



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

Diane Colborn
*Vice President of Legislative
& Regulatory Affairs*

Michael Gunning
Senior Legislative Advocate

Jerry Davies
Director of Communications

Date: April 23, 2004

To: The Honorable Ellen Corbett, Chair
Members, Assembly Judiciary Committee

From: Dan C. Dunmoyer, President
G. Diane Colborn, Vice President of Legislative and Regulatory Affairs
Michael A. Gunning, Senior Legislative Advocate

RE: AB 2689 (Houston): Attorneys Advertising: Construction Defect
Assembly Judiciary Committee Hearing: May 4, 2004
PIFC Position: Support

The Personal Insurance Federation of California (PIFC), which represents insurers who provide construction dispute resolution insurance to subcontractors throughout the state of California, **supports AB 2689** authored by Assembly Member Houston.

AB 2689 requires an advertisement by a lawyer or law firm that urges a person to take an action that may result in the filing of a claim for a residential construction dispute to disclose specific information. This information includes, but is not limited to, potential alternatives that are available to the person or entity to remedy the deficiency; statement as to who will pay for expert fees; and a number of other requirements that bring to light the potential impact that filing a construction dispute resolution claim may have on the value of the property or the costs associated to the individuals filing such a claim.

The construction dispute resolution process in California has fallen on its face as a result of a number of different court decisions and the subsequent applications of these decisions. Those insurers who provide indemnification for subcontractors of various residential construction have all but left the marketplace in California because of the impractical and exorbitant nature surrounding not only the payment of claims, but the defense of claims for construction defects. One of the disappointments in the construction dispute process is the misleading and undisclosed impact that consumers face when they enter into a construction dispute resolution process. Certainly, PIFC believes that any home that has any defect of substance should be repaired by the subcontractor or general contractor depending on which party is responsible. This being said, California leads the nation in the number of lawsuits filed for defect claims. Many, but not all, of the lawyers who pursue these claims do not properly disclose to the consumer the responsibilities and challenges that they face should they pursue such a claim. Many lawyers will suggest to residential homeowners that there is no risk associated with filing a claim for defect insurance. They state, "You don't pay me unless I get you money". They continue by stating, "There is no risk to you for filing this claim". Unfortunately, these are misleading communications to the consumer because upon filing a construction dispute claim, many times the value of their home will be negatively impacted. Furthermore, there may be costs or fees associated with filing of the claim that are not fully contained within the contingency fee; a family may be displaced as a result of

destructive testing that may result in making the home uninhabitable; and the defects that are found may be minor in nature and result in extended litigation that diminishes the value and quality or life of the homeowner without providing any appreciable value or improvement to the structure or to the dwelling.

For these reasons, PIFC believes that disclosure to consumers is well served in this environment and that by providing consumers with the opportunity to understand the full impact of their actions, they will make a more informed decision on how to proceed. We do not believe that this disclosure will discourage claims for true defects. We do believe that individuals who feel that there might be a “quick buck to make” by filing a claim and “no consequence to them” for doing so may rethink that process if in fact the defect in their home or negligible.

For the reasons stated above PIFC urges your support of this measure. If you have any questions, please contact Dan Dunmoyer at (916) 442-6646.

cc: Assembly Member Houston, Author
Kevin Baker, Assembly Judiciary Committee
Mark Redmond, Assembly Republican Caucus
Cynthia Bryant, Office of the Governor
Scott Reid, Office of the Insurance Advisor