

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
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Sacramento, CA 95814**

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**UPDATED INFORMATIVE DIGEST**

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

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:

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.”

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.

Amended Subsection (b) adds a reference to Subsection (c) along with Subsection (d) due to amendments to existing Subsection (d). Finally, amended Subsection (b) includes a sentence clarifying that this amendment does not affect determinations made prior to this 2011 amendment.

Amended Subsection (c) makes rebuttable presumptions out of exceptions to the principally at-fault determination. 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.

Amended Subsection (d) clarifies that the presumption relating to Insurance Code Section 488.5, found in existing Subsection (d)(6) and limits the exception specifically to the circumstances described in Insurance Code 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. Amended Subsection (e) adds a requirement for the insurer to state the basis of a determination that an injury or death occurred was added. 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.

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 addition, existing Subsections (g) and (i) are incorporated into this Subsection and reorganized. Amended Subsection (f) deletes the last paragraph of existing Subsection (i) in its entirety.

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. 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).

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.

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

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.

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 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.