



General Assembly

Amendment

January Session, 2009

LCO No. 7580

HB0645007580HDO

Offered by:

REP. FONTANA, 87th Dist.

SEN. CRISCO, 17th Dist.

To: Subst. House Bill No. 6450

File No. 109

Cal. No. 139

**"AN ACT CONCERNING THE SETTLEMENT AMOUNT ON
TOTALLED MOTOR VEHICLES."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 38a-353 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective January 1, 2010*):

5 (a) Whenever any damaged motor vehicle covered under an
6 automobile insurance policy has been declared to be a constructive
7 total loss by the insurer, the insurer shall, in calculating the value of
8 such vehicle for purposes of determining the settlement amount to be
9 paid to the claimant, use at least the average of the retail values given
10 such vehicle by (1) the National Automobile Dealers Association used
11 car guide or any other publicly available automobile industry source
12 that has been approved for such use by the Insurance Commissioner,
13 and (2) one other automobile industry source [which] that has been
14 approved for such use by [the Insurance Commissioner] said

15 commissioner. For the purposes of this section, "constructive total loss"
16 means the cost to repair or salvage damaged property, or the cost to
17 both repair and salvage such property, equals or exceeds the total
18 value of the property at the time of loss.

19 (b) The insurer shall provide to the claimant, not later than the date
20 the insurer pays the claimant the settlement amount for such vehicle,
21 (1) a detailed copy of such insurer's calculation of such vehicle's
22 constructive total loss value, (2) if applicable, a copy of any valuation
23 report provided to the insurer by any automobile industry source that
24 is not publicly available, and (3) a written notice disclosing that the
25 claimant may dispute such settlement amount by contacting the
26 Insurance Department. The written notice shall including the
27 following statement, which shall appear in the final paragraph of the
28 notice in not less than twelve-point type: "If you do not agree with this
29 valuation, you may contact the Consumer Affairs Division within the
30 Insurance Department". The notice shall include the address and toll-
31 free telephone number for the division and the Insurance Department's
32 Internet address.

33 Sec. 2. Subdivision (2) of subsection (b) of section 38a-9 of the
34 general statutes is repealed and the following is substituted in lieu
35 thereof (*Effective January 1, 2010*):

36 (2) The commissioner shall prepare a list of at least ten persons, who
37 have not been employed by the department or an insurance company
38 during the preceding twelve months, to serve as arbitrators in the
39 settlement of such disputes. The arbitrators shall be members of any
40 dispute resolution organization approved by the commissioner. One
41 arbitrator shall be appointed to hear and decide each complaint.
42 Appointment shall be based solely on the order of the list. If an
43 arbitrator is unable to serve on a given day, or if either party objects to
44 the arbitrator, then the next arbitrator on the list will be selected. The
45 department shall schedule arbitration hearings as often, and in such
46 locations, as it deems necessary. Parties to the dispute shall be
47 provided written notice of the hearing, at least ten days prior to the

48 hearing date. The commissioner may issue subpoenas on behalf of the
49 arbitrator to compel the attendance of witnesses and the production of
50 documents, papers and records relevant to the dispute. Decisions shall
51 be made on the basis of the evidence presented at the arbitration
52 hearing. Where the arbitrator believes that technical expertise is
53 necessary to decide a case, [he] such arbitrator may consult with an
54 independent expert recommended by the commissioner. The arbitrator
55 and any independent technical expert shall be paid by the department
56 on a per dispute basis as established by the commissioner. The
57 arbitrator, as expeditiously as possible, but not later than fifteen days
58 after the arbitration hearing, shall render a written decision based on
59 the information gathered and disclose the findings and the reasons to
60 the parties involved. The arbitrator shall award filing fees to the
61 prevailing party. If the decision favors the consumer the decision shall
62 provide specific and appropriate remedies including interest at the rate
63 of [ten] fifteen per cent per year on the arbitration award concerning
64 the disputed amount of the claim, retroactive to the date of payment
65 for the undisputed amount of the claim. The decision may include
66 costs for loss of use and storage of the motor vehicle and shall specify a
67 date for performance and completion of all awarded remedies.
68 Notwithstanding any provision of the general statutes or any
69 regulation to the contrary, the Insurance Department shall not amend,
70 reverse, rescind, or revoke any decision or action of any arbitrator. The
71 department shall contact the consumer within ten working days after
72 the date for performance, to determine whether performance has
73 occurred. Either party may make application to the superior court for
74 the judicial district in which one of the parties resides or, when the
75 court is not in session, any judge thereof for an order confirming,
76 vacating, modifying or correcting any award, in accordance with the
77 provisions of sections 52-417, 52-418, 52-419 and 52-420. If it is
78 determined by the court that either party's position after review has
79 been improved by at least ten per cent over that party's position after
80 arbitration, the court, in its discretion, may grant to that party its costs
81 and reasonable attorney's fees. No evidence, testimony, findings, or
82 decision from the department arbitration procedure shall be

83 admissible in any civil proceeding, except judicial review of the
84 arbitrator's decision as contemplated by this subsection."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2010</i>	38a-353
Sec. 2	<i>January 1, 2010</i>	38a-9(b)(2)