

## Department Provides Advice on Effective Date of Amendments to California Principally At-Fault Regulation

October 27, 2011 by [Samuel Sorich](#)

The [California Department of Insurance](#) issued a [notice on October 24, 2011](#), which advises that most of the [amendments to regulatory section 2632.13](#) apply to accidents that occur prior to the amendments' December 11, 2011, effective date.

However, provisions in the amendments relating to the threshold for principally at-fault determinations and to presumptions about principally at-fault accidents do not apply to accidents that occur prior to December 11, 2011.

### **Background**

The question of whether a driver was principally at-fault for an accident has significant implications for the driver. A principally at-fault accident affects the driving record that is used to determine the driver's auto insurance premium and also affects the driver's eligibility for the statutory good driver discount.

Regulatory section 2632.13 sets forth the requirements that a private passenger auto insurer must follow when the insurer determines whether a driver was principally at-fault for an accident. The section was first adopted in 1994.

Two years ago, the Department of Insurance started the process of amending section 2632.13. The process resulted in amendments to section 2632.13 which were adopted on March 16, 2011. The amendments will go into effect on December 11, 2011.

The amendments address a number of issues including insurers' reliance on loss underwriting exchange data, notices that insurers must send to drivers, the injury or property damage accident threshold that must be met in order for a driver to be considered principally at-fault for the accident and certain presumptions that insurers must follow when they make principally at-fault determinations.

### **October 24, 2011, Notice**

The amended version of subsection (b) of section 2632.13 changes the accident threshold that must be met in order for an insurer to determine that a driver was principally at-fault for an accident. The amended version of subsection (c) of section 2632.13 changes the presumptions that an insurer must follow when the insurer makes a principally at-fault determination.

The question of whether the amended threshold and presumptions in subsections (b) and (c) apply to accidents that occur prior to the amendments' December 11, 2011, effective date needed resolution.

The department's October 24 notice advises that the amended version of subsections (b) and (c) do not apply to accidents that occur prior to December 11, 2011, because the subsections change the legal consequences of past behavior and there is no evidence that those two subsections are intended to be applied retroactively.

The October 24 notice concludes that the remaining amendments to section 2632.13 are procedural and do apply to accidents that occur prior to the amendments' December 11, 2011, effective date.

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