

MEMORANDUM

Date: January 7, 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
Dan Chick, Senior Legislative Advocate

RE: AB 695 (Harman) Decedent's Estates: Posthumously Conceived
Children
Assembly Judiciary Committee Hearing: January 13, 2004
PIFC Position: Support, Note Concerns

The Personal Insurance Federation of California, representing insurers who write nearly 35% of all personal lines insurance sold in the state, including State Farm, Farmers Insurance, 21st Century, SAFECO, and Progressive Insurance Companies, **supports AB 695** by Assemblymember Harman.

AB 695 states that, for purposes of determining rights to property to be distributed upon the death of a decedent, a child of the decedent conceived after the death of the decedent would be deemed to have been born in the lifetime of the decedent if the child was born within two years of the decedent's death. In addition, the child or his or her representative must prove that the child was conceived using the decedent's genetic material.

Our concerns with the bill lie with the timing of the notice required by the Probate Code. Under normal circumstances, it's quite possible that death benefit proceeds could be paid well before any such notice is received.

Under the bill, the individual has up to six months after the death to provide the notice to the insurer. In a situation where the policy is beyond the contestable and suicide provisions, and the death certificate and W-9 forms are submitted promptly, the policy could have been paid long before the notice is ever received.

Section 249.7 of the Probate Code appears to require an insurer to wait for 6 months before making distribution in order to be protected against the claims of the posthumous child. An insurer should not have to wait the full 6 months in order to receive any type of protection against the claims of the posthumous child. In addition, the insurer should not have to pay interest on the proceeds as a delayed payment whether the insurer has to wait six months waiting for a notice or in a situation where the notice is given. Insurers should not be punished financially for something over which they have no control.

The author has stated his willingness to address these concerns as the bill moves forward. Currently, the laws in California are unclear on the inheritance rights of children conceived by posthumous parents and should be clarified. For this reason, **PIFC supports AB 695 and urges an "AYE" vote**. If you have any questions, please contact Dan Chick at (916) 442-6646.

cc: The Honorable Tom Harman, Author
Members, Assembly Judiciary Committee
Daneen Bennigson, Consultant, Assembly Judiciary Committee
Mark Redmond, Assembly Republican Caucus