



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: February 20, 2003

To: The Honorable Dede Alpert, Chair
Members, Senate Appropriations Committee

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

Re: SB 1 (Speier) Financial Privacy
Senate Appropriations Committee Hearing: February 24, 2003
PIFC Position: **Oppose Unless Amended**

The Personal Insurance Federation of California, representing insurers writing over 30% 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.

To the extent that the measure successfully impedes the flow of commerce and discourages the purchase of products in California, this measure will have a negative impact on California's already struggling economy and decrease General Fund 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 1980, 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 annual privacy notices to all applicants and policyholders, and prohibits insurers from disclosing medical information without consent. The Department of Insurance testified before the Legislature 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 are in the process of revising their privacy notices to meet the March implementation date for 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 additional unnecessary 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 affect the ability of companies to do business if not corrected. These concerns include:

- ◆ Use of Information for Marketing

SB 1 applies broadly to the sharing of personal information, and requires compliance with opt-in or opt-out provisions before information can be shared for any purpose, unless the purpose for which the information is shared falls explicitly within one of several exemptions contained in the bill. A significant concern of the insurance industry is that this approach will result in unintended consequences, including restricting the sharing of information for legitimate business purposes that are not expressly exempt. Uncertainty over whether each specific exchange of information falls within one of the exemptions will add tremendous compliance costs and increase liability exposure. Since there is general agreement that sharing of information is appropriate for operational, transactional, and servicing purposes, a better approach, that would be more narrowly tailored and less likely to result in unintended consequences, would be to focus the restrictions of the bill on the sharing of information for marketing purposes.

- ◆ Affiliates

SB 1 restricts the sharing of information among affiliates that are part of the same family group of companies. This restriction interferes with the ability of insurers 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 that flow 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.

- ◆ Notices

SB 1 mandates insurers provide consumers with new statutory privacy notices that would be in addition to the privacy notices already required by the federal Gramm-Leach-Bliley Act and the Department of Insurance regulations referenced above. The insurance regulations allow insurers to send a single consolidated notice, however, SB 1 does not allow this. Providing multiple, contradictory notices to consumers will only add confusion and make it more difficult for consumers to understand and exercise their privacy rights. PIFC recommends that the notice requirements of SB 1 be amended to allow for one consolidated notice, allow companies the flexibility to modify the notices to reflect their own privacy practices as long as minimum standards for readability, type size and content are met, and

make the statutory notice a safe harbor rather than a mandatory form. Of particular concern to insurers is the need to consolidate the privacy requirements of the Insurance Code with the requirements of any new privacy legislation passed by the Legislature, in order to avoid overlapping, inconsistent, or duplicative regulatory requirements on insurers.

◆ Service Providers

SB 1 includes an exemption that allows companies to outsource or contract with a third party service provider to provide certain customer services. However, the bill does not clearly allow companies to share information with such a service provider in order to market the company's own products.

◆ Insurance Agents

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 and vice versa. This two-way flow of information is necessary in order to fully service customer needs, and should be permitted whether the company's agents are employees, independent agents, or agents which have 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 vested in the functional regulator as the sole enforcement mechanism.

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 Diane Colborn at (916) 442-6646.

cc: Senator Speier, Author
Ann Richardson, Deputy Legislative Secretary, Governor's Office
Maureen Brooks, Senate Appropriations Committee
Mike Genest, Senate Republican Caucus
Senate Floor Analyses