



General Assembly

January Session, 2009

**Amendment**

LCO No. 7101

**\*HB0644407101HDO\***

Offered by:

REP. FONTANA, 87<sup>th</sup> Dist.

SEN. CRISCO, 17<sup>th</sup> Dist.

To: Subst. House Bill No. **6444**

File No. 318

Cal. No. 245

**"AN ACT CONCERNING AUTOMOBILE INSURANCE."**

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

3 "Section 1. Section 38a-686 of the general statutes is repealed and the  
4 following is substituted in lieu thereof (*Effective January 1, 2010*):

5 The following standards, methods and criteria shall apply to the  
6 making and use of rates pertaining to personal risk insurance:

7 (a) Rates shall not be excessive, inadequate or unfairly  
8 discriminatory.

9 (1) A rate in a competitive market is not excessive. A rate in a  
10 noncompetitive market including a rate for insurance provided  
11 pursuant to sections 38a-328, 38a-329 and 38a-670 is excessive if it is  
12 unreasonably high for the insurance provided.

13 (2) No rate shall be held inadequate unless (A) it is unreasonably

14 low for the insurance provided, and (B) continued use of it would  
15 endanger solvency of the insurer, or unless (C) such rate is  
16 unreasonably low for the insurance provided and the use of such rate  
17 by the insurer using same has, or, if continued will have, the effect of  
18 destroying competition or creating a monopoly.

19 (b) In determining whether rates comply with the excessiveness  
20 standard in a noncompetitive market under subdivision (1) of  
21 subsection (a) of this section, the inadequacy standard under  
22 subdivision (2) of subsection (a) of this section and the requirement  
23 that rates not be unfairly discriminatory, the following criteria shall  
24 apply:

25 (1) Consideration may be given, to the extent possible, to past and  
26 prospective loss experience within and outside this state, to  
27 conflagration and catastrophe hazards, to a reasonable margin for  
28 underwriting profit and contingencies, to past and prospective  
29 expenses both country-wide and those specially applicable to this  
30 state, to investment income earned or realized by insurers both from  
31 their unearned premium and loss reserve funds, and to all other  
32 factors, including judgment factors, deemed relevant within and  
33 outside this state and in the case of fire insurance rates, consideration  
34 may be given to the experience of the fire insurance business during  
35 the most recent five-year period for which such experience is available.  
36 Consideration may be given in the making and use of rates to  
37 dividends, savings or unabsorbed premium deposits allowed or  
38 returned by insurers to their policyholders, members or subscribers.

39 (2) (A) The systems of expense provisions included in the rates for  
40 use by an insurer or group of insurers may differ from those of other  
41 insurers or groups of insurers to reflect the operating methods of any  
42 such insurer or group with respect to any kind of insurance, or with  
43 respect to any subdivision or combination thereof.

44 (B) (i) With respect to private passenger nonfleet automobile  
45 insurance, an insurer shall not allocate as flat dollar amounts to base

46 rates: (I) Producer commissions; (II) premium taxes; (III) underwriting  
47 profits; or (IV) contingencies.

48 (ii) With respect to private passenger nonfleet automobile insurance,  
49 an insurer shall allocate as flat dollar amounts to base rates: (I) At least  
50 ninety per cent of general expenses, including administration and  
51 overhead costs; (II) at least ninety per cent of other acquisition costs for  
52 marketing and agent field offices, which may be allocated over the  
53 expected life of such insurer's policies; and (III) miscellaneous taxes,  
54 licenses and fees.

55 (iii) Each insurer shall allocate such flat dollar amounts set forth in  
56 subparagraph (B)(ii) of this subdivision after any classification factors  
57 set forth in subdivisions (3) to (5), inclusive, of this subsection have  
58 been applied to base rates.

