

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

RH05042805

June 30, 2009

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

SUBJECT OF PROPOSED RULEMAKING

Notice is hereby given that the Insurance Commissioner proposes to amend Sections 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 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 regulation will implement, interpret and make specific the provisions of California Insurance Code Sections 1861.02 and 1861.025.

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: **August 26, 2009 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 August 26, 2009. 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.

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 §§ 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 June 22, 2007, 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:

- The title of the regulation is amended to clarify that it contains guidelines for two separate determinations, determining “principally at fault” accidents and determining eligibility for the Good Driver Discount policy.
- Former subsection (a): This subsection is amended to explain that the “principally at fault” determination is applicable to the Good Driver Discount determination (Cal. Ins. Code section 1861.025) and to the “insured’s driving safety record” (Cal. Ins. Code section 1861.02, 10 CCR section 2632.5).
- Former subsection (b) is amended as follows:
 - Subsection (b) is moved to subsection (j) and subsections (c) – (j) are re-lettered (b) – (i), respectively.
 - In addition, part of the text of former subsection (b), which refers to Vehicle Code section 12810, specifically subsections (e), (g) and (h) are re-lettered (f), (i)(1), and (j), respectively.
 - Former subsection (b)(3), now (j)(3), is also amended to clarify that an insurer may choose to classify an accident as either property damage or bodily injury/death, but not both.
 - The second sentence in former subsection (b)(3) is removed.
 - Finally, former subsection (b) is amended to clarify the distinction between DMV points and points that may be assigned by an insurer for “principally at fault” accidents involving property damage.
- Former subsection (c) is amended as follows:
 - This section is amended to further define the term “principally at fault” for accidents involving bodily injury and death.
 - The threshold loss for property damage is revised upward from \$750 to \$1000.
- Former subsection (d) is amended as follows:
 - Former subsection (d)(1) is deleted.
 - With the deletion of subsection (d)(1), former subsections (d)(2) – (d)(7) are renumbered (c)(1) –(c)(6), respectively.
 - Former subsection (d)(7), now (c)(6), is amended to clarify that a driver cannot be found “principally at fault” when the driver reasonably could not have avoided an accident.
- Former subsection (e): The clause “other than an indisputably solo accident and which is not of the type specified in subpart (d)” is omitted.
- Former subsection (f) is amended as follows:
 - Former subsection (f)(1) is amended to allow subsequent insurers to find that a driver is “principally at fault” for an accident, even if the driver was not formally charged by the insurer at the time of the accident.
 - Former subsections (f)(2) and (f)(3) were amended to correct typographical errors and to re-letter the subsections in accordance with the other amendments.
 - A paragraph is added to former subsection (f), now subsection (e)(4), to allow subsequent insurers to find that a driver was “principally at fault” for an accident when the driver provides written confirmation to that effect.
- Former subsection (g) is amended as follows:
 - The clause “or if the driver confirms in writing that the driver is principally at fault for the accident as defined by subsection (b)” is added.

- Former subsection (g)(3) is merged with subsection (g)(2), now (f)(2), and amended to clarify the guidelines in cases where a driver was involved in an accident for which there was no prior carrier and the insured fails to respond to written request for information regarding the accident.
- Former subsection (i) is amended as follows:
 - The last sentence of the first paragraph is deleted.
 - In addition, the first paragraph is amended to create a mechanism that allows an insurer to use contrary information to rate the driver if the driver confirms that the contrary information is true.
 - The last paragraph is omitted.
- Former subsection (j) is amended as stated above (see former subsection (b) and (c).)
- References to subsections within the text of the entire regulation are re-lettered as necessary, in accordance with the amendments

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.

To search, enter "RH05042805" (the Department's regulation file number for this regulation) in the search field. Alternatively, search by keywords ("principally at fault," for example, or "Good Driver Discount"). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Currently Proposed Regulations" link. A list of the names of regulations for which documents are posted will appear.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposed text are appropriate. If the Commissioner makes changes that are sufficiently related to the original proposed text, copies of the changed text will be made available to the public for at least 15 days before the Commissioner adopts the regulation as modified. Please send requests for copies of any changed text to the Contact Person listed above. Copies of the changed text will automatically be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. The Commissioner will accept written comments concerning the changes only, for a period of at least 15 days after the date on which the changed text is made available.

Dated: June 30, 2009

STEVE POIZNER
Insurance Commissioner

By: _____/S/_____
Lisbeth Landsman-Smith
Staff Counsel