

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 PRESUMING FAULT WHEN MAKING AT FAULT DETERMINATIONS

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74.01: Authority

211 CMR 74.00 is promulgated 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 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. Pavement marking, imaginary, drawn, or otherwise designated, which separates traffic moving in opposite directions.

Collision, Collides. The 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. Any person who 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, § 113P, which are contained in 211 CMR 74.04.

74.04: Standards of Fault: Circumstances in Which an Operator's 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 Operator collides with a person or a lawfully or unlawfully parked vehicle.
- (03) Rear End Collision. The Operator collides with the rear section of another vehicle.
- (05) Out of Lane Collision. The Operator, when operating a vehicle which is partially or completely out of its proper lane, 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.
- (07) Failure to Signal. The Operator collides while failing to signal as required by law before turning or changing lanes.
- (08) Failure to Proceed with Due Caution from a Traffic Control Signal or Sign. The Operator fails to obey a traffic control signal or sign, or fails to proceed with due caution from a traffic control signal or sign, and thereafter collides with another vehicle.
- (09) Collision on Wrong Side of Road. The Operator collides with another vehicle which is moving in the opposite direction on the proper side of the roadway or center line.
- (10) Operating in the Wrong Direction. The Operator, when operating a vehicle in the wrong direction on a travel lane, one-way street, or highway, thereafter collides with another vehicle.
- (11) Collision at an Uncontrolled Intersection. The Operator collides with another vehicle at an uncontrolled intersection and:
 - (a) the Operator's vehicle entered a main road from a secondary road; or
 - (b) both vehicles entered the intersection at the same time, and 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) the Operator's vehicle entered the intersection at a point in time later than the other vehicle.
- (14) Collision While in the Process of Backing Up. The Operator is in the process of backing up and thereafter collides with another vehicle.
- (15) 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, 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.
- (17) Leaving or Exiting from a Parked Position, Parking Lot, Alley or Driveway. The Operator, when operating a vehicle which is leaving or exiting from a parked position, parking lot, alley or driveway, thereafter collides with another vehicle.
- (18) Opened or Opening Vehicle Door(s). A door of the Operator's vehicle is open, or is in the process of being opened, resulting in a collision with another vehicle.
- (19) Single Vehicle Collision. The Operator operates the only vehicle involved in a collision.

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74.04: continued

(20) Failure to Obey the Rules and Regulations for Driving. The Operator violates a specified provision of M.G.L. chs. 85, 89 or 90, or fails to obey a specified regulation in 350 CMR: *Department of Conservation and Recreation*, 540 CMR: *Registry of Motor Vehicles*, 720 CMR: *Department of Highways* or 740 CMR: *Massachusetts Port Authority*, and thereafter collides with another vehicle.

(21) Unattended Vehicle Collision. The Operator's vehicle is left unattended and rolls, resulting in a collision.

(26) Collision While Merging onto a Highway, or into a Rotary. The Operator, when merging onto a highway, or into a rotary, thereafter collides with another vehicle already on the highway, or in the rotary.

(27) Non-contact Operator Causing Collision. The Operator's vehicle is not in a collision, but the Operator's operation of his or her vehicle causes the collision of one or more other vehicles.

(29) Failure to Yield the Right of Way to Emergency Vehicles as is Required by Law. 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.

(31) Collision at a "T" Intersection. The Operator, coming from a roadway that terminates onto a throughway, thereafter collides 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.

NON-TEXT PAGE