59 (3) Risks may be grouped by classifications for the establishment of  
60 rates and minimum premiums, provided that with respect to private  
61 passenger nonfleet automobile insurance, any change in territorial  
62 classifications shall be subject to prior approval by the Insurance  
63 Commissioner, and provided no surcharge on any motor vehicle  
64 liability or physical damage insurance premium [may] shall be  
65 assigned for (A) any accident involving only property damage of one  
66 thousand dollars or less, [or] (B) the first accident involving only  
67 property damage of more than one thousand dollars which would  
68 otherwise result in a surcharge to the policy of the insured, within the  
69 experience period set forth in the insurer's safe driver classification  
70 plan, [or] (C) any violation of section 14-219 unless such violation  
71 results in the suspension or revocation of the operator's license under  
72 section 14-111b, [or] (D) less than three violations of section 14-218a  
73 within any one-year period, [or] (E) any accident caused by an  
74 operator other than the named insured, a relative residing in the  
75 named insured's household, or a person who customarily operates the  
76 insured vehicle, [or] (F) the first or second accident within the current  
77 experience period in relation to which the insured was not convicted of  
78 a moving traffic violation and was not at fault, or (G) any motor

79 vehicle infraction. Subparagraph (G) of this subdivision shall not be  
80 applicable to any plan established pursuant to section 38a-329.  
81 Classification rates may be modified to produce rates for individual  
82 risks in accordance with rating plans [which] that provide for  
83 recognition of variations in hazards or expense provisions or both.  
84 Such rating plans may include application of the judgment of the  
85 insurer and may measure any differences among risks that can be  
86 demonstrated to have a probable effect upon losses or expenses.

87 (4) Each rating plan for private passenger nonfleet automobile  
88 insurance that includes territorial classifications shall assign a weight  
89 of seventy-five per cent to individual territorial loss cost indication and  
90 twenty-five per cent to the state-wide average loss cost indication.

91 ~~[(4)]~~ (5) Each rating plan shall establish appropriate eligibility  
92 criteria for determining significant risks [which] that are to qualify  
93 under the plan. Rating plans [which] that comply with the provisions  
94 of this subdivision shall be deemed to produce rates [which] that are  
95 not unfairly discriminatory.

96 (6) With respect to personal risk insurance, an insurer shall not use  
97 an applicant's or insured's credit history as a factor in underwriting or  
98 rating except in accordance with this subdivision. For the purposes of  
99 this section, "credit history" means any credit-related information  
100 derived from or found in a credit report or credit scoring program or  
101 provided in an application for personal risk insurance, and "financial  
102 history measurement program" means a program that uses an  
103 applicant's credit history to measure such applicant's risk of loss.

104 (A) An insurer shall file with the commissioner any financial history  
105 measurement program it uses to underwrite or rate risks for personal  
106 risk insurance. Such filing shall (i) include a description of the  
107 program, (ii) identify the characteristics used in such program from  
108 which a measurement is derived, (iii) include the rules and procedures  
109 of such program, and (iv) include an explanation of the impact of  
110 credit information and items of public record on insurance rates over

111 time. Such program shall not unfairly discriminate among applicants  
112 or produce rates that are excessive for the risk assumed. Any filing  
113 made pursuant to this subparagraph shall be considered a trade secret  
114 for the purposes of section 1-210.

115 (B) (i) An insurer that uses a financial history measurement program  
116 shall submit to the commissioner documentation that demonstrates the  
117 correlation between such program and the expected risk of loss, and  
118 how such program impacts consumers (I) in urban territories, versus  
119 consumers in nonurban territories, and (II) based on consumers' ages.  
120 The commissioner may request the insurer to provide a financial  
121 history measurement for a set of test examples that reflect various  
122 characteristics.

