

211 CMR: DIVISION OF INSURANCE

211 CMR 74.00: STANDARDS OF FAULT TO BE USED BY THE BOARD OF APPEAL ON MOTOR VEHICLE LIABILITY POLICIES AND BONDS AND INSURERS IN ~~DETERMINING THE APPLICATION OF SURCHARGES IN ACCORDANCE WITH M.G.L. c. 175, § 113P~~ PRESUMING FAULT WHEN MAKING AT FAULT DETERMINATIONS

Section

74.01: Authority

74.02: ~~Purpose and Scope~~ Definitions

74.03: ~~Purpose and Scope~~ Definitions

74.04: Standards of Fault: Circumstances in Which an Operator's ~~Situations in Which~~ Fault is Presumed to be More Than 50%

74.05: Violations

74.06: Severability

74.01: Authority

211 CMR 74.00 is promulgated ~~in accordance with~~ according to the authority granted the Board of Appeal on Motor Vehicle Liability Policies and Bonds by M.G.L. c. 26, § 8A, and M.G.L. c. 175, § 113P; ~~and the authority granted the Commissioner of Insurance by M.G.L. c. 175E, §§ 7A and 10.~~

74.02: Purpose and Scope

The Standards of Fault contained in 211 CMR 74.04 shall be applied by Insurers and the Board of Appeal on Motor Vehicle Liability Policies and Bonds when determining whether to presume an Operator of a Private Passenger Motor Vehicle is more than 50% at fault for an Accident.

74.03: Definitions

Accident. ~~An unexpected, unintended event that causes damage to the operator's vehicle, another vehicle, or other property, such damage~~ arising out of the ownership, maintenance or use of a Private Passenger Motor Vehicle that results in a claim to an Insurer under a Private Passenger Motor Vehicle insurance policy.

At Fault Accident. An Accident involving a Private Passenger Motor Vehicle in which its Operator was more than 50% at fault.

Board. ~~The~~ Board of Appeal on Motor Vehicle Liability Policies and Bonds established pursuant to M.G.L. c. 26, § 8A.

Center line. ~~P~~ Pavement marking, imaginary, drawn, or otherwise designated, which separates traffic moving in opposite directions.

Collision, collides. ~~T~~he accidental upset of a vehicle or any physical contact of a vehicle with an object or a person.

Commissioner. ~~The~~ Commissioner of Insurance appointed pursuant to M.G.L. c. 26, § 6.

Insurer. Any corporation, association, partnership, group or individual authorized to write Private Passenger Motor Vehicle insurance in the Commonwealth.

Operator. ~~A~~ny person who ~~operates a motor vehicle~~ is operating a Private Passenger Motor Vehicle, whether or not the Operator owns the vehicle.

Private Passenger Motor Vehicle. Any vehicle, except a motorized vehicle not normally driven on public ways, that is insured by a Private Passenger Motor Vehicle insurance policy.

Standards of Fault. The standards referred to in M.G.L. c. 175E, § 7A, and M.G.L. c. 175, §

211 CMR: DIVISION OF INSURANCE

113P, which are contained in 211 CMR 74.04.

Safe Driver Insurance Plan, the adjustment of insurance rates and premiums on the basis of at-fault accidents, comprehensive claims and traffic law violations pursuant to M.G.L. c. 175, § 113B.

Vehicle subject to the Safe Driver Insurance Plan, any private passenger vehicle rated in accordance with the Massachusetts Private Passenger Automobile Insurance Manual.

74.03: Purpose and Scope

The standards established by 211 CMR 74.00 shall be used by insurers and the Board in determining whether an operator is more than 50% at fault for the purpose of applying the Safe Driver Insurance Plan. The presumptions raised as to an operator being more than 50% at fault, as described in 211 CMR 74.04, shall be considered determinative unless and until the operator overcomes the presumption by producing sufficient evidence at an initial review or hearing held in accordance with the rules of the Board.

211 CMR: DIVISION OF INSURANCE

74.04: Standards of Fault: Circumstances in Which an Operator's ~~Situations in Which~~ Fault is Presumed to be More Than 50%

The following Standards of Fault shall be considered determinative that an Operator of a Private Passenger Motor Vehicle was more than 50% at fault for an Accident, unless a showing to the contrary is demonstrated by the evidence presented in the course of review of the At Fault Accident.

(01) Collision with a Person or a Lawfully or Unlawfully Parked Vehicle. The ~~O~~operator ~~of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in collision~~collides with a person or a lawfully or unlawfully parked vehicle.

(023) Rear End Collision. The ~~O~~operator ~~of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in collision~~collides with the rear section of another vehicle.

74.04: continued

(035) Out of Lane Collision. The ~~Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is partially or completely out of its proper lane, and is in collision~~thereafter collides with another vehicle:

- (a) while being passed by the other vehicle, the passing vehicle being in its proper lane; or
- (b) while passing the other vehicle, the other vehicle being in its proper lane; or
- (c) while changing or turning into or across the other vehicle's lane.

