

DEPARTMENT OF INSURANCE

300 Capitol Mall, 17th Floor
Sacramento, CA 95814

**ADVISORY NOTICE**

**TO: ALL INSURERS ADMITTED TO SELL AUTOMOBILE INSURANCE
IN CALIFORNIA AND ALL OTHER INTERESTED PERSONS**

DATE: OCTOBER 24, 2011

RE: NOTICE REGARDING PRINCIPALLY AT-FAULT REGULATIONS

This advisory notice provides information regarding the Principally At-Fault Regulation, section 2632.13 of subchapter 4.5, title 10, of the California Code of Regulations, and is intended to inform insurers and interested persons of (1) the effect of the recent amendment to this regulation that becomes effective on December 11, 2011 ("amended regulation") on insurer accident verification for purposes other than determining whether a driver is principally at fault for an accident and (2) existing case law affecting the application of the amended regulation to accidents occurring before its effective date.

I. Amendment of the Principally At-Fault regulation does not change enforcement of Insurance Code Section 1861.02(c), which provides:

"The absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability."

Specifically, a driver may continue to use a driver's declaration, set forth in subsection (f)(5) of the amended regulation, for the purpose of declaring that he or she has no history of accidents and an insurer may not surcharge or refuse to insure that driver solely because the information is not provided by a prior insurer.

II. On or after the effective date of the amended regulation:

1. Insurers should use Subsections (b) and (c) of the prior version of the regulation to determine whether the driver is principally at-fault for an accident occurring prior to the effective date.

Subsections (b) and (c) of the amended regulation should not be used. Subsection (b) of the amended regulation sets forth a new threshold amount and changes the type of property damage that must exist for an insurer to determine that a driver is principally at-fault for an accident. Subsection (c) of the amended regulation changes the conclusive

nature of the presumptions applicable to specified types of accidents. If applied, they would operate to change the legal consequences of past conduct. Due to the absence of an express retroactivity provision or extrinsic evidence clearly indicating an intent to apply the regulation retroactively, Subsections (b) and (c) of the amended regulation should not be applied retroactively to accidents occurring prior to its effective date. See *Evangelatos v. Superior Court*, 44 Cal. 3d 1188, 1206 (1988); *Strauss v. Horton*, 46 Cal. 4th 364, 470 (2009).

2. All provisions, other than subsections (b) and (c), of the amended regulation should apply to any pending principally at-fault determination.

The remaining provisions of the amended regulation are procedural, clarify the regulation, and therefore should not be considered to be retroactive. Unlike subsections (b) and (c), these provisions do not change the legal consequences of past conduct. See *City of San Jose v. Int'l Assn. of Firefighters, Local 230*, 178 Cal. App. 4th 408, 420 (2009); *In re Marriage of McClellan*, 130 Cal. App. 4th 247, 255 (2005). See also *As You Sow v. Conbraco Indus.*, 135 Cal. App. 4th 431, 452 (2005).

Inquiries about this notice may be addressed to Lisbeth Landsman-Smith, Staff Counsel, California Department of Insurance, 300 Capitol Mall, 17th floor, Sacramento, CA 95814. (916) 492-3561.