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## MEMORANDUM

**Date:** June 27, 2011

**To:** The Honorable Mike Feuer, Chair  
The Honorable Donald P. Wagner, Vice Chair  
Members, Assembly Judiciary Committee

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

**Re:** SB 459 (Corbett): Employment: independent contractors  
As Amended May 27, 2011

**Assembly Judiciary Committee – Hearing June 28, 2011**  
**PIFC Position: Oppose, unless amended**

The Personal Insurance Federation of California, 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, unless amended, SB 459 by Senator Corbett.**

Insurance agents and brokers have long been classified as independent contractors, with an extensive history of federal court cases (see e.g. *Nationwide v. Darden* 503 U.S. 318 (1992) and *Desimone v. Allstate*, 1999 WL 33226248 (N.D. Cal. Sept. 14, 1999)) and Internal Revenue Service (IRS) determinations that establish that this classification is proper. Agents and brokers are individuals that own, operate and manage their own businesses, receive 1099 forms from their contracted insurers, and are individually licensed by the California Department of Insurance. Each operates in conjunction with insurance companies, with that relationship clearly outlined in agency contracts.

This bill would subject insurance companies and agents/brokers to new administrative burdens and requirements that are unnecessary given the settled nature of independent contractors in the insurance industry. In addition to the costs associated with providing a form to each agent and broker, and maintaining specific records for two years, insurers are subject to criminal misdemeanor penalties and would subject the business to lawsuits – even if there is no

misclassification, and even where the business had a detailed written contract and well-established course of dealing with its independent contractors.

While we recognize that there may be certain situations where the proper classification of an individual could be difficult to discern, this is not the case in the insurance industry. As discussed above, the federal courts and the IRS have upheld the classification of insurance agents as independent contractors. For this reason, we are seeking language be put into the bill that would recognize the unique independent contractor relationship insurance companies have with their agents so as to provide them with an exception from the requirements of this bill. The language reads as follows:

*“This chapter shall not apply to persons licensed as an insurance agent under section 1621, a life licensee under section 1622, an insurance broker under section 1623, or an insurance solicitor under section 1624 of the Insurance Code, who are under a written contract with an insurer, a general agency, a managing general agent or production agency.”*

For the above reasons, **PIFC opposes, unless amended, SB 459** and urges your **“nay”** vote. If you have any questions regarding PIFC’s position, please contact Manolo P. Platin at (916) 442-6646.

cc: Senator Ellen Corbett, Author  
Kevin Baker, Assembly Judiciary Committee  
Mark Redmond, Assembly Republican Caucus  
Gareth Elliott, Secretary of Legislative Affairs, Office of the Governor  
Randall Ward, Director, Office of the Insurance Advisor