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MEMORANDUM

Date: April 29, 2011

To: The Honorable Jose Solorio, Chair
The Honorable Curt Hagman, Vice Chair
Members, Assembly Insurance Committee

From: Rex D. Frazier, President
Michael A. Gunning, Vice President
Kimberley Dellinger Dunn, General Counsel
Manolo P. Platin, Legislative Advocate

Re: AB 705 (Blumenfield): Insurance: Risk Retention
As Amended April 27, 2011

Assembly Insurance Committee – Hearing May 4, 2011
PIFC Position: Oppose Unless Amended

The Personal Insurance Federation of California (PIFC), representing six of the nation's largest insurance companies (State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and Mercury) and one national trade association (National Association of Mutual Insurance Companies) who collectively write a majority of the personal line auto and home insurance in California, **opposes, as currently drafted, AB 705 by Assembly Member Blumenfield.**

AB 705 would prohibit a domestic insurer from acquiring any direct or indirect investment in Iran. The bill would also, as to an admitted foreign insurer, disallow and treat as a nonadmitted asset on the financial statement of such insurer, any direct or indirect investment in Iran.

The opposition to this legislation in no way suggests that insurers support the actions of the Iranian government. This is purely a legal issue. The regulation of foreign commerce and foreign relations is the jurisdiction of the federal government. The state is preempted by the United States Constitution and federal law from regulating in this area, beyond the limited scope of authority specifically conferred. The federal Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, did confer limited authority upon states to regulate as to the investment of assets of the State or local governments:

Personal Insurance Federation of California
1201 K Street Suite 1220 Sacramento California 95814
T (916) 442 6646 F (916) 446 9548 E www.pifc.org

SEC. 202. AUTHORITY OF STATE AND LOCAL GOVERNMENTS TO DIVEST FROM CERTAIN COMPANIES THAT INVEST IN IRAN.
(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States should support the decision of any State or local government that for moral, prudential, or reputational reasons divests from, or prohibits the investment of ***assets of the State*** *or local government in, a person that engages in investment activities in the energy sector of Iran, as long as Iran is subject to economic sanctions imposed by the United States.*
(b) AUTHORITY TO DIVEST.—Notwithstanding any other provision of law, a State or local government may adopt and enforce measures that meet the requirements of subsection (d) to divest the ***assets of the State*** *or local government from, or prohibit investment of the* ***assets of the State*** *or local government in, any person that the State or local government determines, using credible information available to the public, engages in investment activities in Iran described in subsection (c).* (emphasis added).

AB 705, however, would regulate the assets and investments of private insurance companies. The legislation would restrict and disallow investments of these ***private*** companies that are deemed legal under federal law. Insurers and other companies are subject to the federal legislation and the restrictions on investing or doing business with entities on the United States Treasury list and any other restrictions developed and enforced by the federal government. California may not operate independently on foreign policy issues, however righteous the motive.

It appears the Legislature has recognized the authority necessary to legislate in this area. Last year, AB 1650, specifically acknowledged, *"It is the intent of the Legislature to implement the authority granted under Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010."* Of course, AB 1650 applied only to state and local government assets and investments. That defined authority is the only authority conferred by the federal law and AB 705 clearly reaches well beyond it.

We are supportive of the author's goal and have worked to develop a proposal that would not exceed the scope of the federal law. However, any legislation to restrict private investments that goes beyond what is regulated in the federal law, is illegal, unconstitutional and exposes the State to legal challenge.

For the foregoing reasons, **PIFC opposes, unless amended, AB 705** and urges your **"nay"** vote. If you have any questions regarding PIFC's position, please contact Kimberley Dellinger Dunn at (916) 442-6646.

cc: Assembly Member Robert Blumenfield, Author
Manny Hernandez, Assembly Insurance Committee
Kevin Hanley, Assembly Republican Caucus
Gareth Elliott, Secretary of Legislative Affairs, Office of the Governor
Randall Ward, Director, Office of the Insurance Advisor