123 (ii) An insurer that uses a financial history measurement program  
124 shall disclose to each applicant for personal risk insurance, in writing,  
125 by telephone, by electronic mail or orally, at the time of application  
126 that the applicant's credit history may be used in the underwriting or  
127 rating of such applicant's policy, and that the applicant has the right to  
128 request, in writing, that the insurer consider, during its underwriting  
129 or rating process or during a review requested by such applicant of a  
130 rate quote, an extraordinary life circumstance, as set forth in  
131 subparagraph (D) of this subdivision, if such applicant's credit history  
132 has been adversely impacted by such extraordinary life circumstance  
133 and such extraordinary life circumstance occurred within three years  
134 before the date of the application. In addition, such insurer shall  
135 provide to each purchaser of such policy, not later than the date of  
136 issuance of such policy, a written disclosure that includes: (I) The  
137 name, address, telephone number and toll-free telephone number, if  
138 applicable, of the insurer; (II) detailed information about how the  
139 insurer uses credit information to underwrite or rate such policies; and  
140 (III) a summary of consumer protections regarding the use of credit, in  
141 a form determined by the commissioner. Such written disclosure shall  
142 be printed in reasonably conspicuous type and be provided by the  
143 insurer electronically, by mail or by hand delivery.

144 (C) (i) An insurer may use a financial history measurement program  
145 to underwrite or rate risks only (I) for new personal risk insurance  
146 policies, or (II) upon renewal, either at the request of an insured or if  
147 such use reduces the premium for the insured in accordance with the  
148 insurer's filed rates and rules.

149 (ii) An insurer shall not use the following characteristics in a  
150 financial history measurement program: (I) The number of credit  
151 inquiries in an applicant's or insured's credit report or credit history;  
152 (II) the applicant's or insured's use of a particular type of credit card,  
153 debit card or charge card; (III) the applicant's or insured's total  
154 available line of credit; (IV) any disputed credit information while such  
155 dispute is under review by a credit reporting company, provided such  
156 information is identified in an applicant's or insured's credit report or  
157 credit history as being in dispute; (V) collection accounts identified  
158 with a medical industry code in the applicant's or insured's credit  
159 report or credit history; and (VI) the applicant's or insured's lack of  
160 credit history, unless the insurer treats the applicant or insured as if  
161 such applicant or insured had neutral credit information, as defined by  
162 the insurer.

163 (iii) A financial history measurement program shall give the same  
164 weight to an applicant's or insured's purchase or financing of a specific  
165 item regardless of the type of item purchased or financed.

166 (D) (i) Upon written request by an applicant, an insurer shall  
167 consider, during its underwriting or rating process or during a review  
168 requested by such applicant of a rate quote, an extraordinary life  
169 circumstance of such applicant if such extraordinary life circumstance  
170 occurred within three years before the date of application. If such  
171 insurer determines that such applicant's credit history has been  
172 adversely impacted by such extraordinary life circumstance, such  
173 insurer shall grant a reasonable exception to such insurer's rates, rating  
174 classifications or underwriting rules for such applicant. As used in this  
175 subparagraph, "extraordinary life circumstance" means (I) a  
176 catastrophic illness or injury, (II) divorce, (III) the death of a spouse,

177 child or parent, (IV) the involuntary loss of employment for more than  
178 three consecutive months, (V) identity theft, (VI) total or other loss that  
179 makes a home uninhabitable, (VII) other circumstances as adopted in  
180 regulations by the commissioner, in accordance with chapter 54, or  
181 (VIII) any other circumstance an insurer may choose to recognize.

182 (ii) An insurer may require the applicant to provide reasonable,  
183 independently verifiable written documentation of the extraordinary  
184 life circumstance and the effect of such extraordinary life circumstance  
185 on such applicant's credit report or credit history. Any such  
186 documentation shall be kept confidential by the insurer.

187 (iii) If the insurer grants an exception pursuant to subparagraph  
188 (D)(i), the insurer shall (I) consider only credit information that is not  
189 affected by the extraordinary life circumstance, or (II) treat the  
190 applicant as if such applicant had neutral or better than neutral credit  
191 information, as defined by the insurer.

192 (iv) An insurer shall not be deemed to be out of compliance with  
193 any provision of the general statutes or regulations adopted  
194 thereunder concerning underwriting, rating or rate filing solely on the  
195 basis of the granting of an exception pursuant to this subparagraph.

