



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

MEMORANDUM

STAFF

Dan Dunmoyer
President

Rex D. Frazier
Vice President & General Counsel

Michael Gunning
Senior Legislative Advocate

Michael Paiva
Senior Legislative Advocate

Jerry Davies
Director of Communications

Date: April 20, 2005

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

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

Re: AB 1700 (Pavley): Secrecy Agreements: Public Danger
Assembly Judiciary Committee Hearing: April 26, 2005
PIFC Position: Oppose

The Personal Insurance Federation of California (PIFC), representing insurers that write over 50% of the personal lines insurance sold in California, **opposes AB 1700** by Assembly Member Pavley.

AB 1700 relates to confidential settlements and public disclosure of documents produced during litigation. We recognize the importance of making reliable information available that is necessary to warn the public about potential public dangers. However, a careful balance must be struck that also protects legitimate businesses from false or frivolous allegations, and protects valuable proprietary information from disclosure to competitors. PIFC opposes AB 1700 because it fails to strike that balance and will have an adverse impact on businesses, consumers, and the California economy by increasing litigation, discouraging settlements, and driving up the cost of many goods and services.

The bill will also have a detrimental impact on market competition, and infringe on the property rights and privacy rights of businesses and individuals. AB 1700 does this by providing for the disclosure of proprietary or otherwise private information that is appropriately protected from public disclosure under current California law.

PIFC opposes AB 1700 for the following reasons:

- ◆ AB 1700 creates a presumption that documents produced during the course of litigation are public, and significantly narrows the circumstances under which a protective order may be granted. This presumption flies in the face of existing discovery rules which are designed to encourage the sharing of information

among parties, subject to protective orders where appropriate, in order to facilitate resolution of disputes. Discovery rules liberally provide for the disclosure of any relevant information that might lead to the discovery of admissible evidence.

- ◆ As the U.S. Supreme Court recognized in *Seattle Times Co. v. Rhinehart* (1984) 467U.S.20, liberal discovery rules allow extensive intrusion into the affairs of both litigants and third parties and poses a significant potential for abuse and damage to reputation and privacy. The availability of protective orders, which the court in its discretion may grant for good cause shown, is an important mechanism for preventing discovery abuse.
- ◆ Proponents have argued that AB 1700 is needed to protect public health and safety. However, California courts are already required to take into account public health and safety when issuing protective orders. (See *Stadish v. Superior Court* (1995) 71 Cap.App. 4th 1130, 1145). Nevertheless, if the proponents' real concern is that a protective order might be issued by the court preventing a document that raises serious public health and safety concerns from being made public, there are other narrower alternatives that could be implemented to ensure that such information is not kept secret from the public. One such alternative that PIFC would support is to allow the parties to present a motion to the court to have any such documents turned over to the appropriate regulatory agency with authority for investigating and addressing any alleged public safety concern. Such an approach would be more narrowly tailored and provide a more appropriate alternative for addressing true "smoking gun" documents that raise real issues of public danger.

For all the reasons stated above, **PIFC urges your "No" vote on AB 1700.** If you have any questions regarding PIFC's position, please give Rex Frazier a call at 916-442-6646.

cc: Assembly Member Pavley, Author
Drew Liebert, Chief Counsel, Assembly Judiciary Committee
Mark Redmond, 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