~~(047) Failure to Signal.~~ The ~~Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in collision~~collides while failing to signal as required by law before turning or changing lanes.

(058) Failure to Proceed with Due Caution from a Traffic Control Signal or Sign. The ~~Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when the operator~~ fails to obey a traffic control signal or sign, or fails to proceed with due caution ~~therefrom~~ a traffic control signal or sign, and ~~whose vehicle is thereafter in a~~thereafter collides with another vehicle.

(069) Collision on Wrong Side of Road. The ~~Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in collision~~collides with another vehicle which is moving in the opposite direction on the proper side of the roadway or center line.

(0740) Operating in the Wrong Direction. The ~~Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle in the wrong direction on a travel lane, one-way street, or highway, and whose vehicle is thereafter in a~~collidession with another vehicle.

~~(0844) Collision at an Uncontrolled Intersection.~~ The ~~Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in collision~~collides with another vehicle at an uncontrolled intersection and:

- (a) ~~if the~~ Operator's vehicle entered a main road from a secondary road, or
- (b) ~~if both vehicles entered~~ the intersection at the same time, and ~~such the~~ Operator's vehicle entered the intersection from the left of the other vehicle, failing to allow the vehicle on the right to proceed, or
- (c) ~~if the~~ Operator's vehicle entered the intersection at a point in time later than the other vehicle.

(0944) Collision While in the Process of Backing Up. The ~~Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is in the process of backing up and whose vehicle is thereafter in a~~collidession with another vehicle.

(105) Collision While Making a Left Turn or U-Turn Across the Travel Path of a Vehicle Traveling in the Same or Opposite Direction. The ~~Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle making a left turn or U-turn across the path of travel of another vehicle moving~~ in the same or the opposite direction, thereafter collides with that other vehicle.:

- (a) ~~in the same direction, or~~
  - (b) ~~in the opposite direction,~~
- ~~and whose vehicle is in a collision with such vehicle.~~

211 CMR: DIVISION OF INSURANCE

[74.04: continued](#)

(117) Leaving or Exiting from a Parked Position, Parking Lot, Alley or Driveway. The Operator, ~~of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault~~ when operating a vehicle which is leaving or exiting from a parked position, parking lot, alley or driveway, ~~thereafter and whose vehicle is in a~~ collision ~~with another vehicle.~~

(128) Opened or Opening Vehicle Door(s). ~~A door of (The Operator's of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when the vehicle's door or doors are opened or is open, or is in the process of being~~ opening, resulting in a collision with another vehicle.

211 CMR: DIVISION OF INSURANCE

~~74.04: continued~~

~~(139) Single Vehicle Collision. The Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating the only vehicle involved in a collision.~~

Formatted: Indent: Left: 0.81"

~~(1420) Failure to Obey the Rules and Regulations for Driving. The Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when the operator violates any provision of M.G.L. Chs. 85, 89 or 90, or fails to obey the following any regulations: The Metropolitan District Commission in CMR Chs. (350, CMR), Registry of Motor Vehicles (540, CMR), MA Department of Highways (720, CMR), MA Turnpike Authority (730, CMR), or MA Port Authority (740-CMR), and thereafter whose vehicle is in a collision with another vehicle.~~

~~(215) Unattended Vehicle Collision. The Operator's of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when the vehicle is left unattended and rolls, resulting in a collision.~~

~~(216) Collision While Merging onto a Highway, or into a Rotary. The Operator, of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle merging onto a highway, or into a rotary, thereafter collides with when the another vehicle is already on the highway, or in the rotary, resulting in a collision.~~

~~(217) Non-Contact Operator Causing Collision. The Operator's of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle which is not in a collision, but the Operator's operation of his or her vehicle whose actions causes the collision of one or more other vehicles.~~

~~(1829) Failure to Yield the Right of Way to Emergency Vehicles when as is Required by Law. The Operator of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when the operator fails to yield the right of way to emergency vehicles (as is required by M.G.L. c. 89, §§ 7, 7A and 7C,) resulting in a collision.~~

~~(1934) Collision at a "T" Intersection. The Operator, of a vehicle subject to the Safe Driver Insurance Plan shall be presumed to be more than 50% at fault when operating a vehicle coming from a roadway that terminates onto a throughway, thereafter and whose vehicle is in a collision with another vehicle traveling on that intersecting throughway.~~

74.05: Violations

An Insurer's failure to apply the standards established by 211 CMR 74.00 in presuming or determining an Operator to be more than 50% at fault for an Accident may be a violation of M.G.L. c. 176D, § 2.

74.06: Severability

If any section or portion of a section of 211 CMR 74.00 or the applicability thereof to any person, entity, or circumstance is held to be invalid by a court of competent jurisdiction, the remainder of 211 CMR 74.00 or the applicability of such provision to other persons, entities or circumstances, shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 74.00: M.G.L. c. 26, § 8A; c. 175, § 113P; and c. 175E, §§ 7A and 10.

211 CMR: DIVISION OF INSURANCE

NON-TEXT PAGE