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# Insurance Review of Selected 1970 California Legislation

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# Insurance

## Motor Vehicle Minimum Liability Coverage

Insurance Code §§11580.05-11580.9 (new); 11580.1, 11580.9 (repealed).

AB 1665; STATS 1970, Ch 300

Section 11580.5 states that the legislature declares that the public policy of this state in regard to provisions authorized or required to be included in policies affording automobile liability insurance or motor vehicle liability insurance issued or delivered in this state shall be stated in this article and that this article expresses the total public policy of this state respecting the content of automobile liability policies. Section 11580.05 further states that Article 2 (*commencing with Vehicle Code Section 16450*) is to apply only to an owner's policy or operator's policy of liability insurance certified as provided in Section 16431 of the Vehicle Code as proof of ability to respond in damages, and that the requirements set forth in Article 4 (*commencing with Insurance Code Section 11620*) shall apply only to automobile liability insurance policies issued under the California assigned risk plan. All other policies covering liability insurance pertaining to ownership, maintenance or use of a motor vehicle shall comply with Sections 11580, 11580.1 and 11580.2.

Section 11580.6 defines the following terms: *motor vehicle*—any vehicle designed for use on streets and highways and subject to motor vehicle registration; *insured*—includes the names of persons to whom a policy subject to this code is issued and any other person afforded coverage; *bodily injury*—includes sickness or disease, including death resulting therefrom.

Section 11580.1 requires, as did the repealed Section, that four provisions appear in every automobile insurance policy. These are: (1) coverage not less than the minimums required by Vehicle Code Section 16059 (*\$15,000 for one person, \$30,000 for two or more, and \$5,000 for property damage*); (2) an explicit description of vehicles or class of vehicles covered; (3) an explicit description of uses not covered; (4) coverage to the named insured and others using the motor vehicle with his permission.

The significant changes in this Section are: The above provisions are not required for such policies to the extent that the insurance exceeds minimum required amount or if such policy has an underlying insurance requirement, or provides for a retained limit of self-insurance, equal to or greater than the minimum required amount. Provision 2 now requires explicit description of vehicles specifically covered instead of intended to be covered, as before. Provision 3 requires explicit description of uses specifically excluded, instead of intended to be excluded, as before. Provision 4 allows the insurance afforded for the loading or unloading of any motor vehicle to be restricted to the named insured, a relative of a named insured who is a resident of the named insured's household, a lessee or bailee of the motor vehicle, or an employee of such person. In addition, the insurance need not apply to employees injured by a fellow employee, or any person testing, selling, delivering, parking or servicing the motor vehicle with respect to any accident arising out of the maintenance or use of a motor vehicle in connection therewith. The following may be excluded from the policy at the option of the parties: a) liability assumed by the insured under a contract; b) liability for bodily injury or property damage caused intentionally by the insured; c) liability under the workmen's compensation laws; d) liability to an employee arising out of the course of his employment; e) liability for bodily injury to the insured; f) liability for damage to property owned, rented to, transported by, or in the charge of the insured; g) liability which may be covered by a nuclear energy liability policy; and h) liability for any vehicle or class of vehicles specifically excluded.

All the above requirements shall apply only to motor vehicle policies and not to the following specifically mentioned policies: homeowners, personal and residence liability, personal and farm liability, general liability, comprehensive personal liability, manufacturers and contractors policies, premises liability, comprehensive personal liability, manufacturers and contractors policies, special multiperil policies, or any other policy covering automobile liability incidentally.

Section 11580.8 declares it to be the legislature's intent to avoid conflicts in litigation and resulting court congestion between and among injured parties, insureds, and insurers. The purpose is to prevent litigation as to which insurance policies are responsible as primary, excess, or sole coverage under the circumstances of any given event involving death or injury to persons or property caused by the operation or use of a motor vehicle.

Section 11580.9 sets out specific priorities of insurance coverage where there are two or more policies applicable to the same motor vehicle. Subsection (a) provides that motor vehicle insurance policies issued to one engaged in the business of repairing, leasing, or selling motor vehicles shall be primary providing the owner of the business or his agent or employee was driving at the time of the loss. Insurance coverage by any other policy shall be excess. If at the time of the loss someone else is operating the motor vehicle the insurance issued to any person engaged in the above businesses shall be excess over all other insurance available to such operator as a named insured or otherwise. Subsection (b) provides that where two or more policies are applicable to the same loss, and one of the policies affords coverage to a named insured engaged in business of renting or leasing commercial vehicles without operators (*Vehicle Code Section 260 defines commercial vehicles*) it is conclusively presumed that the insurance afforded by such policy to a person other than the named insured, shall be excess over any other valid and collectible insurance applicable to the same loss covering such person as a named insured.

