



DIVISION OF INSURANCE

Frequently Asked Questions

About At-Fault Accident Surcharges For Personal Automobile Insurance Policies

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When You are At-Fault in an Accident

What does it mean to be at-fault?

Under Massachusetts law, you are considered to be at-fault for an accident if your driving behavior at the time of the accident was more than 50% of the reason for the accident.

Why does it matter who is at-fault in an accident?

State law requires your motor vehicle to be insured for accidental injury to other people and property that may occur while you are driving it. Who is at-fault in the accident affects the amount of money insurance companies are obligated to pay in damages, and is also likely to affect the at-fault driver's cost of insurance in the future.

The amount of money an insurer is obligated to pay in an accident is partly determined by who is at fault. If an operator's actions were more than 50% of the reason for an accident, that operator's insurance company must cover all of the losses and expenses incurred by others who were affected by the accident. However, if all individuals involved in the accident were partly the cause of it, and no single individual was more than 50% at fault, insurers are only responsible for restoring other injured parties to the extent they did not contribute to the accident.

The effect on your premium when you are at-fault in an accident will be based on the rules and rating factors your insurance company has filed with the Division of Insurance. Most insurance companies assign a fixed number of points for each type of at-fault accident or traffic violation, and the total point value is used to determine a percentage increase to the premium for the policy. At-fault accidents may affect future premiums for 3-5 years.

The Division of Insurance carefully reviews merit rating plans before authorizing an insurance company to apply them to determine premiums. Individual insurer's rating plans are available to the public. If you have specific questions about the at-fault accidents or traffic violations that are reflected in your premium, contact your agent or company.

Will my insurance premium go up if I am at-fault in an accident?

In many instances your premium will go up if you are found to be at-fault in an accident. However, state law prohibits insurers from increasing your premium based on at-fault accidents or traffic violations that occurred more than five years prior to the effective date of your policy.

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Who determines who is at-fault in an accident?

Ultimately, the determination of who is at-fault in a motor vehicle accident rests with the Massachusetts courts. However, because motor vehicle accidents are very common, laws and regulations have been established that permit insurers to presume that motor vehicle operators are at-fault in certain pre-defined accident situations. For example, the law states that an operator shall be presumed to be more than 50% at fault when operating a vehicle which is in a collision with another vehicle which is moving in the opposite direction on the proper side of the roadway or center line.

A complete list of accidents in which the law allows insurers to presume that an operator was at fault is contained in regulation 211 [CMR 74.00](#) .

How will I find out if I am at-fault in an accident?

Insurers can presume who is at-fault when the accident situation is one of those described in regulation [211 CMR 74.00](#).

When this happens, the insurer will send a notice to your home stating that you have been presumed to be at-fault for the accident.

If you are involved in a very complex accident, it is likely that a Massachusetts court will determine who was at-fault.

If you are at-fault and the insurer pays more than \$1000 in claims on your behalf, state law requires the insurer to report such claims to the Massachusetts Merit Rating Board.

Can I appeal an insurer’s determination that I am at-fault in an accident?

Yes. If you believe that you are not more than 50% at-fault for an accident, you may appeal the insurer’s at-fault determination to the Board of Appeal at the Division of Insurance. You must request this appeal within thirty days of the date shown on the at-fault notice.

How do I appeal an insurer’s determination that I am at-fault in an accident?

The notice informing you that an insurer has determined you to be at-fault has two sides. The process for applying for an appeal is described on the bottom of the front side of the notice. An appeal form is on the back side of the notice. You must complete the form and return it to the Board of Appeal at the Division of Insurance within 30 days of the notice.

If I appeal the at-fault determination, can my insurer still raise my premium because of the accident?

Yes. Filing an appeal does not prevent the at-fault accident from affecting your insurance premium. If the Board of Appeal decides that the insurer’s at-fault determination was improper, your insurer must refund any premiums associated with that accident.

Where and when will my hearing be scheduled?

The Board of Appeal will mail you a Notice of Hearing when your hearing date has been scheduled. Appeal hearings are scheduled in Boston as well as a number of other locations.

Carefully note the location of your hearing listed on the Notice. Directions are included at the bottom of the Hearing Notice.

