



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

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MEMORANDUM

Date: April 1, 2005

To: The Honorable Jackie Speier, Chair
Members, Senate Banking, Finance and Insurance Committee

From: Dan C. Dunmoyer, President
Michael A. Gunning, Senior Legislative Advocate
Michael A. Paiva, Senior Legislative Advocate

Re: SB 2 (Speier): Homeowners' Insurance: Valuation
Senate Insurance Committee Hearing: April 6, 2005
PIFC Position: Oppose Unless Amended

The Personal Insurance Federation of California (PIFC), representing insurers who write 50% of all homeowners' insurance sold in California, **opposes SB 2 authored by Senator Speier unless it is amended.**

SB 2 would make a number of substantive changes to the way California insurance companies handle the adjusting and managing of claims following major fires and catastrophic losses. **PIFC is opposed to a number of sections in this measure unless they are amended to address the substantial costs that they will add to millions of customers** that our member companies serve. Below is a more detailed analysis of our concerns.

Section 2 prohibits an insurance company from submitting a report of a claim filed under a fire/homeowners' insurance policy to any insurance-support organization unless it also provides every customer a copy of the report. PIFC believes that this mandate will add unnecessary costs to the homeowners' insurance system, especially since consumers are already protected in the event that an adverse underwriting decision is made from the use of an insurance support organization database.

Under the Fair Credit Reporting Act if an insurer makes an adverse decision based on the use of an insurance-support organization's information, the consumer is afforded the opportunity to review the information used and to have the information corrected if in fact there is an error. In discussions with some of the leading insurance-support organizations, they claim there are approximately 7 complaints registered for every 10,000 reports provided to consumers. Less than 4 of these complaints result in actual changes to the information where errors do occur. **Because of the small number of complaints associated with the use of insurance-support organization data, as well as the guarantee under federal law for the right of the consumer to correct this information in a timely manner (45 days or less), we believe that the additional cost associated with Section 2 is unmerited.**

Section 3 makes a number of changes to the broker and agent licensing requirements including enhanced curriculum and instruction for fire and casualty agents. PIFC members are supportive of enhanced education of fire and casualty broker and agents but believe that this measure provides unnecessary burdens and complexities for both new and existing agents.

PIFC believes that companies should be provided the opportunity to develop curriculum that addresses the proper education and training of agents in the proper methods of estimating value of structures and that this should be done within the current curriculum for both new and continuing education programs for agents. By allowing companies to develop and provide this training, the training will be consistent with the processes and tools used by that particular company to estimate replacement costs. Although there is justification for being concerned about the proper training of agents for valuation of residential structures, there are also other areas which may present even greater risk for consumers if the agent does not provide adequate information to the consumer. This would include adequate liability coverage in the event that a homeowner is sued for activities that transpire on their property. In this scenario, consumers could not only lose their home but also all of their assets if they do not have adequate liability coverage.

It is our hope that this section can be amended to allow for clarification that companies will have the ability to establish educational programs that address the issues of proper valuation of property within the existing educational requirements of agents and brokers. The CDI would approve this curriculum and then this instruction would be provided within the existing educational requirements of agents and brokers. With that clarification, PIFC would support this section.

Section 4 requires that an insurer shall provide fair market payment to an insured if they take it upon themselves to remove debris from their property. Although one organization in the San Diego area made the noble effort of assisting consumers in post-disaster debris removal, PIFC believes that there are public policy and safety concerns with this subdivision. It is often unwise for untrained individuals to enter into disaster areas and attempt to remove debris because they may sustain substantial bodily injury.

All of our member companies provide debris removal coverage and believe that it is best that individuals not be encouraged to come in to clear property. With that charitable act, comes additional liability and exposure to workers' compensation losses which may over-shadow any financial gains received by the consumer associated with this debris removal. **Since debris removal coverage is provided and there are trained professionals who have workers' compensation and liability coverage as well as large equipment to remove the debris, we prefer not to encourage this gracious post disaster activity because of the potential for great bodily harm.** If it is the wisdom of the legislature to encourage such philanthropy we would urge that insurers not be held liable for injuries or damages sustained when volunteers clear debris from a disaster sight

Section 4 of the measure also precludes an insurer from placing a time limit of less than 24 months for additional living expense (ALE) for an individual who has been dislocated following a major disaster. Although a number of our members have voluntarily provided 24 months of additional living expense coverage following the recent firestorms there is public policy merit in requiring some consumer responsibility during this 24 month time period. Specifically, is it fair to require an insurer to pay for additional months if the homeowner refuses to determine whether or not they wish to rebuild their home within the first or second year? Second, is it fair to require an insurer to pay for ALE if the homeowner decides to rebuild a substantially larger home (which has occurred on a number of occasions after the 2003 Southern California fires) and this requires additional months of approval from local planning commissions?

We have grave concerns with the provisions contained in Section 4, subsection c, subdivision 2 which requires an insurer to pay full policy limits for the loss of personal property in the event that a home is involved in a Governor declared disaster. PIFC members are very sympathetic to the great challenges associated with a consumer fully determining the loss of contents in a total loss situation. However, the solution provided for in SB 2 will add substantial cost to the overall system of insurance in California and this cost will be borne by millions of individuals who are highly unlikely to suffer a total loss in a major wildfire.

