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

STAFF
Dan Dunmoyer
President
Michael Gunning
Senior Legislative Advocate
Michael Paiva
Senior Legislative Advocate
Jerry Davies
Director of Communications

MEMORANDUM

Date: March 30, 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 706 (Ortiz): Insurance Commissioner
Senate Banking, Finance and Insurance Committee
PIFC Position: Oppose

The Personal Insurance Federation of California (PIFC), which represents insurers who write over 50% of all personal lines of insurance in California, **opposes SB 706,** authored by Senator Ortiz.

The bill grants the Insurance Commissioner unlimited powers to intervene in the affairs of insurers, distorts the presumption of innocence, allows the Commissioner to impose fines prior to issuing a cease and desist order, and ignores the fact that insurers are capable of policing bad actors.

Unlimited Powers. In Section 1 of the bill, the Commissioner is given the authority to remove an insurer employee for an act that the Commissioner alone is allowed to deem "an act of misconduct." Included in this list of bad acts is an act that may be prosecuted." (page 4, line 9, emphasis added). Section 2 of the bill extends this broad power to actions against licensed producers.

Section 1 also grants authority for the Commissioner to remove an employee for an act that the Commissioner determines has "caused financial loss or other injury" to, among others, a "policyholder." PIFC notes that merely denying a claim causes financial loss and that surcharging a premium causes a financial loss.

PIFC asserts that taken together, these sections give the Commissioner the authority to act as judge, jury, and regulator. PIFC asserts that the Commissioner has sufficient powers to take action against bad actors and that this measure, as drafted, is overly broad.

Guilty until proven innocent? In several instances, the proposed language grants authority to the Commissioner to take drastic action against individuals who "may" have done something wrong. Section 1 and Section 2 of the bill grant the Commissioner the

980 Ninth Street, Suite 2030 Sacramento, CA 95814
Phone (916) 442-6646 • Fax (916) 446-9548 • e-mail: pifc@pifc.org • Website: www.pifc.org

right to issue an order to remove an insurer's employee for committing a single act that the Commissioner determines "may" be an act for which the individual "may" be prosecuted.

PIFC raises two concerns with this provision. First, the proposed language dramatically expands the Commissioner's powers by allowing him/her to remove an individual from their place of employment after having been accused of committing just one bad act. Under existing law, the Commissioner can only take such drastic action if the individual has engaged in "repeated acts" of dishonesty. Second, the Commissioner is allowed to remove an employee for committing an act that "may be prosecuted criminally." Allowing the Commissioner this type of unfettered authority turns on its head the concept that an individual is innocent until proven guilty.

Fines. Section 5 of the bill amends existing law in order to allow the Commissioner to impose fines on an insurer prior to putting the insurer on notice regarding the alleged offense. The stated intent of the Department is "protect consumers by taking away a person's monetary incentive to conduct business without a license." PIFC acknowledges the need to punish bad actors. Bad actors harm consumers and damage the reputation of legitimate insurers. However, PIFC asserts that SB 706 subjects legitimate insurers to unreasonably fines, especially given the fact that genuine disputes over what is legally required occasionally occur between insurance companies and the Commissioner. When these disputes occur, a cease and desist order is a sufficient mechanism for stopping the behavior. In addition, SB 706 removes an insurer's right to challenge the Commissioner's interpretation of the law and grants the Commissioner the power to issue fines for any action that the Commissioner alone deems unlawful. PIFC asserts that in so doing, SB 706 unreasonably removes due process protections.

PIFC notes that a legitimate insurer may make an inadvertent, unintentional mistake regarding licensing issues. Under existing law, the Commission can intervene and issue a cease and desist order, thereby putting the insurer on notice of the problem. The insurer is then given the opportunity to correct the problem. Under SB 706, an insurer who makes an inadvertent mistake, that did not harm a consumer, and that was not intentional or willful, may still suffer punitive fines.

Insurer autonomy. Granting the Commissioner the broad powers to intervene in the operations of every insurer is not necessary. If an employee misbehaves and engages in misconduct, the insurer can and will take action to remove those people from the company. In addition, insurers monitor agents and brokers that are authorized to sell their product. If an agent or broker engages in egregious conduct, the insurer will be motivated to take action to preserve the good name of the insurer. Furthermore, the insurer's contract with the agent or broker allows the company to withdraw the agent or brokers authority to represent the company.

For the reasons stated above PIFC urges your opposition to this measure. If you have any questions, please contact Michael Paiva at (916) 442-6646.

cc: Senator Ortiz
Tim Conaghan, Senate Republican Caucus
Brian Perkins, Senate Banking, Finance & Insurance Cmte.
Richard Costigan, Legislative Secretary to the Governor
Cynthia Bryant, Deputy Legislative Secretary to the Governor
Scott Reid, Office of the Insurance Advisor