

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

REG-2010-00011

October 5, 2010

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

SUBJECT OF PROPOSED RULEMAKING

Notice is hereby given that the Insurance Commissioner proposes to amend Section 2632.13 of Subchapter 4.5, Title 10, of the California Code of Regulations.

AUTHORITY AND REFERENCE

The Commissioner proposes to amend the regulation under the express authority of California Insurance Code Sections 791.10, 1861.02, 1861.025, 12921 and 12926 as well as *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989) and *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216 (1994). The proposed regulations will implement, interpret and make specific the provisions of California Insurance Code Sections 488, 488.5, 1861.02 and 1861.025 and California Vehicle Code Section 12810.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: **November 29, 2010 at 10:00 a.m.**

Location: **Employment Development Department
Auditorium (first door on the right)
722 Capitol Mall
Sacramento, CA 95814**

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Lisbeth Landsman-Smith, Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3561
E-mail: landsmanl@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

Bruce Patton
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492- 3560

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at her address listed above, no later than 5:00 p.m. on November 29, 2010. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: landsmanl@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of the contact person for this proceeding using the following facsimile number: (916) 324-1883.

Comments shall be transmitted by one method only and are subject to the deadline set forth above for written comments. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Person with sight or hearing impairments are requested to notify the contact person for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with Insurance Code Section 10089.11(c) and the provisions of Subchapter 4.9, Title 10, California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring

about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
45 Fremont Street, 21st Floor
San Francisco, California 94105
(415) 538-4190

A copy of any written materials submitted to the Public Advisor regarding this rulemaking shall also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Proposition 103, approved by California voters in 1988, requires that insurance rate changes be subject to the prior approval of the Insurance Commissioner (the “Commissioner”) and sets forth the means by which automobile insurance rates and premiums are to be determined. In addition, Proposition 103 makes every person who qualifies as a “good driver” eligible to purchase a Good Driver Discount policy from the insurer of his or her choice (Insurance Code Sections 1861.02(b), 1861.025).

Insurance Code Section 1861.025 (b)(1)(A) excludes a driver from eligibility for a Good Driver Discount policy who, in the previous three years, has more than one point counted against him or her due to various traffic code violations and accidents that resulted only in damage to property for which he or she is “principally at fault.” Insurance Code Section 1861.025(c)(3) excludes a driver from eligibility who, in the previous three years, was involved in an accident that resulted in the bodily injury or death of any person for which he or she is “principally at fault.”

In addition, Insurance Code Section 1861.02 establishes three mandatory rating factors that insurers must use to set rates, the first being the “insured’s driving safety record.” Section 2632.5 of Title 10 of the California Code of Regulations defines the “insured’s driving safety record” as the insured’s motor vehicle traffic conviction record and the insured’s history of “principally at fault” accidents.

The guidelines for determining whether a driver is “principally at fault” for an accident and for determining a driver’s eligibility for a Good Driver Discount policy are found in Section 2632.13 of Title 10 of the California Code of Regulations (hereinafter “Section 2632.13”).

Since its last amendment, insurers, consumer advocates, and Department of Insurance (the “Department”) staff have observed numerous problems with the interpretation and implementation of Section 2632.13. On September 3, 2010, the Department held a workshop to discuss improvements to the regulation. After considering comments received by workshop participants, the Commissioner proposes amending Section 2632.13 to clarify and update its provisions.

The proposed amendments are as follows:

First, the regulation is split into Sections 2632.13 and 2632.13.1, the former devoted to the principally at-fault determination and the latter devoted to the determination of eligibility for a Good Driver Discount policy. Titles were given accordingly.

Section 2632.13 is reorganized and amended to make it simpler and easier to follow:

Subsection (a) is amended to clarify the purpose of the regulation.

Subsection (b) is amended to clarify the definition of a “principally at-fault” accident. It is updated to be consistent with *Mitchell v. Gonzales* (1991) 54 Cal.3d 1041. In addition, the regulation is amended to replace the “damage to any one person” standard with “total loss or damage.” Finally, the regulation is amended to adjust the threshold amount of property damage required for a finding that a driver is principally at-fault for an accident upwards to \$1000.

Subsection (c) is amended to create rebuttable presumptions out of the exceptions to the principally at-fault determination.

Subsection (d) is amended to clarify that the presumption relating to Insurance Code Section 488.5 shall be conclusive.

Subsection (e) is amended to clarify the procedure that a driver’s insurer at the time of an accident must follow to determine that the driver is principally at-fault for the accident. A requirement for the insurer to state the basis of a determination that an injury or death occurred was added.

Subsection (f) is amended to clarify the procedure that any subsequent insurer of a driver/applicant must follow to determine that the driver was principally at-fault for an accident. Subsection (f)(2) is added to clarify that data from a subscribing loss underwriting exchange carrier cannot be solely relied upon if it does not provide enough information to ascertain whether a driver is principally at-fault for an accident as required by Subsection (b).

Subsection (g) is amended by moving driver’s declaration requirements to Subsection (f) and by clarifying the acceptable and unacceptable uses of a DMV motor vehicle report to determine that a driver is principally at-fault for an accident.

Subsection (h) is re-lettered (i) and new Subsection (h) clarifies the additional permissible uses of data obtained from a subscribing loss underwriting exchange carrier.

Subsection (i) (previously (h)) is amended to clarify the type of information that insurers must disclose to each other, when an inquiry is made.

Subsection (j) is added to clarify the course of action an insurer may take when a driver/applicant does not provide requested information.

Section 2632.13.1 is added to clarify how an insurer may determine a driver's eligibility for a Good Driver Discount policy. That portion of the existing Section 2632.13 that concerns eligibility for a Good Driver has been moved here.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

OTHER STATUTORY REQUIREMENTS

There are no other specific statutory requirements applicable to the proposed regulations.

The Commissioner has made the following initial determinations:

Mandates On Local Agencies Or School Districts - Regulatory action imposed herein will result in no program mandates on local agencies or school districts.

Fiscal Impact - The regulations will involve no costs or savings to any State agency, no reimbursable costs to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no nondiscretionary costs or savings to local agencies, and no costs or savings in federal funding to the State.

Impact On Housing Costs - The proposed regulations will have no significant effect on housing costs.

Economic Impact On Businesses - The proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because it amends existing insurance regulations.

Cost Impact On Private Persons Or Entities/Businesses – Other than the cost impact incurred under the existing regulations, the agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment Regarding Effect on Jobs/ Businesses – Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Impact On Small Business - The proposed regulations will only affect insurance companies and will therefore not affect small business. Pursuant to Government Code Section 11342.610(b)(2), insurers are not small businesses.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Commissioner invites public comment on alternatives to this regulation.

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based as well as the express terms of the proposed action. The initial statement of reasons and the text of the proposed amendment are available on the Department's website and may be accessed as explained below.

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address above, which currently includes this notice, the proposed text of the regulation, and the initial statement of reasons. Requests for inspection and copying should be directed to the contact person listed above. The final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should also be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulation, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find, at the right hand side of the page "Quick Links." The third item in this column under this heading is "For Insurers"; on the drop-down menu for this item, select "Legal Information." When the "Insurers: Legal Information" screen appears, click the third item in the list of bulleted items near the top of the page: "Proposed Regulations." The "Insurers: Proposed Regulations" screen will be displayed. Select the only available link: "Search for Proposed Regulations." Then, when the "Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

