



Personal Insurance Federation of California

California's Personal Lines Trade Association

REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

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FLOOR ALERT

Date: May 20, 2003
To: Members, California State Senate
From: Dan C. Dunmoyer, President,
G. Diane Colborn, Vice President of Legislative and Regulatory Affairs
Michael A. Gunning, Senior Legislative Advocate
Re: SB 122 (Escutia): Private Enforcement Actions
Senate Third Reading File: May 22, 2003
PIFC Position: Oppose

The Personal Insurance Federation of California **opposes SB 122 by Senator Escutia**. This measure purports to “reform” the Unfair Competition Law in a manner that would reduce the number of frivolous lawsuits brought under Section 17200 of the Business and Professions Code. However, the bill would likely have just the opposite effect, *increasing* such shakedown suits by creating new incentives for the filing of Section 17200 actions. The bill creates these new incentives by allowing attorneys who file these suits to collect payments for “disgorgement” of earnings connected with the challenged practice. Such payments could be demanded even in cases where there has been no evidence of economic harm to any identifiable consumer. Currently, under the existing law, an attorney who is bringing a representative action on behalf of the public at large, and without an identified client or any evidence of economic harm to anyone, is limited to obtaining an injunction and recovering attorneys fees. SB 122 would greatly expand the incentives for bringing such actions by allowing “disgorgement” as an additional remedy. The bill provides that any disgorgement in excess of restitution shall be distributed as a fluid recovery or cy pres award, which means that the funds could be paid into a pool for distribution to groups or law firms involved in lawsuits or legislation on issues related to the lawsuit.

Several other substantive proposals were introduced this year in the Legislature that would produce real reform of Section 17200 actions, including AB 69(Correa), AB 102(Pacheco), and SB 912(Ackerman). Unfortunately, these bills were all defeated in the Judiciary Committees of the respective houses of the Legislature.

Substantive reform of Section 17200 is clearly needed to address the abuses of that law, highlighted most recently by the rash of lawsuits filed against businesses throughout the state for minor technical alleged violations. Meaningful reforms would address such issues as standing, actual harm, and res judicata. However, SB 122 is not substantive reform and would only serve to increase rather than decrease abuse and overreaching by plaintiff’s attorneys under Section 17200. For all these reasons, PIFC urges a “no” vote on SB 122.

cc: Senator Escutia, Author
Ann Richardson, Deputy Legislative Secretary, Governor’s Office
Senate Republican Caucus
Senate Floor Analyses