

**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: INVALIDATION OF SB 841 (PERATA; CHAPTER 169,
STATUTES OF 2003)

DATE: NOVEMBER 1, 2005

The purpose of this Notice is to inform affected licensees and interested members of the public regarding how the Commissioner will implement the September 27, 2005, decision of the Court of Appeal in the case of *The Foundation for Taxpayer and Consumer Rights, et al. v. Garamendi*, No. BS086235. That decision invalidated SB 841, which redefined the “persistence” optional automobile rating factor, and in accordance with court rules, became final on October 27, 2005.

On March 5, 2004, following issuance of the superior court’s decision that has now been affirmed in this case, the Commissioner notified all affected insurers that he expected them to be in a position promptly to file class plan applications in full compliance with the appellate court’s ruling. Because SB 841 is invalid, California Code of Regulations, Title 10 (“CCR”), section 2632.11(d) represents the only definition of persistence authorized for use in California.

Therefore, any insurer having an approved class plan incorporating the SB 841 definition of persistence, or a definition similar to SB 841, must immediately comply with the court’s decision in the following manner:

- Effective immediately, any class plan application which an insurer submits, or which is currently pending, must reflect the court’s decision regarding persistence and must include a revised sequential analysis, if necessary. Any class plan application that does not comply with the court’s decision will not be approved.
- Any insurer wishing to use the optional rating factor of “persistence” must have a class plan on file with and approved by the Commissioner which complies with CCR section 2632.5(d)(11).

- Regardless of the terms of any insurer's approved class plan, on or after December 5, 2005, no insurer may apply an SB 841 persistency rating factor, or rating factor similar to SB 841, when issuing a new or renewal insurance policy. Any policy issued on or after December 5, and any renewal which takes effect on or after December 5 must apply a persistency discount which complies with CCR section 2632.5(d)(11).

Any insurer not in compliance with the court's decision will, in appropriate circumstances, be deemed to be in willful violation of law pursuant to California Insurance Code Section 1858.07.

Questions regarding this Notice 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: November 2, 2005

JOHN GARAMENDI
Insurance Commissioner