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MEMORANDUM

Date: March 29, 2006

To: The Honorable Jackie Speier, Chair
Members, Senate Banking, Finance and Insurance Committee

From: Rex D. Frazier, Vice President & General Counsel
Michael A. Gunning, Vice President
Michael A. Paiva, Senior Legislative Advocate

Re: SB 1459 (Simitian): Political Reform Act of 1974: Insurance Commissioner
Senate Banking, Finance and Insurance Committee Hearing: April 5, 2006
PIFC Position: Oppose

The Personal Insurance Federation of California (PIFC), representing insurers who write 48% of all personal lines insurance in California, including State Farm, Farmers, Safeco, 21st Century, Progressive and NAMIC, is **opposed to SB 1459** (Simitian) which would force insurers to pay for the political campaign of candidates seeking the office of Insurance Commissioner.

PIFC asserts that SB 1459 is unconstitutional because it imposes a new tax and because it compels insurers and their policyholders to engage in political speech. In addition, PIFC objects to statements in the intent language of the bill suggesting that campaign contributions from insurance companies prohibit the Insurance Commissioner and the Department of Insurance (CDI) staff from effectively regulating the insurance industry. Furthermore, statements in the intent language suggests that the exaction called for in the bill represents a fee when in reality the exaction is a tax.

Unconstitutional – Tax.

Although SB 1459 consistently refers to the money that will be exacted from insurers as a “fee,” PIFC maintains that the bill, if enacted, would impose a new tax on insurers. The exaction specified in SB 1459 is not imposed to provide a benefit to insurers, is not imposed to regulate insurers, and is not imposed to remediate a societal problem caused by insurers. Therefore, PIFC asserts that the exaction specified in the bill is a tax and runs afoul of both the California Constitution and the California Revenue and Tax Code. The California Constitution, in Article XIII, Section 28 (f) and the Revenue and Tax Code, in Section 12204 contains an identical provision noting that the gross premium tax applied to insurers is “in lieu of all other taxes and licenses...” PIFC asserts that any change to either of these provisions requires a 2/3 vote of the Legislature. However, the bill is currently keyed a majority vote bill.

PIFC has learned that Legislative Counsel has recently opined that the exaction does in fact constitute a tax. Furthermore, PIFC has learned that Legislative Counsel has opined that the bill avoids a 2/3 vote of the Legislature as a result of the fact that the bill amends the Political Reform Act of 1974. PIFC asserts that this measure represents a clear “end-run” around Proposition 13 which was

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passed by the voters and which holds that all tax increases must be approved by 2/3 vote of the Legislature.

Unconstitutional – Compelled Speech.

Under SB 1459, insurers would be forced to contribute an estimated \$10 million each year to the Insurance Commissioner Election Accountability (ICEA) Fund. This money would be used by candidates for the office of Insurance Commissioner who voluntarily choose to forego all campaign contributions and instead use only ICEA funds. The bill does not prohibit an insurer from passing on, in the form of a rate increase, the costs associated with the measure. However, PIFC asserts that even if insurance companies were allowed to pass on such an expense, compelling policyholders to contribute to the political campaign of candidates for the office of Insurance Commissioner is unconstitutional.

PIFC notes that all rates must be approved by the Insurance Commissioner. As such, it is not certain that insurers would be able to pass on this tax, in which case the tax would fall squarely on the individual companies. PIFC notes that not all insurance companies choose to contribute to political candidates. In fact, one PIFC member company has a long-standing corporate policy of not contributing to any political candidates. PIFC asserts that forcing an entity to do so violates an individual's right to free speech.

Intent Language.

The intent language of SB 1459 suggests that campaign contributions from insurance companies prohibit the Commissioner and the CDI staff from effectively regulating the insurance industry. PIFC finds these statements offensive to insurers, their policyholders, the Insurance Commissioner, and the entire CDI staff. The bill notes on one occasion that the provisions of the bill would eliminate a serious obstacle to "honest" insurance regulation. In another section, the bill notes that the connection between the influence of contributions of regulated entities and "ineffective" or "biased" regulatory oversight is well documented. PIFC asserts that such statements demean the work of the civil service employees of the CDI and the elected Insurance Commissioner, and that these statements unfairly single out the political contributions of those insurance companies who choose to exercise their first amendment right to participate in the political process.

For all of the reasons stated above, **PIFC is opposed to SB 1459 and urges your no vote on this measure.** If you have any questions, please do not hesitate to contact Michael Paiva at (916) 442-6646.

cc: Senator Simitian, Author
Erin Ryan, Senate Banking, Finance, and Insurance Committee
Tim Conaghan, Senate Republican Caucus
Cynthia Bryant, Deputy Legislative Secretary for the Governor
Kathleen Webb, Office of the Insurance Advisor
Senate Floor Analyses