



# 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

**Date:** April 16, 2003

**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 Gunning, Senior Legislative Advocate

**Re:** SB 434 (Escutia): State Departments: Investigations  
Senate Judiciary Committee Hearing: April 22, 2003  
PIFC Position: **Oppose Unless Amended**

The Personal Insurance Federation of California, representing insurers selling close to 35% of the personal lines insurance sold in this state, **opposes unless amended SB 434 by Senator Escutia**. This measure makes numerous changes to provisions of the Corporations and Government Codes regarding state agency investigations and inspections, including provisions relating to the disclosure of documents. Existing law authorizes the head of a state department, in connection with investigations of an unlawful activity, to inspect books and records and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony. This bill would provide that the department head may also *copy* these books and records as well as other specified materials and issue a subpoena for the production of any other writing.

PIFC is particularly concerned with the proposed changes to Government Code Sections 11181 through 11188. Section 11181 currently authorizes the regulatory agency to inspect documents and records. SB 434 would amend that section to also require that the agency be permitted to make copies of the documents. PIFC opposes this proposed change because it could be used to force companies to permit a governmental agency to make copies of proprietary documents containing trade secrets, or copies of other privileged documents. Although Sections 11180.5 and 11183 speak to the maintenance of confidentiality of the documents, there is no guarantee that agency staff will comply with those requirements, and insurers have had negative experiences in the past with agency staff disclosing confidential, proprietary documents.

It is also unclear what recourse a company would have if it objects to the copying of confidential documents. Although Section 11187 provides that if an objection is made to copying of papers the validity of the objection shall be determined in a proceeding brought under that section by the department to compel compliance, Section 11188 does *not* make it clear that the court can uphold an objection to prevent copying, since it states that if the court determines that the subpoena was regularly issued, or the interrogatories regularly promulgated, the court "shall" enter an order that the person permit copying of the records.

We are also analyzing the extent to which any of the Corporations Code provisions apply to insurers. If so, the proposed changes to these sections may present other problems for insurers.

Thank you for your consideration of our views. If you have any questions regarding our position, please call Diane Colborn at (916) 442-6646.

cc: Ann Richardson, Office of the Governor  
Michael Yang, Senate Judiciary Committee  
Senate Republican Caucus  
Senate Floor Analyses

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