196 (E) (i) If an insurer takes an adverse action that is due at least in part  
197 to the information contained in an applicant's or insured's credit  
198 report, such insurer shall disclose to such applicant or insured: (I) That  
199 such adverse action was based on the credit report of such insured or  
200 applicant; (II) that such applicant or insured is entitled to a free copy of  
201 such credit report and where such report can be obtained; (III) the  
202 types of extraordinary life circumstances set forth in subparagraph (D)  
203 of this subdivision; and (IV) the procedures for an applicant to inform  
204 the insurer of an extraordinary life circumstance and to submit any  
205 required documentation pursuant to subparagraph (D) of this  
206 subdivision.

207 (ii) For the purposes of this subdivision, an "adverse action" means  
208 (I) the denial of coverage to an applicant or insured or the offering of

209 restricted coverage, (II) the offering of a higher rate, (III) the  
210 assignment of an applicant or insured to a higher rate tier or to a  
211 higher-priced company within an insurer group, or (IV) any other  
212 action that adversely impacts an applicant or insured due to the  
213 financial history measurement program.

214 (F) After an insurer's financial history measurement program has  
215 been in effect for two years, the commissioner may require such  
216 insurer to submit a report to the commissioner on the use of such  
217 program in the state. Such report shall include information that  
218 demonstrates that such program results in rates that are supported by  
219 the data and that are not unfairly discriminatory, and an analysis of  
220 consumer complaints submitted in writing or by electronic mail to the  
221 insurer resulting from such insurer's use of a financial history  
222 measurement program, such that is sufficient to identify the basis for  
223 the complaints and any subsequent insurer action.

224 (c) Notwithstanding the provisions of subsections (a) and (b) of this  
225 section, no rate shall include any adjustment designed to recover  
226 underwriting or operating losses incurred out-of-state.

227 (d) [The] Not later than January 1, 2011, the commissioner [may]  
228 shall adopt regulations<sub>2</sub> in accordance with the provisions of chapter  
229 54<sub>2</sub> [concerning rating plans to effectuate] to implement the provisions  
230 of this section and the most current guidelines and bulletins issued by  
231 the Insurance Department and in effect that pertain to territorial  
232 classifications.

233 Sec. 2. (NEW) (*Effective January 1, 2010*) The declination, cancellation  
234 or nonrenewal of a personal risk insurance policy not subject to the  
235 provisions of section 38a-358 of the general statutes, as amended by  
236 this act, is prohibited if the declination, cancellation or nonrenewal is  
237 based solely on information contained in an insured's or applicant's  
238 credit history or credit rating or solely on an applicant's lack of credit  
239 history. For the purposes of this section, an insurer shall not be  
240 deemed to have declined, cancelled or nonrenewed a policy if

241 coverage is available through an affiliated insurer.

242 Sec. 3. Section 38a-358 of the general statutes is repealed and the  
243 following is substituted in lieu thereof (*Effective January 1, 2010*):

244 The declination, cancellation or nonrenewal of a policy for private  
245 passenger nonfleet automobile insurance is prohibited if the  
246 declination, cancellation or nonrenewal is based: (1) On the race,  
247 religion, nationality or ethnicity of the applicant or named insured; (2)  
248 solely on the lawful occupation or profession of the applicant or  
249 named insured, except that this provision shall not apply to any  
250 insurer which limits its market to one lawful occupation or profession  
251 or to several related lawful occupations or professions; (3) on the  
252 principal location of the insured motor vehicle unless such decision is  
253 for a business purpose which is not a mere pretext for unfair  
254 discrimination; (4) solely on the age, sex or marital status of an  
255 applicant or an insured, except that this subdivision shall not apply to  
256 an insurer in an insurer group if one or more other insurers in the  
257 group would not decline an application for essentially similar coverage  
258 based upon such reasons; (5) on the fact that the applicant or named  
259 insured previously obtained insurance coverage through a residual  
260 market; (6) on the fact that another insurer previously declined to  
261 insure the applicant or terminated an existing policy in which the  
262 applicant was the named insured; [or] (7) the first or second accident  
263 within the current experience period in relation to which the applicant  
264 or insured was not convicted of a moving traffic violation and was not  
265 at fault; or (8) solely on information contained in an insured's or  
266 applicant's credit history or credit rating or solely on an applicant's  
267 lack of credit history. For the purposes of subdivision (8) of this  
268 subsection, an insurer shall not be deemed to have declined, cancelled  
269 or nonrenewed a policy if coverage is available through an affiliated  
270 insurer.