Upon receipt of the Hearing Notice, you have three options through which to pursue the appeal:

a. **Appear in Person.**

Bring your Hearing Notice to the scheduled location, along with copies of all relevant information and documents/photographs etc., that you want the Hearing Officer to consider when making the decision.

b. **Submit a Written Statement in lieu of your appearance.**

The Board must receive your written or typed statement via mail or facsimile **at least 5 days prior** to your hearing. The statement must include:

- copies of all relevant information, and any documents/photographs etc. that you want the Hearing Officer to consider when making the decision
- your signature on the Hearing Notice, which affirms that you are waiving a personal appearance in favor of your written statement and that your statements about the accident are truthful.

c. **Select a representative to appear on your behalf.**

If you elect to submit a written statement via a representative, instead of appearing in person, it must include:

- copies of all relevant information, and any documents/photographs etc. that you want the Hearing Officer to consider when making the decision
- your signature on the Hearing Notice, which affirms that you are waiving a personal appearance in favor of your written statement and that your statements about the accident are truthful.

NOTE: All materials submitted toward your appeal will become a part of the Board's record and cannot be returned. It is recommended that you make additional copies for your records.

What will the hearing entail?

The hearing is informal and public, and typically lasts 20 to 30 minutes. The Hearing Officer will make an audio tape recording of the hearing. You or your representative and the insurance company representative will each be given an opportunity to present all pertinent information. You may also bring a witness or a witness statement to the hearing. The Hearing Officer may ask you or the representative questions to clarify the information presented or the circumstances of the accident.

When will I learn the outcome of my hearing?

At the conclusion of the hearing, the Hearing Officer will take your appeal under advisement. The facts and circumstances presented will be reviewed in accordance with the governing laws and regulations.

Under the law, your testimony and the evidence/information you present must overcome the presumption of fault to have the at-fault determination removed from your driving record.

A Memorandum of Finding and Order, the Board's decision, will be mailed to you within 2-4 weeks.

If the decision is marked **VACATE**, the Board has found that you were not more than 50% at-fault for the accident. The at-fault determination on your driving record as a result of the accident will be removed.

If the decision is marked **UPHELD**, the Board has found that you were more than 50% at-fault for the accident. The at-fault determination will remain on your driving record.

May I appeal the Board's decision if it is unfavorable?

If you disagree with the Board's decision, you may appeal that decision to your county's Superior Court or in Boston, to Suffolk County Court. In accordance with [M.G.L. c. 30A § 14](#) and Superior Court Standing Order 1-96, you must file this appeal **within 30 days** of your receipt of the decision.

May I appeal traffic citations to the Board of Appeal?

No. Any questions regarding this type of incident should be directed to the [Massachusetts District Court Department](#).

Will my insurance premium be reduced if the Board of Appeal determines that the insurance company's at-fault presumption was in error?

If the Board of Appeals finds that the insurer's at-fault determination was in error, and your insurer had raised your premium in recognition of the at-fault determination, the insurer will correct the premium within 30 days of receiving notice of the Board's reversal of the at-fault determination.

If a reversal is issued and you were never a policyholder of the insurer who made the at-fault determination, you must inform your current insurer that the at-fault determination has been reversed. To do this, you must send a copy of the Board's notice of reversal to your insurer within 45 days after you receive it.

Will the at-fault determination be removed from my record if the Board of Appeal determines that the at-fault presumption of the insurance company was in error?

Yes. Insurers are required to notify the Merit Rating Board and any other data collection agencies that the insurer originally notified of an operator's at-fault determination that it has been reversed within 15 days.

How do insurance companies find out about my involvement in automobile accidents?

If you are at-fault and the insurer pays more than \$1000 in claims on your behalf, state law requires the insurer to report such claims to the Massachusetts Merit Rating Board.

Some insurers also submit automobile insurance claim information to a central exchange. The most common exchange is Comprehensive Loss Underwriting Exchange (C.L.U.E.).

When you apply for private passenger automobile insurance, the insurer will likely check one or both of these organizations to for the purpose of reviewing your driving record.

How do I verify that the accident information the insurer is using is correct?

The simplest way to verify the accident information used by your insurance company is to contact your insurance agent or company.

The Massachusetts Merit Rating Board (MRB) maintains records of your at-fault accident involvement and traffic violations. To obtain a copy of your driving record maintained by the MRB, go the [Registry of Motor Vehicles Website](#) or call **857-368-8100**.

To find out about the accident history an insurer may have obtained about you through C.L.U.E, you should consult the [Lexis Nexis Website](#) or call 866-312-8076.

While the MRB and Lexis Nexis maintain accident records for periods longer than five years, state law prohibits your insurance company from increasing your premiums for at-fault accidents or traffic violations that occurred more than five years before your policy effective date.

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