



Personal Insurance Federation of California

California's Personal Lines Trade Association

REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

State Farm • Farmers • 21st Century Insurance Group • SAFECO • Progressive

STAFF

Dan Dunmoyer
President

Michael Gunning
Senior Legislative Advocate

Michael Paiva
Senior Legislative Advocate

Jerry Davies
Director of Communications

MEMORANDUM

Date: March 24, 2005

To: The Honorable Dave Jones, Chair
Members, Assembly Judiciary Committee

From: Dan C. Dunmoyer, President
Michael A. Gunning, Senior Legislative Advocate
Michael A. Paiva, Senior Legislative Advocate

Re: AB 1133 (Harman): Evidentiary Privileges
Assembly Judiciary Committee Hearing: April 5, 2005
PIFC Position: Support

The Personal Insurance Federation of California (PIFC), representing insurers who write over 50% of all personal lines insurance sold in California, **supports AB 1133** authored by Assembly Member Harman.

AB 1133 amends Section 912 of the California Evidence Code to require an intentional disclosure for waiver of a privilege. This change is especially warranted in light of the growing reliance on electronic communication, and the potential for accidental disclosures and unintentional waivers of privilege to occur through a mistaken or inadvertent computer keystroke.

The recommendation of the California Law Revision Commission, who is the sponsor, is "that this provision [regarding waiver of a privilege by disclosure] be revised to make clear that disclosure of a communication protected by one of the specified privileges waives the privilege only when the holder of the privilege voluntarily and intentionally makes the disclosure or voluntarily and intentionally permits another person to make the disclosure."

According to the commission, "this would codify the majority view in case law applying the provision to an inadvertent disclosure and would provide readily accessible guidance as courts, attorneys, and litigants attempt to assess how the provision applies to unauthorized disclosures resulting from use of new means of communication."

The proposed changes to Section 912, in addition to requiring intent to disclose for waiver of a privilege, provide that if a holder of a privilege makes or consents to disclosure of a significant part of a confidential communication, then the court may order disclosure of another part, but only to the extent necessary to prevent unfairness from partial disclosure.

Again, the proposed changes are appropriate, especially in this era of electronic communication when an inadvertent press of a single computer key might produce an unexpected disclosure and unwanted waiver of a valuable privilege.

For the reasons stated above, **PIFC supports AB 1133** by Assembly Member Harman. If you have any questions, please contact Michael A. Gunning at (916) 442-6646.

cc: Leora Gershenzon, Assembly Judiciary Committee
Mark Redmund, Assembly Republican Caucus
Richard Costigan, Legislative Secretary for the Governor
Cynthia Bryant, Deputy Legislative Secretary for the Governor
Scott Reid, Office of the Insurance Advisor