Insurers are concerned about the trauma and challenges associated with the contents loss adjustment process and for that reason provide inventory specialists, buying services, expert reconfiguration adjustors, and other expertise to assist in this adjustment process. This measure would obviously provide greater ease to consumers who have a number of valuable contents and a house in which every room is substantially filled. Unfortunately, this section would also provide a windfall to individuals who have empty rooms or contents of limited replacement value. As is the case with the Southern California fires, our members have policyholders who had contents in excess of their contents coverage and individuals who had contents substantially less than their coverages. **In some cases individuals submitted claims for contents in amounts \$800,000 less than their contents coverage.** The effect of this amendment would allow individuals who do not have very many contents to receive hundreds of thousands of dollars in coverage in excess of their sustained loss. This section would also allow individuals who have been afforded some time to secure trucks or rent moving vans to unload a substantial amount of their furniture and still be able to receive full payment for their furnishings even though they have retained them in storage.

Finally, this provision will also result in various tax challenges for these consumers because coverages paid in excess of actual losses are viewed as gains and will be taxed. **For one of our members, on average consumers would have received \$13,000 more in contents pay-outs than their actual loss in the most recent fire disasters if this section had been in effect.** On the other hand if individuals have contents losses in excess of their coverage, they will still be required to provide full documentation of their contents to the IRS in order to properly deduct their losses that exceed the coverages provided by insurance. Although we realize that this process can be very traumatic and time consuming this is an essential process to ensure that the insurance mechanism can operate fairly and affordably.

Section 5 states that no insurer or insurance agent or broker may use a computer software product for the purpose of estimating costs for replacing a home unless it has been approved by the Insurance Commissioner. We believe that this requirement to obtain approval from the CDI will result in unintended and damaging activities.

Specifically, we are not certain that the CDI currently has the expertise associated with reviewing and developing these models. Second, if they are to obtain the expertise and they make a determination that a model is no longer an acceptable tool for underwriting purposes, then **a company which has developed an entire rating and underwriting structure (in some cases pre-approved by the Insurance Commissioner) would be left with only one decision if the vendor's software is no longer acceptable -- to shut down the sale of all homeowners' business in California** until a new vendor can be approved.

Finally, PIFC believes that this section may have the unintended consequence of discouraging the use of valuation tools. Valuation tools have proven very helpful to insurers in providing useful estimates to their customers to help the customers select the proper coverages. If an insurer knew that this valuation tool could be disapproved in one day and dislocate an insurer's entire homeowners business the insurer may elect not to use these tools resulting in lengthy delays and frustration for consumers at the time of buying a home and attempting to close their escrow in a timely manner.

Section 6 requires an insurer to provide a homeowner following a loss under their policy a list of items the insurer believes may be covered under the policy for “alternative living expenses”. The purpose of this is to give consumers a basic idea of the traditional items that are paid for under this coverage. The second part of subsection b requires the insurer to provide a copy of the entire insurance policy within 15 working days. We believe the first section of this subsection is redundant with the requirement contained in the second section. Insurers cut additional living expense checks and in doing so provide resources for the consumer until they can find a more permanent but still temporary residence. Because the insurance policy will provide the consumer with information regarding their coverages, we believe that providing an additional disclosure is duplicative. The purpose of this coverage is to allow people to live in a manner similar to what they are accustomed to before the fire; not to provide them a lesser or greater living situation. We believe that providing a copy of the policy is sufficient for assisting the consumer in making the claim.

As it relates specifically to the requirement to provide a copy of the policy within 15 working days of the date that the insurer receives notice of the claim, although we support the ability for a consumer to receive a copy of the policy, we request this time be extended to 30 days for a total loss and 60 days for a total loss after a Governor or federally declared disaster. As we recently witnessed by the Southern California fires, close to 20,000 policyholders made claims following the fires. Requiring insurers to provide a full copy of all endorsements to all policyholders in the proposed short time frame would be very difficult especially if some of the facilities used to process copies of the policy are damaged or destroyed or if in fact there are additional complications associated with the major disaster. In addition, this request should be documented in some kind of writing, so both parties are clear when the time during which to provide the policy begins. With a requirement that the request be in writing and **with a change in the time frame to provide a copy of the policy to consumers involved in a total loss from 15 to 30 days for an individual loss and 15 to 60 days for a Governor declared disaster, we would be supportive of this requirement that homeowners be provided a copy of their insurance policy.**

Section 7 though 11 makes various changes to the existing post disaster mediation program. PIFC members are supportive of the removal of the sunset on the mediation program for both the homeowners’ and earthquake insurance program. After a quick review, **we have only one technical concern with the amendments made to this section that remove the ability for the Insurance Commissioner to disallow mediation where the Commissioner finds that the complaint is frivolous or the dispute turns on a question of major insurance coverage or purely legal interpretation or where it involves a dispute with an agent or broker.** Deletions of these sections found on page 8, line 15-31 should be reinserted into the overall program to ensure that the program can be effectively used. We do believe that the mediation program has proven to be a useful tool in a number of situations after both the Northridge earthquake and the Southern California fires and support the concept.

For the reasons stated above, **PIFC opposes SB 2** (Speier) unless the concerns raised above are addressed through amendments to the bill. If you have any questions regarding our position, please contact Dan Dunmoyer at (916) 442-6646.

cc: Brian Perkins, Senate Banking, Finance, and Insurance Committee
Tim Conaghan, Senate Republican Caucus
Senate Floor Analyses
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