

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

**REG-2010-00011**

**May 25, 2011**

**FINAL STATEMENT OF REASONS**

**California Code of Regulations, Title 10, Sections 2632.13 and 2632.13.1**

**UPDATE OF INITIAL STATEMENT OF REASONS**

**Necessity**

The Commissioner has determined that amendment of certain provisions of Section 2632.13 is reasonably necessary in order to properly implement the requirements, purposes and intent of the statutes. The basis for this determination and the specific purpose of the proposed amendments are set forth below.

For clarity, 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:

Amended Subsection (a) clarifies the purpose of the regulation.

Amended Subsection (b) clarifies the definition of a “principally at-fault” accident, changing the standard from “proximate cause” to “legal cause.” The term “legal cause” includes the two elements to be considered, cause in fact and proximate cause: ' "Legal cause" exists if the actor's conduct is a "substantial factor" in bringing about the harm and there is no rule of law relieving the actor from liability.' *Lombardo v. Huysentruyt*, 91 Cal. App. 4th 656, 665-666 (Cal. App. 1st Dist. 2001); *Nola M. v. University of Southern California*, 16 Cal. App. 4th 421, 427 (Cal. App. 2d Dist. 1993); Restat 2d of Torts, § 431. In order to maintain consistency between court decisions and insurer principally at-fault determinations, “legal cause” is the proper term because it encompasses all the elements considered by a court in determining causation.

Amended Subsection (b) also replaces the “any one person” standard with “total loss or damage” and revises the threshold amount of damage from \$750 to \$1000. The existing regulation’s \$750 property damage threshold and “any one person” standard are set forth in Vehicle Code Section 16000. While Vehicle Code Section 16000 is applicable to the existing regulation, the Commissioner’s authority governing the determination of a principally at-fault is not derived from Section 16000, but from Insurance Code Section 1861.025(b)(3).

Amended Subsection (b) replaces the “damage to any one person” standard with “total loss or damage” because the “any one person” standard creates the potential for a driver to cause unlimited damage to more than one person and still not meet the threshold for being charged with a principally at-fault accident. Furthermore, this Subsection 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 in order to rule out de minimus damage, in recognition of the fact that the damage to more than one person may now be counted and that inflation has increased the cost of repairs. Due to the amendment of the threshold amount of damage and the damage “to any one person” standard, Vehicle Code Section 16000 is no longer applicable and is no longer relied upon.

Amended Subsection (b) adds a reference to Subsection (c) along with Subsection (d) due to amendments to existing Subsection (d) that are further explained below.

Finally, amended Subsection (b) includes a sentence clarifying that this amendment does not affect determinations made prior to this 2011 amendment. This is necessary to avoid confusion on treatment of prior determinations.

Amended Subsection (c) makes rebuttable presumptions out of exceptions to the principally at-fault determination. The existing Subsection (d) creates what is effectively a conclusive presumption for each of the exceptions described. The Commissioner has determined that all but one of those exceptions should be treated as rebuttable presumptions that an insurer can refute following a reasonable investigation because facts may demonstrate that what may be usually true is not true in every instance. The rebuttable presumptions created by amended Subsection (c) are primarily concerned with facilitating the principally at-fault determination. Therefore, they affect the burden of producing evidence as provided in Evidence Code §603. Finally amended Subsection (c)(6) renumbers existing Subsection (d)(7) and clarifies that insurers must have evidence that a driver is principally at-fault for a solo vehicle accident before the driver can be charged for that accident not only for hazards that could not reasonably have been noticed, but also for hazards that could not reasonably have been avoided. Insurers often presume that a driver is principally at-fault in such solo vehicle accidents. This clarifies that they have the burden of producing evidence that the driver is principally at-fault.

Amended Subsection (d) clarifies that the presumption relating to Insurance Code Section 488.5, found in existing Subsection (d)(6), shall remain conclusive as required by the Insurance Code Section 488.5. The amendment also limits the exception specifically to the circumstances described in Insurance Code Section 488.5 because the existing language appears to be somewhat broader than intended in Section 488.5.

Amended Subsection (e) clarifies 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. This is necessary for consistent application of the regulation. The amendment eliminates a reference to solo vehicle accidents because it is unnecessary and has been

misunderstood to mean that insurers are not required to apply the same standards to investigation of solo vehicle accidents. In addition, amended Subsection (e) adds a requirement for the insurer to state the basis of a determination that an injury or death occurred to verify that insurer considered whether injury or death occurred while investigating the accident. The alternative of setting a dollar threshold for injury or death is impractical because a dollar amount may only reflect a doctor's visit and not bodily injury, the cost of such a visit may vary according to the medical care provider, and there may be no medical expenses involved in an accident involving a death. Amended Subsection (e)(2) restates and clarifies the requirements for reconsideration of a determination. Finally, amended Subsection (e) prohibits reporting of principally at-fault accidents to subscribing loss underwriting exchange carriers that do not comply with this regulation. This is necessary to safeguard the integrity of the data provided by insurers to subscribing loss underwriting exchange carriers, which other insurers rely upon to set premiums when they were not the insurer at the time of the accident (a "subsequent insurer").

