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 • NAMIC

MEMORANDUM

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Date: May 20, 2005

To: The Honorable Carole Migden, Chair
Members, Senate Appropriations Committee

From: Dan C. Dunmoyer, President
Rex D. Frazier, Vice President & General Counsel
Michael A. Gunning, Senior Legislative Advocate
Michael A. Paiva, Senior Legislative Advocate

Re: SB 150 (Escutia): Insurance: Adverse Underwriting Decisions
As Amended May 4, 2005
Senate Appropriations Committee Hearing: May 23, 2005
PIFC Position: Oppose

The Personal Insurance Federation of California (PIFC), representing insurers who write over 50% of all personal lines insurance sold in California, including State Farm, Farmers, Safeco, 21st Century, Progressive, and NAMIC, **opposes SB 150** authored by Senator Escutia.

PIFC is opposed to SB 150 for the following reasons:

Section 1: Under current California law, an insurance company, upon the request of the policyholder or applicant for insurance, is obligated to provide specific information regarding an adverse underwriting action that would negatively impact the consumer. SB 150 would require insurers to provide this information regardless of whether a policyholder or applicant has requested it.

When there is an issue regarding an adverse underwriting action, a consumer can and often does immediately contact his or her agent or company with questions and concerns. Person-to-person communication about problems is much more effective than reducing everything to writing. Nonetheless, if a consumer does desire to receive information about an adverse action in writing, he or she already has statutory rights to demand such a written notice. The vast majority of consumers do not need, want or request information in writing about adverse actions and would simply ignore the written notice mandated by SB 150. This mandate is too costly to merit the limited benefit.

Section 2: This section prohibits automobile and homeowners insurers from basing an adverse underwriting decision on information received from an insurance support organization unless the information received contains specified pieces of information, including a description of the "specific cause of the loss" and the "property damaged or the liability incurred." Current practice for the industry is to provide some of the required

information to data collectors, but certainly not narrative descriptions as required by SB 150. As such, SB 150 erects huge barriers to the use of loss history databases and requires insurers to seek information that is not even part of their underwriting process. A majority of the insurance industry relies upon loss history databases to aid in underwriting and SB 150 would severely disrupt the industry's ability to service the very consumers SB 150 purportedly would aid.

Further, we do not see any benefit to mandate use of specific information in the underwriting process. **The information that is collected and utilized for underwriting purposes for consumers is already protected by the Fair Credit Reporting Act (FCRA) and is subject to review and challenge by consumers if in fact there is a dispute on the veracity of the information.** Under federal law, if an insurer takes an adverse action based upon information received by a third-party vendor, then the consumer must be notified of this fact and has a right to challenge and contest this information. Under federal law, a consumer also is required to receive a response within 45 days regarding any challenge of accuracy of this information. Requiring additional burdens upon insurers does nothing to improve the underlying system of insurance or provide fairness or balance for consumers. The costs associated with this change compared to any minimal benefit are not justified.

Section 3: Going from bad to worse, SB 150 prohibits an insurer from submitting any information to an insurance-support organization with respect to automobile or homeowners' insurance claims unless the insurer submits all of the required data elements described in Section 2 (which are not even needed in the underwriting process). This is particularly troubling because SB 150 would require insurers to begin submitting narrative descriptions of specific causes of loss, which sometimes could include personal or embarrassing information. For instance, one of our member companies received a claim arising from an insured's use of a car while engaged in sexual activity. Should an insurance company specifically describe the nature of such a claim, specifically point to the involved individual and disclose the information to a loss history database available to all insurers? To say the least, this is contrary to the Legislature's general trend toward restricting financial institutions from sharing personal information.

Moreover, because an insurer would never be certain it had completely complied with SB 150's requirement to disclose specifics of a loss, each insurer would naturally over-disclose the specifics to ensure compliance with SB 150. This is because the consequence of sharing information in violation of SB 150 would be to violate a consumer's privacy rights under the California Insurance Code. Unintended violation of privacy rights is bad enough, but when the mandated information disclosure is not even desired by the insurance company and would not be used by others in the underwriting process, SB 150 goes too far.

Again, we do not believe any true benefit is received by the effort, energy, and cost associated with requiring insurers to submit information that is not used in the underwriting process. It certainly is not acceptable to require unneeded information disclosure that disclosing parties are not even certain will comply with California privacy laws.

Give new laws a chance to succeed before adding more: In 2003, Governor Davis signed legislation to mandate additional disclosures on policies. AB 1181 by Assembly Member Ridley-Thomas (Chapter 360 of the 2003 Statutes) and AB 1191 by Assembly Member Wiggins (Chapter 571 of the 2003 Statutes) will provide additional information to auto and homeowners' insurance policyholders but have not been given time to go into effect or succeed. We feel it is prudent to wait for these statutes to take an effect before trying to fix a problem that may not need repair.

In conclusion, SB 150 creates an unnecessary and costly mandate on insurers that provides little or no benefit beyond existing law, and for this reason **PIFC opposes SB 150** (Escutia). If you have any questions, please contact Rex Frazier at (916) 442-6646.

cc: Senator Escutia, Author
Maureen Ortiz, Senate Appropriations Committee
Doug Carlile, Senate Republican Caucus
Cynthia Bryant, Deputy Legislative Secretary for the Governor
Scott Reid, Office of the Insurance Advisor
Senate Floor Analyses

4.SB150-SApps