

MEMORANDUM



Date: April 11, 2007

To: The Honorable Mike Machado, Chair
Members, Senate Banking, Finance and Insurance Committee

From: Rex D. Frazier, President
Michael A. Gunning, Vice President
Michael A. Paiva, Senior Legislative Advocate
Ermelinda Ruiz, Legislative Advocate

Re: SB 536 (Simitian): Political Reform Act of 1974: Insurance Commissioner
Senate Banking, Finance and Insurance Committee Hearing:
April 18, 2007

PIFC Position: Oppose

The Personal Insurance Federation of California (PIFC), representing insurers who write over 50% of all personal lines insurance sold in California, including State Farm, Farmers, Safeco, 21st Century, Progressive, and NAMIC, **opposes Senate Bill 536** authored by Senator Simitian, which would allow Insurance Commissioner candidates to obtain funding for their campaigns from a fund consisting of a tax collected from insurance companies.

PIFC and its member companies contend that SB 536 is unconstitutional because it imposes a new tax on insurers and compels insurers and their policyholders to engage in political speech. In addition, PIFC objects to the intent language in the bill because it suggests that campaign contributions from insurance companies prohibit the Insurance Commissioner and the Department of Insurance staff from effectively regulating the insurance industry. Finally, statements in the intent language suggest that the exaction called for in the bill represents a fee when in fact the exaction is a tax.

If enacted, SB 536 would impose a new tax on insurers. The exaction specified in the bill is not imposed to provide a benefit to insurers or to regulate insurers, or remediate a societal problem caused by insurers. Therefore, PIFC contends that the exaction specified in the bill is a tax and conflicts with the California Constitution and the California Revenue and Taxation Code. The California Constitution, Article XIII, Section 28 (f) and the Revenue and Taxation Code, 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 as a majority vote bill.

Under SB 536, insurers would be forced to contribute millions of dollars 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 the costs associated

with the measure in the form of a rate increase. 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 would violate an individual's right to free speech.

The intent language in the bill suggests that campaign contributions from insurance companies would prohibit the Commissioner and the CDI staff from effectively regulating the insurance industry. The bill references on one occasion that the provisions of SB 536 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 contends 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 the above reasons, **PIFC opposes SB 536 (Simitian)** and urges your "no" vote. If you have any questions, please contact Ermelinda Ruiz at (916) 442-6646.

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

4. SB33-SBF14-07