



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: June 5, 2003

To: Assemblymember Patricia Wiggins, Chair
Members, Assembly Banking and Finance Committee

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

Re: SB 1 (Speier): Financial Privacy
Assembly Banking and Finance Committee: June 9, 2003
PIFC Position: Oppose Unless Amended

The Personal Insurance Federation of California, representing insurers writing nearly 35% of the personal lines insurance sold in California, opposes SB 1 (Speier) unless amended. SB 1 would impose new restrictions on the sharing of information by financial institutions, including insurers, banks, and securities firms. The bill would also mandate new statutory privacy notices to be sent to consumers, which would be in addition to the privacy notices already required under existing federal and state laws.

Increased Costs and Economic Impact

The significant compliance costs mandated by SB 1 will increase the prices of goods and services for consumers. In addition, to the extent that the measure successfully impedes the flow of commerce and decreases the purchase of products and services in California, SB 1 will have a negative impact on California's struggling economy and decrease General Fund Tax Revenues accordingly.

Insurers Have A Strong Record in California of Protecting Consumer Privacy

PIFC's member companies support the right of privacy and have an excellent record of protecting their customers' privacy. Insurers do not sell personal information to third parties, and carefully guard their customer lists from competitors.

Since 1982, insurers in California have been operating under a state privacy law known as the Insurance Information and Privacy Protection Act. Among other things, the Act prohibits insurers from disclosing personal or privileged information about an individual, collected or received in connection with an insurance transaction, without the written authorization of the individual, except as specifically allowed under the statute. The Act also requires insurers to provide privacy notices to all applicants and policyholders, and prohibits insurers from disclosing medical information without consent. The Department of Insurance testified before the Legislature this year that in the 20+ years since enactment of the insurance privacy law, the Department has not received any consumer complaints, or found any violations, regarding insurer compliance with the Act. Recently, the insurance commissioner adopted new regulations that clarify some of the requirements of the Act, and harmonize the provisions of the Act with the federal Gramm-Leach-Bliley Act. Insurers have revised their privacy notices to comply with the new regulations.

New Privacy Laws Should Provide Necessary and Useful Privacy Protection without Impairing Business or Harming the State's Economy

Since 1999, the California Legislature has passed over 40 different bills strengthening consumer privacy protection. These measures include laws to protect against identity theft, establish do-not-call lists, restrict disclosure of social security numbers, and address concerns related to on-line privacy. In considering what additional protections are needed, the Legislature should identify the specific problems that the legislation is intended to address, and then narrowly tailor the law to address those concerns. Such legislation should encourage responsible information practices while minimizing unnecessary additional costs to business – costs which ultimately are born by consumers in the price they pay for goods and services.

The Personal Insurance Federation has several core concerns with SB 1, which could adversely impact consumers and affect the ability of companies to do business if not corrected. These concerns include:

- ◆ Affiliates
SB 1 restricts the sharing of information among affiliates offering different product lines that are part of the same family group of companies. This restriction interferes with the ability of companies to offer customers an integrated package of products and services. Insurance companies are frequently organized as groups of affiliated companies, operating under the same parent company, and often operating under the same brand name or through a common point of contact, such as an insurance agent. The consumer benefits from the ability of insurance company affiliates to communicate and share customer information include the convenience of one-stop-shopping, timely delivery of services that meet a consumer's overall financial needs, discounts, and other cost savings.
- ◆ Safe Harbor Notices
SB 1 strives to create a simple, easy to read customer information sharing notice and selection form. While this is a worthy goal, without the ability to modify the mandatory forms headings and selection boxes, insurers and other financial institutions will be forced to provide multiple, often conflicting, notices to consumers to comply with the myriad of privacy laws and regulations adopted by federal and state governmental bodies. It would be less confusing to California consumers if companies were allowed to incorporate California selections within their existing privacy mailings or choose to provide the safe harbor notice. Any financial institution's combined notice should be held to broad parameters for clarity and readability and the financial institution's functional regulator should be empowered to enforce compliance.

Instead, SB 1, as amended on June 4, 2003, practically requires the use of statutory form because it prohibits any modification of the headings or selection boxes. The company is allowed only to alter the short descriptive paragraph that explains the mandatory selection box narrative. Because the forms mandatory headings and selection boxes score at a 34.6 on the Flesch test (12th grade level), the SB 1 notice language does not satisfy the California Department of Insurance regulatory privacy notice minimum Flesch score of 50. Combining the selection boxes with the federal privacy notice is also impractical and will likely result in consumers being asked to make contradictory and confusing choices.

- ◆ Postage Paid Requirement
SB 1 mandates companies with assets in excess of 25 million dollars (\$25,000,000) provide a postage paid return envelope. Many companies already provide efficient, instantaneous toll-free telephone numbers for the consumers' use in making opt-out or opt-in selections. Although toll-free telephone numbers would be permitted, companies would be forced to provide postage prepaid envelopes and are unlikely to cost justify offering more convenient alternative means of response.

◆ Insurance Agents and Brokers

Although SB 1 includes language partially exempting insurance agents, the exemption is unclear in that it does not specifically allow companies to share information with their agents. SB 1 should be amended to clarify that information may flow from the company to the agent or broker and vice versa. This two-way flow of information is necessary in order to fully service customer needs, and should be permitted whether the agent/broker is an employee, independent agent, or has an exclusive contractual relationship with one company group.

◆ Enforcement

SB 1 currently allows for enforcement by both the Attorney General and the functional regulator, which in the case of insurers is the elected Insurance Commissioner. In addition, although SB 1 does not expressly create a new private cause of action, private parties could bring enforcement actions under Section 17200 of the Business and Professions Code. The potential for Section 17200 actions is of grave concern to insurers, especially in light of the complexity of SB 1 and the potential for technical, unintended violations. We can envision a rash of lawsuits against financial institutions under SB 1, alleging that the sharing of information for transactional or operational purposes was not absolutely “necessary” and therefore a violation of the law. This concern has been heightened with the recent spotlight on abuse of Section 17200 by law firms targeting thousands of small businesses in California. PIFC recommends that enforcement of financial privacy legislation be exclusively vested in the functional regulator as the sole enforcement mechanism.

◆ Inseverability

As a matter of fundamental fairness and to ensure no one sector of the financial services industry achieves a competitive advantage over the others, should all or a portion of the enhanced privacy restrictions of SB 1 be deemed unconstitutional, invalid or pre-empted as to one industry, those provisions should also be invalidated as to the other sectors of the industry.

PIFC has other technical concerns with SB 1, which we would be glad to discuss with the Committee if desired. Thank you for your consideration of our concerns. If you have any questions regarding PIFC’s position, please do not hesitate to contact Dan Dunmoyer or Diane Colborn at (916) 442-6646.

cc: Honorable Jackie Speier, Author
Ann Richardson, Deputy Legislative Secretary, Governor’s Office
Margaret Gladstein, Assembly Banking and Finance Committee
Peter Renevitz, Assembly Republican Caucus