271 Sec. 4. Section 38a-343 of the general statutes is repealed and the  
272 following is substituted in lieu thereof (*Effective October 1, 2009*):

273 (a) No notice of cancellation of a policy to which section 38a-342  
274 applies [may] shall be effective unless sent, by registered or certified  
275 mail or by mail evidenced by a certificate of mailing, or delivered by  
276 the insurer to the named insured, and any third party designated  
277 pursuant to section 38a-323a, at least forty-five days before the  
278 effective date of cancellation, except that (1) where cancellation is for  
279 nonpayment of the first premium on a new policy, at least fifteen days'  
280 notice of cancellation accompanied by the reason for cancellation shall  
281 be given, and (2) where cancellation is for nonpayment of any other  
282 premium, at least ten days' notice of cancellation accompanied by the  
283 reason for cancellation shall be given. No notice of cancellation of a  
284 policy which has been in effect for less than sixty days [may] shall be  
285 effective unless mailed or delivered by the insurer to the insured and  
286 any third party designee at least forty-five days before the effective  
287 date of cancellation, [provided] except that (A) at least fifteen days'  
288 notice shall be given where cancellation is for nonpayment of the first  
289 premium on a new policy, and (B) at least ten days' notice shall be  
290 given where cancellation is for nonpayment of any other premium or  
291 material misrepresentation. The notice of cancellation shall state or be  
292 accompanied by a statement specifying the reason for such  
293 cancellation. Any notice of cancellation for nonpayment of the first  
294 premium on a new policy may be retroactive to the effective date of  
295 such policy, provided at least fifteen days' notice has been given to the  
296 insured and any third party designee and payment of such premium  
297 has not been received during such notice period.

298 (b) Where a private passenger motor vehicle liability insurance  
299 company sends a notice of cancellation under subsection (a) of this  
300 section to the named insured of a private passenger motor vehicle  
301 liability insurance policy, or a third party designee, such company  
302 shall provide with such notice a warning, in a form approved by the  
303 Commissioner of Motor Vehicles and the Insurance Commissioner,  
304 which informs the named insured that (1) the cancellation will be  
305 reported to the Commissioner of Motor Vehicles; (2) the named  
306 insured may be receiving one or more mail inquiries from the

307 Commissioner of Motor Vehicles, concerning whether or not required  
308 insurance coverage is being maintained, and that the named insured  
309 must respond to these inquiries; (3) if the required insurance coverage  
310 lapses at any time, the Commissioner of Motor Vehicles may suspend  
311 the registration or registrations for the vehicle or vehicles under the  
312 policy and the number plates will be subject to confiscation and any  
313 person operating any such vehicle will be subject to legal penalties for  
314 operating a motor vehicle with a suspended registration; (4) the named  
315 insured will not be able to have the registration restored or obtain a  
316 new registration, or any other registration or renewal in the insured's  
317 name, except upon presentation to the Commissioner of Motor  
318 Vehicles of evidence of required security or coverage and the entering  
319 into of a consent agreement with the commissioner in accordance with  
320 the provisions of section 14-12g.

321 (c) If a passenger motor vehicle liability insurance company cancels  
322 a private passenger motor vehicle liability insurance policy pursuant to  
323 section 38a-342, such company shall send a written notice of such  
324 cancellation to any lienholder shown on the records of such company  
325 as having a legal interest in such motor vehicle.

