

MEMORANDUM



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SAFECO
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Date: March 30, 2006

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

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

Re: SB 1492 (Speier) Automotive Body Repair: Insurance Claims
Amended: March 27, 2006
Senate Banking, Finance and Insurance Committee: April 5, 2006
PIFC Position: Oppose

The Personal Insurance Federation of California (PIFC), representing insurers who sell 44% of all private passenger auto liability and property damage in California, including State Farm, Farmers, Safeco, 21st Century, Progressive and NAMIC, **opposes SB 1492** by Senator Jackie Speier.

SB 1492 would permit an insurance claimant to secure three cost estimates from licensed auto body repair dealers of their choice. The average cost of these estimates would create a rebuttable presumption in court that the estimate is "reasonable." This is particularly difficult to understand considering the legal definition of a presumption:

*A rule of law that attaches **definite probative value** to specific facts or draws a particular inference as to the existence of one fact, not actually known, arising from its usual connection with other particular facts which are known or proved. The assumption or **taking for granted of the existence of a fact, permitted or required under the law as a self-evident result of human reason and experience.** An effect of an **evidentiary fact from which the trier of fact must find the existence of another fact unless and until evidence is introduced which will support a finding of its nonexistence.***

We believe that as currently written, there is no feasibility that the average cost of three estimates, from any three body shops chosen by the claimant, should rise to the level of "presumption." Furthermore, we question how the average of three estimates can be deemed by statute to be more credible in court than an insurance company's prevailing competitive price, which is derived from an extensive, scientific, and credible survey of scores of body shops in any given marketplace.

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In addition, SB 1492 raises the following serious issues and concerns:

- How would this presumption operate in situations where the claimant is bound by policy language to give the insurer the right to base the payment on a prevailing competitive price in the market place?
- There is no provision allowing an insurer to ask questions about the shops or their proposed repair technique. Would the body shops have to base the estimate on industry-accepted repair techniques? There is no requirement that the shops themselves be competitive with the rest of the auto repair industry in terms of price, equipment, technician training, or repair technique.
- There is no mechanism to control how the quotes are obtained and if they are accurate. For example, what happens when there is a non-damaged part included in the three estimates? Would this now be part of the average? How would pre-existing damage be treated? How do insurers determine what was included in the three repair quotes? Would insurers even be allowed to inspect the vehicle?
- The cost of repairs is likely to increase under this bill if there is no mechanism for cost control. Clearly, it would be the claimant's incentive to get the highest three bids in order to raise the "reasonable" rate. The bill creates very strong incentives for increased fraud without any built in checks and balances and would lead to higher costs for policyholders in the future.

Claimants who are unhappy with their offer of settlement have many options already available to them: arbitration (under most insurance policies if the claimant is an insured), small claims court, superior court, and complaint mechanisms through the Department of Insurance. The vast majority of claimants have little or no problem with the current auto repair process. Their cars get fixed. Their insurer pays the bill.

We are willing to continue to work with the author and the auto repair industry to address this issue. We suggest that a working group be created to review the issues, determine the problem, and move towards a solution.

For all of the reasons stated above, **PIFC is opposed to SB 1492 and urges your no vote on this measure.** If you have any questions, please do not hesitate to contact Michael Gunning at (916) 442-6646.

cc: Senator Speier, Author
Brian Perkins, 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