



Association of California
Insurance Companies

*An affiliate of the Property Casualty
Insurers Association of America*

The leading voice of California insurers since 1954.

To: The Honorable Pat Wiggins
Member of the California State Senate
State Capitol, Room 4081
Sacramento, CA 95814

From: Samuel Sorich, President
Jeffrey J Fuller, Vice President & General Counsel

RE: **SB 1167 (Wiggins and Migden) Insurance: Vehicle Repair
ACIC Position: Oppose**

Date: February 15, 2008

The Association of California Insurance Companies opposes your **SB 1167**, which would require that an insurer determine whether a policyholder has selected an auto repair facility when the claim is first reported.

ACIC members view the bill as anti-consumer and violative of both the constitutional rights and statutory obligations of insurers.

Policyholders purchase automobile insurance for the security of being financially protected in the event a covered claim arises, including collision damage to an insured's motor vehicle. Because collision damage is a significant part of automobile damage claims filed under auto insurance policies, the total cost of car repairs for insurers is substantial.

In order to effectively serve their policyholders who have collision damage claims, many insurers have established special programs to assure timely, quality repairs at reasonable rates. Such programs, commonly referred to as "direct repair programs," assure that insureds' claims are satisfactorily resolved without unnecessary delay or cost. Overwhelmingly, direct repair programs operated by insurers achieve high levels of satisfaction with insurance customers.

Unfortunately, SB 1167 would impose an unwarranted restraint on the ability of an insurer (a) to explain the benefits to which a policyholder is entitled under the policy and (b) to comply with Insurance Code mandates to promptly investigate and process claims and to fairly and equitably settle those claims. There is no consumer benefit from curtailing an insurer's ability to explain auto repair choices that are available to the customer – choices the customer has paid premium to obtain. Rather, there is great benefit in providing a consumer with information

that enables that consumer to make a choice that serves the consumer's needs instead of the needs of a particular auto repair shop.

There is plainly no reason that state law should restrict a customer's access to information that would be useful in exercising the customer's unquestioned right to choose which auto body repair shop should repair his/her vehicle. Equally unquestionable is an insurer's right -- indeed statutory obligation -- to provide information that will aid that customer in making an informed decision. SB 1167 is also constitutionally defective because it attempts to impose a prior-restraint on commercial free speech. The doctrine known as "commercial free speech," while perhaps not as lofty as political free speech, is nonetheless a right that exists in a free-market economy and is protected for all who participate in business endeavors. The basic principle of commercial free speech was stated in *Allstate Ins. Co. v. Abbott* (495 F.3rd 151 (5th 2007)), "The First Amendment, as applied to the states through the Fourteenth Amendment, generally protects commercial speech from unwarranted governmental regulation where the speech is not false, deceptive or misleading." The ability of an insurer to present information and alternatives to its own customer would be foreclosed under SB 1167.

Regrettably, a practice akin to ambulance-chasing could occur when an auto repair shop that is first on the scene or first to gain storage of a damaged vehicle quickly obtains a claimant's verbal agreement to repair the vehicle at that particular shop before the person has had an opportunity to discuss the claim with his/her insurance company in order to ascertain whether viable alternatives are available -- often at no cost to the customer. There is no valid public purpose served in that scenario.

ACIC is willing to discuss with you the issues that gave rise to the introduction of SB 1167, but initially we must voice unequivocal opposition to the current version of the bill.