326 [(c)] (d) This section shall not apply to nonrenewal or if the private  
327 passenger motor vehicle liability insurance policy is transferred from  
328 an insurer to an affiliate of such insurer for another policy with no  
329 interruption of coverage and contains the same terms, conditions and  
330 provisions, including policy limits, as the transferred policy, except  
331 that the insurer to which the policy is transferred shall not be  
332 prohibited from applying its rates and rating plans at the time of  
333 renewal.

334 Sec. 5. Section 14-12h of the general statutes is repealed and the  
335 following is substituted in lieu thereof (*Effective October 1, 2009*):

336 (a) The Commissioner of Motor Vehicles shall compile and maintain  
337 a record of all registrations suspended in accordance with the  
338 provisions of sections 14-12c and 14-12g. The commissioner shall

339 update the information contained in such record not less than once per  
340 week and shall make available to all law enforcement agencies in this  
341 state a list of all registration number plates for vehicles whose  
342 registration has been suspended. Such list shall contain the number  
343 plate numbers, letters or number and letter combinations and the  
344 address at which the vehicle was registered. The commissioner may  
345 make available the entire list or a portion thereof and may utilize one  
346 or more formats for presenting the information contained therein to  
347 facilitate its use.

348 (b) (1) If any police officer observes a motor vehicle being operated  
349 upon the public highway, and such motor vehicle is displaying  
350 registration number plates identified as suspended on the list made  
351 available by the commissioner, such police officer may (A) stop or  
352 detain such vehicle and its occupants, (B) issue to the operator a  
353 complaint for operating an unregistered motor vehicle, or expired  
354 registration if the vehicle is not being operated, in violation of section  
355 14-12, and (C) remove the registration number plates from the vehicle  
356 and return them to any branch office of the Department of Motor  
357 Vehicles. If any police officer, motor vehicle inspector or constable  
358 observes a motor vehicle parked in any parking area, as defined in  
359 section 14-212, and such motor vehicle is displaying registration  
360 number plates identified as suspended on the list made available by  
361 the commissioner, such police officer, motor vehicle inspector or  
362 constable is authorized to remove the registration number plates from  
363 the vehicle and to return them to any branch office of the Department  
364 of Motor Vehicles. If a number plate is identified as suspended on the  
365 list provided by the commissioner and such identification is in error,  
366 the state shall indemnify any police officer, motor vehicle inspector or  
367 constable for any claim for damages made against that individual as a  
368 result of such individual's good faith reliance on the accuracy of the list  
369 provided by the commissioner regarding the confiscation of number  
370 plates.

371 (2) If any police officer observes a motor vehicle being operated  
372 upon the public highway or parked in any parking area, as defined in

373 section 14-212, displaying registration number plates identified on the  
 374 list made available by the commissioner as being suspended, such  
 375 police officer may seize and impound the vehicle. If a police officer  
 376 seizes and impounds a vehicle pursuant to this subdivision, such  
 377 officer shall give notice to the commissioner in such form as the  
 378 commissioner may require. The police officer shall give such notice not  
 379 later than three days after seizing and impounding the vehicle.

380 (c) Any motor vehicle [which] that has been impounded in  
 381 accordance with the provisions of subdivision (2) of subsection (b) of  
 382 this section shall not be released to the owner or person otherwise  
 383 entitled to possession of the vehicle unless such owner or person  
 384 presents a valid registration and a current automobile insurance  
 385 identification card. Any such impounded motor vehicle that is not  
 386 reclaimed by the owner of such motor vehicle within forty-five days  
 387 after impounding [,] shall be subject to forfeiture to the state."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2010</i>	38a-686
Sec. 2	<i>January 1, 2010</i>	New section
Sec. 3	<i>January 1, 2010</i>	38a-358
Sec. 4	<i>October 1, 2009</i>	38a-343
Sec. 5	<i>October 1, 2009</i>	14-12h