



Assemblymember Autumn Burke
Room 5150
State Capitol
Sacramento, CA 95814

January 6, 2018

RE: AB 1679 (Burke) OPPOSE; REQUEST WITHDRAWAL FROM CONSIDERATION

Dear Ms. Burke,

Having studied the auto repair market in California, and the insurance companies' hold over it, we call upon you to withdraw this legislation, which will irreparably harm policyholders who seek to repair their vehicles financially and, potentially, cost many consumers their safety, and even their lives.

State Farm has been advocating this bill under false pretenses; and its true intent, which is, more than likely, not how it has been represented to you, is to allow State Farm to deny victims of crashes adequate repairs for their vehicles as required per manufacturer specifications. This will imperil policyholders who receive sub-standard repairs on their vehicles and transfer the additional costs of those shoddy repairs to their policyholders, who must then pay those substantial, un-anticipated, out-of-pocket costs for their repairs in violation of their insurance agreement.

State Farm will see big profits at the expense of its policyholders, which is one of the many reasons the state insurance industry regulator has put consumer protection regulations in place to protect consumers. The very regulations AB 1679 will nullify!

Consumer groups, including ourselves, have been shut out of discussions about this bill, but are prepared to meet with you to clarify State Farm's nefarious purpose in proposing and advocating it. Because this also bears on your reputation, we hope you will avail yourself of our expertise before proceeding with this disastrous measure that bears your name. The illegal scheme it perpetuates is described below and revealed in reporting across the nation, including the attached CNN report by Anderson Cooper.

AB 1679 repeals the recently enacted Department of Insurance (CDI) voluntary labor rate survey guidelines; and eliminates a consumer's right to select an auto body shop of their choice to repair their vehicle. AB 1679 is an anti-competitive and anti-consumer bill that would enshrine insurance companies' ability to engage in unfair business practices, conduct their business in bad faith, and monetize the collision repair process, all while knowingly placing their insureds in harms' way.

Current law gives consumers the right to select a repair facility to have their vehicle repaired. Although insurers may advertise and promote their own repair shops, State Farm makes untruthful, deceptive and misleading statements to consumers to unduly

influence the consumer's choice; and engage in unfair, deceptive and unlawful business practices to steer consumers into their insurer-contracted, or owned repair shops.

CDI issued regulations to clarify and complement existing law to prevent such steering and ensure unfettered consumer choice of repair shops and more timely damage inspections. The CDI regulations provide guidelines and reasonable timeframes for insurers to inspect damaged vehicles and identify what constitutes unreasonable distances in cases where an insurer requires the consumer to travel to obtain a repair estimate or have a vehicle repaired.

Labor Rate Survey: A labor rate survey is the process that allows an insurer to determine a reasonable range of prevailing rates that auto shops may charge for labor to repair damaged automobiles. A proper labor rate survey is a useful tool to benchmark labor rates in a particular geographical area in order to pay a fair and reasonable labor rate. When improperly done, a labor rate survey can be gamed to artificially fix prices below market rates and deprive collision repair shops from charging fair and reasonable rates. This forces consumers to pay unnecessary out-of-pocket costs.

CDI has combated insurers' gaming of labor rate surveys through fines and disciplinary actions against offending insurers. Because the lack of standards in many surveys produced inconsistent, inaccurate and unreliable results, CDI determined that regulations in this area were necessary to ensure that consumers were protected. The CDI regulations were a result of a five-year process where consumers, auto body shops, automobile dealers and insurers provided feedback, identified concerns, and supplied data to support their assertions.

The CDI regulations, only in effect since March 2017, define voluntary guidelines and standards for insurers to follow to conduct labor rate surveys in a fair and equitable manner. These regulations grant insurers who use the recommended guidelines a rebuttable presumption that the rates are reasonable, and effectively prevent consumers and auto repair shops from challenging them.

AB 1679 repeals the new labor rate survey regulations and will allow business practices that suppress market labor rates in a manner that skews the results and gives the insurers a rebuttable presumption that the rates are proper. Thus, this bill codifies anti-competitive pricing, harms consumers, businesses and major corporations, while benefitting the worst actors in the insurance industry at the expense of consumers. The worst actor is State Farm Insurance. State Farm Insurance is the major proponent of AB 1679.

Deceptive, unfair, and unscrupulous business practices. After receiving numerous complaints, Consumer Watchdog began a review and investigation into the unscrupulous business practices of State Farm Insurance relating to auto body repair. We found that there is far more to a State Farm controlled collision repair process than meets the eye.

