



Personal Insurance Federation of California

California's Personal Lines Trade Association

REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

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Date: August 19, 2003

To: Members of the California State Assembly

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: SB 122 (Escutia): Unfair Competition Law §17200
Assembly Third Reading File
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.

Do not be fooled. Although the July 1st amendments deleted the word “disgorgement,” the clear and intentional effect of the bill is to allow disgorgement as an additional remedy under §17200. The bill accomplishes this by incorporating the legal definition of disgorgement in Section 2 of the bill.

Currently, under 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.

A second provision in the bill could also lead to further §17200 abuses. Proposed Section 17204.8(c) would change the burden of proof in cases involving multiple defendants, effectively allowing an attorney to sue an entire industry and then require each defendant to separately prove their innocence. This provision would also make it extremely difficult to dismiss a §17200 case prior to trial.

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 unscrupulous attorneys under Section 17200. For all these reasons, PIFC urges a “no” vote on SB 122.

cc: Senator Escutia, Author
Ann Richardson, Office of the Governor
Richard Figueroa, Office of the Governor
Saskia Kim, Assembly Judiciary Committee
Mark Redmond, Assembly Republican Caucus