STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

Circular Letter No. 14 (2003)
December 4, 2003

TO: Insurers Licensed to Write Motor Vehicle Physical Damage Insurance in New York State, Motor Vehicle Self-Insurers, and Insurance Producer and Adjuster Organizations

RE: Application of Section 2610(b) of the Insurance Law

STATUTORY REFERENCE: Section 2610(b) of the Insurance Law

The purpose of this Circular Letter is to advise that the Insurance Department is hereby withdrawing Circular Letter No. 16 (2000), dated May 10, 2000, regarding Section 2610(b) of the Insurance Law. As a result of the recent decision of the United States District Court in Allstate Insurance Co. v. Serio and GEICO v. Serio, 2003 W.L. 21418198 (S.D.N.Y. May 7, 2003), Section 2610(b) of the New York Insurance Law remains in effect, and will be enforced by the Insurance Department consistent with the interpretation of the statute by the New York Court of Appeals in Allstate Insurance Co. v. Serio, 98 N.Y.2d 198 (2002).

Allstate Insurance Co. v. Serio and GEICO v. Serio, which were commenced in the United States District Court for the Southern District of New York in 1997, challenged the constitutionality of Section 2610(b), which prohibits insurers from recommending or suggesting that repairs to a damaged vehicle (other than for a claim solely involving window glass) be made in a particular place or shop or by a particular concern, unless expressly requested to do so by their insureds.

On May 5, 2000, the United States District Court (Richard Conway Casey, U.S.D.J.) ruled that Section 2610(b), as applied to Allstate and GEICO, violated the First Amendment of the United States Constitution as an unjustifiable restriction on commercial free speech. That decision was appealed to the United States Court of Appeals for the Second Circuit. The Second Circuit declined to rule on federal constitutional grounds and instead certified four questions to the New York Court of Appeals regarding the proper interpretation of Section 2610(b) under state law. After the New York Court of Appeals in Allstate Insurance Co. v. Serio, 98 N.Y. 2d 198 (2002), invalidated the Department's interpretation contained in Circular Letter No. 4 (1994), the case was remanded back to the District Court for reconsideration.

On remand, the District Court vacated its prior order and dismissed the claims of Allstate and GEICO. In its opinion and order dated May 7, 2003, the District Court ruled that the plaintiffs' First Amendment claims had been rendered moot by the decision of the New York Court of Appeals and by the Department's action in withdrawing Circular Letter No. 4 (1994).

Accordingly, this Circular Letter supersedes Department Circular Letter No. 16 (2000), dated May 10, 2000, which as indicated above is hereby withdrawn. Department Circular Letter No. 4 (1994), dated April 7, 1994, containing an interpretation of Section 2610(b) that was found invalid by the New York Court of Appeals in the above-cited case, remains withdrawn. As stated above, Section 2610(b) of the New York Insurance Law remains in effect and will be enforced by the Department consistent with the interpretation of the statute by the New York Court of Appeals.

Any questions regarding this Circular Letter should be directed to Debra Forde, Senior Insurance Examiner, Property Bureau, at (212) 480-5665, or by e-mail: email Ms. Forde.

Very truly yours,

Mark Presser
Assistant Deputy Superintendent and
Chief Examiner, Property Bureau