehicle Code, the insurer and any named insured

1 may, by the terms of any policy of automobile liability insurance  
2 to which subdivision (a) applies, or by a separate writing relating  
3 thereto, agree as to either or both of the following limitations, the  
4 agreement to be binding upon every insured to whom the policy  
5 applies and upon every third-party claimant:

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

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

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

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

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

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

36 (2) That with regard to a policy issued to a named insured  
37 engaged in the business of leasing vehicles for those vehicles that  
38 are leased for a term in excess of six months, or selling, repairing,  
39 servicing, delivering, testing, road-testing, parking, or storing  
40 automobiles, coverage shall not apply to any person other than the

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

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

31 (f) (1) On and after January 1, 1976, no policy of automobile  
32 liability insurance described in subdivision (a) shall be issued,  
33 amended, or renewed in this state if it contains any provision that  
34 expressly or impliedly excludes from coverage under the policy  
35 the operation or use of an insured motor vehicle by the named  
36 insured in the performance of volunteer services for a nonprofit  
37 charitable organization or governmental agency by providing social  
38 service transportation. This subdivision shall not apply in any case  
39 in which the named insured receives any remuneration of any kind

1 other than reimbursement for actual mileage driven in the  
2 performance of those services at a rate not to exceed the following:

3 (A) For the 1980–81 fiscal year, the maximum rate authorized  
4 by the ~~California Victim Compensation and Government Claims~~  
5 ~~Board~~ *State Board of Control*, which shall also be known as the  
6 “base rate.”

7 (B) For each fiscal year thereafter, the greater of either (A) the  
8 maximum rate authorized by the *State Board of Control or its*  
9 *successor, the California Victim Compensation and Government*  
10 *Claims Board*, or (B) the base rate as adjusted by the California  
11 Consumer Price Index.

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

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

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

36 (h) No policy of automobile insurance that provides insurance  
37 covering liability arising out of the ownership, maintenance, or  
38 use of any motor vehicle solely in the Republic of Mexico issued  
39 by a nonadmitted Mexican insurance company, shall be subject

1 to, or provide coverage for, those coverages provided in Section  
2 11580.2.

3 *(i) On or after January 1, 2009, no policy of automobile*  
4 *insurance described in subdivision (a) shall be issued, amended,*  
5 *or renewed in this state if it contains any provision that expressly*  
6 *or impliedly excludes from coverage under the policy the operation*  
7 *or use of an insured motor vehicle by the named insured in the*  
8 *performance of any in-home supportive services described in*  
9 *Article 7 (commencing with Section 12300) of Chapter 3 of Part*  
10 *3 of Division 9 of the Welfare and Institutions Code. No motor*  
11 *vehicle covered under a policy of insurance issued under this*  
12 *section may be classified as a common carrier, livery, or for-hire*  
13 *vehicle solely for the reason that the named insured or applicant*  
14 *is operating or using the insured motor vehicle to provide*  
15 *transportation incidental to the provision of in-home supportive*  
16 *services described in Article 7 (commencing with Section 12300)*  
17 *of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions*  
18 *Code.*

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