Amended Subsection (f) clarifies the procedure that any subsequent insurer of a driver must follow to determine that the driver was principally at-fault for an accident. Amended 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) (see also Subsection (h), below). Amended Subsection (f)(2) differentiates between policies governed by the laws of the State of California and policies governed by the laws of other states, giving full faith and credit to at-fault determinations made pursuant to the laws of other states. In either situation, the regulation specifies the data that an insurer must have to rely solely on subscribing loss underwriting exchange data. This is necessary to reasonably safeguard the integrity of the data provided by insurers to the subscribing loss underwriting exchange carrier. In addition, existing Subsections (g) and (i) are incorporated into this Subsection and reorganized. As a result, all actions that a subsequent insurer may take to determine whether a driver is principally at-fault for an accident are grouped together in this Subsection. This simplifies the regulation and makes it easier to follow. Amended Subsection (f) deletes the last paragraph of existing Subsection (i) in its entirety as the paragraph applied in a prior rulemaking to a Subsection for which insurers had no previous compliance requirements. Since that is not the case in this rulemaking, it is no longer applicable and is superfluous.

Amended Subsection (g) clarifies the acceptable and unacceptable uses of a DMV motor vehicle report (an "MVR") to determine that a driver is principally at-fault for an accident. First the amendment clarifies that insurers are not permitted to use a Vehicle Code Section 12810 (g) notation on an MVR for the purpose of determining whether the driver is principally at fault for an accident. Vehicle Code Section 12810(g) allows the DMV to charge points against a driver for a traffic accident in which the DMV deems the driver to be responsible and the DMV uses those points to determine the driver's eligibility for a driver's license. Insurance Code 1861.025(b) permits insurers to use some Vehicle Code Section 12810 points charged by the DMV to determine eligibility

for a good driver discount. But, it does not permit insurers to determine that a driver is principally at-fault because the DMV has deemed the driver to be responsible.<sup>1</sup> Instead, through Subsections (b)(1)(A) and (b)(3) of Insurance Code Section 1861.025, the Commissioner is required to create a standard for determining whether a driver is principally at-fault for an accident. That standard is found in Subsection (b) of this regulation. In addition, amended Subsection (g) clarifies that an insurer may not rely solely on an MVR that does not contain sufficient information to find a driver principally at-fault under Subsection (b). DMV MVRs do not currently contain enough information to determine that a driver is principally at-fault for an accident under the Commissioner's standard set forth in Subsection (b). Consequently, while an insurer may use information obtained from a DMV motor vehicle report, it may not rely solely on an MVR until that report provides all the necessary information to determine that a driver is principally at-fault for an accident as required in Subsection (b).

The existing Subsection (h) is re-lettered (i) and amended Subsection (h) is added to clarify the additional permissible uses of data obtained from a subscribing loss underwriting exchange carrier. As stated above, insurers often rely on subscribing loss underwriting exchange reports to determine whether a driver is principally at-fault for an accident. The existing regulation does not indicate the parameters of permissible usage and there has been some confusion as to whether insurers can rely at all on the data provided by subscribing loss underwriting exchange carriers. This Subsection and Subsection (f)(2) together clarify how insurers may use the data to determine that a driver is principally at-fault for an accident.

Amended Subsection (i) (previously (h)) clarifies the type of information that insurers must disclose to each other, when an inquiry is made. The existing regulation does not include that an insurer must disclose whether an accident resulted in injury or death and the total amount of property damage. These facts are necessary to determine whether a driver is principally at-fault for an accident pursuant to Subsection (b) and to determine whether a driver qualifies for a Good Driver Discount policy.

Amended Subsection (j) is added to clarify the course of action an insurer may take when a driver/applicant does not provide requested information. Increasing the premium for an insured solely because the insured fails to respond is disapproved. While an insured who fails to respond to a request for information may be considered an increased hazard pursuant to Section 2632.19, Insurance Code Section 1861.03 only authorizes an insurer to cancel the policy. Failure to respond to an insurer's request does not support a finding that a driver is principally at-fault for an accident. Unless there is enough information available to an insurer to determine that a driver is principally at-fault for an accident as provided in Subsection (b), an insurer may not find that a driver is principally at-fault for an accident.

Section 2632.13.1 is added to clarify how an insurer may determine a driver's eligibility for a Good Driver Discount policy. The first amended paragraph is the same as existing

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<sup>1</sup> Vehicle Code Section 12810(g) was formerly Vehicle Code Section 12810(f) at the time of the passage of Proposition 103.

Section 2632.13 (j). Amended Subsection (b)(1) amends the existing Section 2632.13(b)(1). The amendment updates applicable sections of the Vehicle Code that have been redesignated since the passage of Proposition 103. Amended Subsection (b)(2) is the same as existing Section 2632.13 (b)(2). Amended Subsection (b)(3) amends existing Section 2632.13 (b)(3). The amendment clarifies how principally at-fault accidents may be used to determine eligibility for a Good Driver Discount policy. The existing regulation does not sufficiently explain that property damage accidents and accidents resulting in bodily injury or death cannot both be used to determine eligibility and that no points may be assigned for an accident resulting in bodily injury or death. In the case of a property damage only accident, Insurance Code Section 1861.025(b)(1)(A) provides that the driver receives a one point assignment. In the case of bodily injury or death, Insurance Code Section 1861.025(b)(3) provides that a driver may only be disqualified from purchasing a Good Driver Discount policy.

In all other respects, the Initial Statement of Reasons included in this rulemaking file continues to fully and accurately reflect the views of the Department of Insurance. Therefore, it is incorporated herein by this reference.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

#### **LOCAL MANDATE DETERMINATION**

The proposed regulation does not impose any mandate on local agencies or school districts.

#### **ALTERNATIVES DETERMINATION**

The Commissioner has determined that no alternative would be more effective in carrying out the purpose for which this regulation is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

#### **SUMMARY OF AND RESPONSE TO PUBLIC COMMENT**

The Commissioner's summary of and response to the public comment is separately included in this rulemaking file and incorporated herein by this reference.