Subsection (c) states that any policy covering loading and unloading of motor vehicles on specified premises shall be primary over the policy insuring the motor vehicle.

Subsection (d) provides that in all other instances the insurance policy which rates or describes the motor vehicle shall be primary and any other policy shall be excess. The excess policy shall apply only to the extent necessary to cover the limits specified in *Vehicle Code Section 16059*.

These presumptions can be modified or amended only by written agreement signed by all insurers who have issued a policy or policies applicable to a loss described in such subdivisions and all named insureds under such policies.

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**References:**

- 1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §364b (Supp. 1969).
- 2) Comment, *Calif. Financial Responsibility Laws—A Judicial Interpretation*, 20 HAST. L.J. 1273 (1969); Comment, *The Pacific Case: Automobile Liability Coverage Under Homeowners Policies*, 2 U.S.F. L. REV. 120 (1968).

## **Uninsured Motorist Coverage**

Insurance Code §11580.2 (amended).

AB 266; STATS 1970, Ch 472

This amendment adds subsection (j) to Section 11580.2. It pro-

vides that if an accident occurs in any other state or foreign jurisdiction to which coverage is extended under the insurance policy and if the insurer of the tortfeasor becomes insolvent, any action authorized pursuant to this Section may be maintained within three months of the insolvency of the tortfeasor's insurer. However, no action may be maintained later than the specified period of limitation of the jurisdiction in which the accident occurred.

Section 11580.2 is the basic statute requiring uninsured motorist coverage to be offered in motor vehicle liability insurance policies.

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**References:**

- 1) CAL. CODE CIV. PROC. §361.
- 2) 1 WITKIN, CALIFORNIA PROCEDURE, *Actions* §19 (1954).
- 3) Annot., 28 A.L.R. 3d 580 (1969).

## **Cancellation of Policies**

Insurance Code §673 (new)

AB 1850; STATS 1970, Ch 573

Chapter 573 adds Section 673 specifying the procedure that one who finances insurance premiums must follow to cancel an insurance policy when he has financed premiums for the insured. Where an insured has borrowed to pay the premiums of an insurance policy, the right to cancel is transferred to the lender from the insured. Such a transfer must be in writing and may be by a power of attorney or any other document.

Section 673 sets out the procedures a lender must follow when exercising his right to cancel a policy.

Written notice of intent to cancel must be mailed to the insurer and insured at least 5 days prior to the effective date of cancellation. An industrial loan company is required to give the insured 10 days notice of intent to cancel.

Following the effective date of cancellation as specified in the notice, the lender has 5 days to send confirmation of the cancellation date to the insurer.

This notice of cancellation procedure applies in conjunction with any statutory, regulatory or contractual restriction requiring notice be given to governmental agencies, mortgagees or other parties.

When an insurance policy is cancelled, the insurer shall return all unearned premiums to the lender, based on the confirmation date of cancellation.

Section 673 also grants to the Insurance Commissioner the right to amend any rules and regulations to carry out the purposes of this Section.

This Section does not apply where the insurer exercises his right to cancel for nonpayment of premiums, nor to contracts entered into between an insured and a lender before the effective date of this Section.

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References:

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §296 (7th ed. 1960).
- 2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1968 CODE LEGISLATION 179.

### Cancellation; notice

Insurance Code §§668.5 (new); 651 (amended).

AB 2159; STATS 1970, Ch 576

Chapter 10 of the Insurance Code (*commencing with Section 660*) includes provisions for cancellation or failure to renew insurance on private vehicles.

Before a policy may be cancelled, notice must be given to the insured. Prior to this amendment, there were no provisions for cancellation when an insurance policy had been in effect for less than 60 days. Section 668.5 is added to the Insurance Code to establish notice requirements for policies that have been in effect less than 60 days. Under this Section, no cancellation shall be effective unless a notice of cancellation is mailed or delivered by the insurer to the named insured not later than the 59th day following its effective date and at least 10 days prior to the effective date of cancellation.

Section 662 sets forth the procedures for cancellation of policies that have been in effect more than 60 days. The Section provides that no notice of cancellation of a policy shall be effective unless mailed or delivered to the insured at least 20 days prior to the effective date of cancellation; however, if cancellation is for nonpayment of premiums only 10 days notice need be given.

