

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, CA 94105**

NOTICE

TO: ALL ADMITTED PROPERTY AND CASUALTY INSURERS LICENSED TO WRITE PRIVATE PASSENGER AUTOMOBILE INSURANCE, AND OTHER INTERESTED PERSONS

SUBJECT: LOS ANGELES COUNTY SUPERIOR COURT DECISION INVALIDATING SB 841 (PERATA) (CHAPTER 169, STATUTES OF 2003)

DATE: MARCH 5, 2004

The purpose of this Notice is to inform affected licensees and interested members of the public of a recent decision of the Superior Court for the County of Los Angeles declaring invalid recent amendments to California Insurance Code Section 1861.02(c).

SB 841 (Chapter 169, Statutes of 2003), signed by the Governor on August 2, 2003, redefined the optional automobile rating factor "persistency". SB 841 was subsequently challenged in *The Foundation for Taxpayer and Consumer Rights, et al. v. Garamendi*, Los Angeles Superior Court Case No. BS086235.

On January 15, 2004, Los Angeles Superior Court Judge Dzintra Janavs issued an oral ruling, which declared SB 841 an invalid amendment to the provisions of Proposition 103. Judge Janavs granted a Peremptory Writ of Mandate, ordering the Commissioner not to attempt to enforce the provisions of SB 841. Judge Janavs signed the Judgment and Peremptory Writ of Mandate on February 20, 2004.

The Department has been informed that Judge Janavs' decision will be appealed. Questions have been posed by insurers and others regarding the regulation of class plans during the time the case is on appeal. Some insurers are concerned about the possibility of being required to change their class plans now and again after the case is finally resolved. In order to minimize any disruption to insurers and their policyholders, to maintain the status quo pending the outcome of an appeal, and in accordance with the provisions of the Judgment and Writ of Mandate signed by Judge Janavs, the Commissioner provides the following guidance as to the actions he intends to take, in the sound exercise of his discretion, during the pendency of any appeal:

1. The Commissioner does not intend at this time to order any insurer that submitted a class plan in accordance with the provisions of SB 841, which plan was submitted after the effective date of SB 841 and was approved prior to the date the Judgment and Writ of Mandate was signed by the Court, to take any action to comply with the statute as it read

before enactment of SB 841. However, any such insurer may submit to the Department for approval any changes to its class plan that do not rely on SB 841.

2. In accordance with the judgment, the Department will not approve, or allow to be deemed approved, any application to establish a class plan incorporating the persistency definition set forth in SB 841.

At the conclusion of this litigation, the Commissioner expects all affected insurers to be in a position promptly to file class plan applications that are in full compliance with the provisions of the court's ruling.

Questions regarding this bulletin should be directed to:

Rick Holbrook
Chief, Rate Filing Bureau
California Department of Insurance
45 Fremont Street, 23rd Floor
San Francisco, CA 94105
(415) 538-4328

Dated: March 5, 2004

JOHN GARAMENDI
Insurance Commissioner