

Senate Bill No. 841

CHAPTER 169

An act to amend Section 1861.02 of the Insurance Code, relating to automobile insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 2, 2003. Filed with
Secretary of State August 2, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 841, Perata. Automobile insurance: rates: persistency.

Existing law, as enacted by Proposition 103, requires rates and premiums for automobile insurance policies to be determined by the application of specified factors in decreasing order of importance, including the insured's driving record, the number of miles driven annually, and the number of years of driving experience, and allows the Insurance Commissioner to adopt additional factors by regulation that have a substantial relationship to the risk of loss. Existing law also provides that the absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability.

This bill would allow an insurer to use persistency of automobile insurance coverage with that insurer, an affiliate, or another insurer as an optional rating factor. Because the bill would authorize the use of an additional factor in the determination of premiums for automobile insurance policies, it would amend Proposition 103 and would require a $2/3$ vote.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1861.02 of the Insurance Code is amended to read:

1861.02. (a) Rates and premiums for an automobile insurance policy, as described in subdivision (a) of Section 660, shall be determined by application of the following factors in decreasing order of importance:

- (1) The insured's driving safety record.
- (2) The number of miles he or she drives annually.



(3) The number of years of driving experience the insured has had.

(4) Those other factors that the commissioner may adopt by regulation and that have a substantial relationship to the risk of loss. The regulations shall set forth the respective weight to be given each factor in determining automobile rates and premiums. Notwithstanding any other provision of law, the use of any criterion without approval shall constitute unfair discrimination.

(b) (1) Every person who meets the criteria of Section 1861.025 shall be qualified to purchase a Good Driver Discount policy from the insurer of his or her choice. An insurer shall not refuse to offer and sell a Good Driver Discount policy to any person who meets the standards of this subdivision.

(2) The rate charged for a Good Driver Discount policy shall comply with subdivision (a) and shall be at least 20% below the rate the insured would otherwise have been charged for the same coverage. Rates for Good Driver Discount policies shall be approved pursuant to this article.

(3) (A) This subdivision shall not prevent a reciprocal insurer, organized prior to November 8, 1988, by a motor club holding a certificate of authority under Chapter 2 (commencing with Section 12160) of Part 5 of Division 2, and which requires membership in the motor club as a condition precedent to applying for insurance from requiring membership in the motor club as a condition precedent to obtaining insurance described in this subdivision.

(B) This subdivision shall not prevent an insurer which requires membership in a specified voluntary, nonprofit organization, which was in existence prior to November 8, 1988, as a condition precedent to applying for insurance issued to or through those membership groups, including franchise groups, from requiring such membership as a condition to applying for the coverage offered to members of the group, provided that it or an affiliate also offers and sells coverage to those who are not members of those membership groups.

(C) However, all of the following conditions shall be applicable to the insurance authorized by subparagraphs (A) and (B):

(i) Membership, if conditioned, is conditioned only on timely payment of membership dues and other bona fide criteria not based upon driving record or insurance, provided that membership in a motor club may not be based on residence in any area within the state.

(ii) Membership dues are paid solely for and in consideration of the membership and membership benefits and bear a reasonable relationship to the benefits provided. The amount of the dues shall not depend on whether the member purchases insurance offered by the membership organization. None of those membership dues or any portion thereof shall be transferred by the membership organization to the insurer, or any



affiliate of the insurer, attorney-in-fact, subsidiary, or holding company thereof, provided that this provision shall not prevent any bona fide transaction between the membership organization and those entities.

(iii) Membership provides bona fide services or benefits in addition to the right to apply for insurance. Those services shall be reasonably available to all members within each class of membership.

Any insurer that violates clause (i), (ii), or (iii) shall be subject to the penalties set forth in Section 1861.14.

(c) The absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability. However, notwithstanding subdivision (a), an insurer may use persistency of automobile insurance coverage with the insurer, an affiliate, or another insurer as an optional rating factor. The Legislature hereby finds and declares that it furthers the purpose of Proposition 103 to encourage competition among carriers so that coverage overall will be priced competitively. The Legislature further finds and declares that competition is furthered when insureds are able to claim a discount for regular purchases of insurance from any carrier offering this discount irrespective of whether or not the insured has previously purchased from a given carrier offering the discount. Persistency of coverage may be demonstrated by coverage under the low-cost automobile insurance program pursuant to Article 5.5 (commencing with Section 11629.7) and Article 5.6 (commencing with Section 11629.9) of Chapter 1 of Part 3 of Division 2, or by coverage under the assigned risk plans pursuant to Article 4 (commencing with Section 11620) of Chapter 1 of Part 3 of Division 2. Persistency shall be deemed to exist even if there is a lapse of coverage of up to two years due to an insured's absence from the state while in military service, and up to 90 days in the last five years for any other reason.

(d) An insurer may refuse to sell a Good Driver Discount policy insuring a motorcycle unless all named insureds have been licensed to drive a motorcycle for the previous three years.

(e) This section shall become operative on November 8, 1989. The commissioner shall adopt regulations implementing this section and insurers may submit applications pursuant to this article which comply with those regulations prior to that date, provided that no such application shall be approved prior to that date.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:



Because making a ratings discount portable will expand consumer access to insurance and consumer choice, and will result in increased competition in the marketplace, it is necessary that this act take effect immediately.