Section 651 is amended to exempt the provisions of Chapter 10 of the Insurance Code from the notice requirements of the Section. Until this amendment, the notice requirements of Section 651 applied to all Sections of the Insurance Code.

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References:

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §§212, 296 (7th ed. 1960); (Supp. 1969).
- 2) Petko, *Insurance: Cancellation of Policy: Necessity of Actual Notice*, 6 U.C.L.A. L. Rev. 462 (1958).

## **Cancellation and Failure to Renew**

Insurance Code §§675-679.5, 2074.8 (new).

AB 165; STATS 1970, Ch 313

Chapter 313 has been added to Part I, Division I, of the Insurance Code, to establish standards for the cancellation of residential homeowner's insurance policies.

Section 675 limits the applicability of this act to policies for insuring: (a) The loss or damage to residential property of not more than four dwelling units; (b) The legal liability of natural persons living on such property; (c) The loss or damage to their personal property. This Section specifically excludes automobile insurance, workmen's compensation insurance, and commercial property policies.

Section 676 specifies that if a new policy has been in effect for 60 days, or if the policy holder is seeking a renewal of an existing policy, only certain grounds are sufficient for cancellation. These are:

- (1) nonpayment of premium,
- (2) conviction of a crime involving the hazard insured against,
- (3) fraud or material misrepresentation by the insured in taking out the policy or in pursuing a claim,
- (4) grossly negligent acts by insured which greatly increase the hazard insured against,
- (5) physical changes to the insured's property making it un-insurable.

Sections 677 and 678 require that notice of cancellation be in writing and mailed to the insured. Upon written request the insurer must furnish the insured with a statement containing the grounds for cancellation of the policy. The insurer must give at least 45 days notice to the insured of his intent to terminate the policy.

Section 679 protects the insurer from any liability for any communication regarding cancellation of a policy, including evidence submitted in a court proceeding, unless there was bad faith with malice in fact.

Section 679.5 states that proof of mailing of a notice of cancellation shall be sufficient proof that notice was given as required by this Chapter.

Section 2074.8 provides an alternative form for a cancellation clause, which may be included in the California Standard Form Fire Insurance Policy and the California Standard Form of County Fire Insurance Policy, when the policy is subject to the above enumerated code sections.

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Reference:

- 1) 1 WITKIN, SUMMARY OF CALIFORNIA LAW, *Contracts* §296 (7th ed. 1960), (Supp. 1969).

**Service of Process; foreign insurer**

Insurance Code §§12931 (new); 1452, 1605, 1612, 1660, 11105 (amended); 1606, 1607, 1613-1615 (repealed).

AB 2157; STATS 1970, Ch 949

Chapter 949 establishes a standard procedure and fee for service of process upon the Insurance Commissioner when various Code Sections allow service upon him rather than upon the insurer.

Under existing insurance law, there are several instances (involving foreign companies, for example) in which the plaintiff in an action against an insurer may gain jurisdiction over the defendant by service of *process, notices and papers* upon the Insurance Commissioner rather than upon the insurer. The Commissioner charges a fee for this service, and notifies the insurer. There are five Code Sections which specify various procedures and fees (ranging from \$2 to \$10) for this service. This variation is the result of separate statutes governing the various kinds of insurers.

This Chapter adds Section 12931, which establishes a uniform service of process procedure and a standard fee of \$10. The old procedures have been amended out or repealed, and a reference to new Section 12931 incorporated. The legislation applies to reciprocal insurers (*Section 1452*), foreign insurers (*Section 1605*), non-admitted insurers (*Section 1612*), non-resident agents and brokers (*Section 1660*), and fraternal benefit societies (*Section 11105*).

Service of legal process, notices or other papers referred to in the above Sections may now be made upon the Commissioner in specified situations by delivering two copies for each defendant to the Commissioner along with the \$10 fee. The Commissioner must then "promptly" mail (*by certified mail*) one of the copies to the defendant at the last known principal place of business as shown in the official records. The Commissioner must file the other copy in his office for two years, and keep a record of all services pursuant to Section 12931. Service made in this manner is sufficient to gain jurisdiction over the person of the defendant if the mailing occurs within 10 days of filing with the Commissioner and the receipt of mailing and an affidavit by the plaintiff that Section 12931 was complied with are filed in the court where

the action is pending. No plaintiff who serves process in this manner is entitled to a default judgment until the expiration of 30 days from the date on which the affidavit of compliance is filed. (*Section 12931*).

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**References:**

- 1) 1 WITKIN, CALIFORNIA PROCEDURE, *Jurisdiction* §63 (1954), (Supp. 1967).