

Date: April 8, 2008



PIFC

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21<sup>ST</sup> CENTURY

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To: The Honorable Mike Machado, Chair  
The Honorable George Runner, Vice Chair  
Senate Banking, Finance and Insurance Committee

From: Rex D. Frazier, President  
Michael A. Gunning, Vice President  
Kimberley Dellinger, General Counsel  
Ermelinda Ruiz, Legislative Advocate

Re: SB 1167 (Wiggins and Migden): Insurance: vehicle repair  
Senate Banking, Finance and Insurance Committee Hearing: April 16, 2008  
As Amended: April 7, 2008

**PIFC Position: Oppose**

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The Personal Insurance Federation of California (PIFC), representing insurers who write nearly 50% of the auto insurance sold in the state, including State Farm, Farmers, Safeco, aigdirect.com, Progressive and NAMIC, **continues to oppose your bill, SB 1167.**

As amended, SB 1167 would now require insurers to inform their insureds, when they first call to report an accident, that they have the right to choose an automotive repair dealer of their choice. The bill still prohibits an insurer from engaging in any discussion regarding a program or a facility that performs auto body repairs after a claimant has chosen an automotive repair dealer. The amendments would also require insurance companies to provide each insured with an Auto Body Repair Consumer Bill of Rights at the time of application for a policy and following an accident that is reported to the insurer.

As well intentioned as these amendments might be, we still find SB 1167 to be a restrictive, anti-consumer legislation that would prevent informed consumer choice of an auto repair facility following an insured car crash. Not only is SB 1167 an unconstitutional restriction on truthful speech by auto insurers, it is bad policy because it would allow auto body shops to hide inadequate service and guarantees by keeping customers in the dark about their alternatives.

#### Current Law Empowers Auto Insurance Claimants

Under current law (Insurance Code Section 758.5), following a car crash, insurance claimants have a right to choose any body shop, including one not within an auto insurer's preferred network of shops. Further, current law prohibits an auto insurer from suggesting or recommending a specific body shop unless (a) a claimant requests a referral or (b) the insurer informs the claimant in writing of the right to select the body shop of choice. Lastly, current law prohibits an insurer from suggesting or recommending that a claimant select a different auto body shop after a claimant has chosen a specific body shop.

PIFC fully supports the right of claimants to use the body shop of their choice, even if a claimant chooses a body shop outside of an auto insurer's preferred network. We believe it is critical that the law should allow informed consumer choice of body shops without coercion by auto insurers or body shops.

### Claimants Should Know Whether a Body Shop Will Stand By Its Work

Many auto insurers organize networks of body shops to ensure timely repairs and high-quality standards, as well as to manage costs. It is industry practice for auto insurers to guarantee for life the work performed at a network body shop. In exchange for abiding by high standards, in-network auto body shops receive a high volume of referrals.

Following a car crash, auto insurers are required to inform claimants of their rights, including the right to choose the body shop of choice. At that time, insurers also notify claimants of the advantages of using an in-network body shop.

However, some body shops want to restrict the information the auto insurers can provide to claimants. These body shops want to stop auto insurers from telling claimants about the availability of a lifetime guarantee of work because *few non-network body shops stand by their work for life*.

### SB 1167 Would Allow Body Shops to Keep Claimants in the Dark

SB 1167 is sponsored by a body shop association that is afraid of informed consumers. These body shops think it is unfair when a potential customer decides to use an insurer's preferred shop after learning about the guarantees and other benefits of using an in-network shop. When claimants choose insurer network body shops because the repair is guaranteed for life, non-network shops complain that claimants have been "steered" away from them.

So, body shops would use SB 1167 to prohibit auto insurers from telling claimants about the benefits of preferred shops once a claimant has "selected" a non-network shop – even if the claimant lacks adequate information to make a true "selection." Instead of complaining about consumers getting a benefit from competition, the body shops should improve their guarantees and other benefits and let customers make an informed decision.

The better public policy would be legislation to ensure free, informed choice by consumers through ensuring that consumers (1) know they can choose any body shop they want and (2) will hear all the choices they have.

### SB 1167 Is an Unconstitutional Violation of Free Speech

Not only PIFC believes that consumers benefit from more, rather than less, information. Current law is clear on the prohibition of insurers coercing an insured to a particular shop - there are legal and financial consequences for such coercion. It is a huge leap to prohibit lawful communication aimed at informing a consumer – particularly when it involves an insured with whom an insurer has a contractual relationship.

In fact, legislation from Texas with provisions similar to SB 1167 was recently deemed unconstitutional by the United States Court of Appeals for the Fifth Circuit (*Allstate v. Abbott* (485 F.3d 151)). The Court found that insurance companies have a right to

communicate truthful information about auto repairs – establishing a rule of informed consumer choice. The Court stated specifically:

Consumers benefit from more, rather than less, information. Attempting to control the outcome of the consumer decisions following such communications by restricting lawful commercial speech is **not an appropriate way to advance a state interest in protecting consumers...**” (emphasis added)

The Fifth Circuit concluded that the restrictions on truthful speech about the benefits of using a particular body shop were unconstitutional and did not benefit consumers. As with the unconstitutional Texas bill, *SB 1167 would be an unconstitutional limitation on auto insurers’ speech because there is no consumer interest in hiding truthful information.*

#### SB 1167 Would Permit “Steering” By Body Shops

In an ironic twist, after complaining about insurer “steering,” this proposed law would permit auto repair shops to “steer” customers to their shops by limiting the information available to consumers. SB 1167 would have the impact (likely the desired impact of the sponsors) of helping particular body shops increase market share at the expense of the consumers’ best interest to make an informed choice while trampling over the auto insurers’ commercial free speech rights.

For the aforementioned reasons, **PIFC continues to oppose SB 1167.** If you have any additional questions regarding our position, please do not hesitate to contact Michael A. Gunning at (916) 442-6646.

cc: Senators Patricia Wiggins and Carol Migden (Principal Authors)  
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