



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

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Date: April 22, 2004

To: The Honorable Martha Escutia, Chair
Members, Senate Judiciary Committee

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

RE: SB 1451 (Figueroa): Privacy Guarantees: Contracts
Senate Judiciary Committee Hearing: April 27, 2004
PIFC Position: Oppose

The Personal Insurance Federation of California, representing insurers who write nearly 45% of the personal insurance policies sold in California, including State Farm, Farmers, SAFECO, 21st Century Insurance Group, and Progressive Insurance Company, **opposes SB 1451** by Senator Figueroa.

SB 1451 would require the rewriting of virtually every contract of every company doing business in California that requires the sharing of any personal information for any purpose whatsoever with service providers or contractors located outside of California. The bill, while perhaps well intended, has numerous legal and workability problems. Most importantly, the bill would create a strong disincentive for any company thinking about participating in the California economy to enter, expand or continue doing business in this state. PIFC's concerns with this bill include the following:

- ◆ SB 1451 would impair the right to contract and create burdens on interstate commerce. Provisions of the bill may be unconstitutional and preempted by federal law.
- ◆ The bill attempts to assert extra-territorial jurisdiction on businesses domiciled outside California and conducting business in other states, as it does not appear to be limited to transactions occurring in California. The literal language would appear to apply to contracts of any company that does even a small amount of business in California and shares any personal information with anyone outside of California for any purpose, in which case it would require them to amend all of their contracts.
- ◆ SB 1451 requires all contracts and subcontracts affected by the bill to be amended to "guarantee" that every person, office, contractor, subcontractor, employee, independent contractor or other entity with access to consumer personal or confidential information "shall not disclose that information." This provision fails to recognize the need to transfer information for transactional purposes, and for such purposes as processing claims, verifying credit, communicating with governmental entities and nongovernmental agencies for law enforcement purposes, sharing

information with insurance support organizations such as the National Insurance Crime Bureau or the Insurance Services Organization, and for a multitude of other legitimate business purposes recognized as exemptions under existing federal and state privacy laws.

- ◆ SB 1451 requires that all such contracts be amended to guarantee that everyone with access to the information will treat it with “the utmost care and respect” and solely for the performance of duties and obligations set out in the contract. The phrase “utmost care and respect” is vague and subjective, and will result in court litigation as to its meaning. This standard also conflicts with federal regulations already in place that establish a reasonable duty of care based on the size of the organization, the sensitivity of the information, and the likelihood of harm. Both of the provisions in this subsection are also unnecessary, since state law already requires that such information be protected and restricts its reuse.

Amending the contracts will be extremely costly for businesses and will produce little if any benefit to consumers, since existing law already requires that written agreements with third parties provide that the financial institution that receives the nonpublic personal information must maintain the confidentiality of the information and is prohibited from disclosing or using the information other than to carry out the joint offering or servicing of a financial product or financial service that is the subject of the written agreement. (See, for example, California Financial Code Section 4053(b) and 4054.6, and California Code of Regulations, Title 10, Section 2689.24, requiring that all insurance service contracts include a written requirement that the third party maintain the confidentiality of personal information.)

Existing state and federal law, including regulations adopted by the California Department of insurance (Title 10, CCR, Sections 2689.12-19) require all insurance licensees to establish information security programs that ensure the security and confidentiality of customer information and protect it from both internal and external threats. Company information security programs are also subject to audit by the insurance commissioner. These and other state and federal requirements make the additional restrictions proposed under SB 1451 unnecessary.

- ◆ SB 1451 provides that the primary contractor shall be strictly liable for any action of its contractors or subcontractors, subsidiaries, affiliates, employees or independent contractors that violate the confidentiality provisions of federal or California law. This provision, which makes an individual strictly liable for the actions of someone else without regard to whether they themselves have committed any negligence raises serious due process concerns. The standard of strict liability would apply even to the conduct of affiliates over which the contractor may have no control.

Finally, SB 1451 could have many other unintended and negative consequences that cannot be fully understood without much more extensive analysis and study.

For all these reasons, we urge a **no vote on SB 1451** when it is heard in committee. If you have any questions regarding PIFC’s position, please contact Diane Colborn at (916) 442-6646.

cc: Senator Figueroa, Author
Michael Yang, Senate Judiciary Committee
Mike Petersen, Senate Republican Caucus
Cynthia Bryant, Office of the Governor
Scott Reid, Office of the Insurance Advisor