State Farm intentionally and artificially keeps labor rates low. Simultaneously, however, they are increasing the actual costs of auto body repairs and unfairly transferring those added costs to their policyholders and consumers in general.

State Farm is monetizing the collision repair process. They are doing so in bad faith, utilizing unfair business practices, and knowingly placing their policyholders in financial hardship and possible physical danger.

State Farm sells consumers the insurance policies intended to protect their insureds and guarantee that in case of an accident, their vehicle will be repaired with "like kind and quality" as the original vehicle. They are to be made whole. However, State Farm seeks to make even more profit by completely controlling the entire repair process to the point of monetizing it. State Farm manipulates and steers their insureds away from independent collision shops; and intimidates and coerces collision repair shops into cutting corners and performing shoddy, and dangerous repairs, with inferior quality parts and procedures, to increase their bottom line.

Most collision repair shops are afraid to push back against State Farm's unfair and dangerous practices because of the direct and indirect threats that State Farm will take away their business. Since the collision repair shops rely so heavily on State Farm insureds (they are the biggest), such a threat, if followed through, would put many licensed auto body shops into serious financial difficulty.

Similar to how HMO's make money in managing the provision of health care by reducing, delaying and denying care to their covered patients, so too does State Farm make money in managing the auto body repairs of their own policyholders by reducing, delaying, and denying proper quality or adequate auto body repair services for their insureds.

State Farm intentionally delays the repair process with multiple appraiser visits and negotiations over cost reductions. If the collision repair shop tries to push back on behalf of the consumer, State Farm will inform their policyholder that it is the fault of the collision repair shop that there are so many delays and increased costs. Despite the opposite being true.

In particular, State Farm argues over every step of the repair. For example, the paint. The sanding of the paint. The clear coat. The texture. Whatever the elements of the process may be, they delay. State Farm may decide to hold-up painting in order to review the buffing and polishing in one instance, and then hold-up painting because buffing and polishing is unnecessary in another instance. All instances being equal! State Farm will do anything and everything to delay and frustrate the independent collision shop. In the meantime, their policyholders run out of their contractual rental car coverage because a repair that should have taken three days actually took three months. State Farm operates under the knowledge that many of their insureds will just give up. State Farm relies on the fact that for most consumers, the frustration rises to

the point where they will simply eat the unnecessary and unexpected added cost just to get their car back.

When a State Farm agent or appraiser is working with a policyholder whose vehicle has been damaged, they will recommend certain auto body shops in their network (DRPs). However, if an independent collision repair shop is chosen by the consumer, State Farm may disparage the independent collision shop by putting them in a bad light. They may tell their insureds, "You may have out of pocket cost if you don't go to one of our shops." Or, "You may have long delays if you don't go to one of our shops." Then they implement the tactic to delay and argue so much, that the three-day repair does get stretched-out to three-months.

State Farm also advise their policyholders that they may wish to use one of their DRP's because they cannot "guarantee" the work of the independent collision shop. This tactic is completely disingenuous because only the collision repair shop may guarantee their own work.

Collision repair shops are required to provide complete written repair orders. State Farm, however, utilizes an estimating software to produce their own repair estimates. Using their estimating software as justification, State Farm will further attempt to reduce their costs by proposing less charges over multiple visits to the collision shop, even if it means coercing the collision repair shop to cut corners despite any safety concerns of the collision repair shop. State Farm instructs the collision repair shop in the manner in which the vehicle is to be repaired -- regardless of what the manufacturers' engineers require to be done for a safe repair.

State Farm monitors its appraisers in order to meet certain benchmarks. Basically, State Farm monitors all their field appraisers, field appraiser managers, and claims representatives, based upon how much money they are able to trim from the collision repair shops and off-load onto their policyholders. State Farm management audits all their appraisers to determine to what extent they are meeting their targets. Thus, State Farm appraisers are incentivized to deny, delay, and transfer costs, in violation of the insurance contract guarantee to the contrary, to their policyholders. Obviously, State Farm has inherent conflicts of interest. Independent collision repair shops work on behalf of the consumer. State Farm DRPs work for State Farm Insurance.

Safety is sacrificed. For example, because of the manufacturer's engineering specifics, type, strength of steel, and metallurgical and material science, etc., vehicles are required by their manufacturers to be structurally repaired on what is called a Dedicated Fixture System (aka: jigs). This is similar to the way the car is manufactured. This method guarantees that the vehicle will be repaired to certain, necessary fixed tolerances, so that the vehicle will be safe to drive. Despite these safety mandates, State Farm instructs collision repair shops to ignore the manufacturer and conduct the repairs as State Farm directs instead. This may include not using the Dedicated Fixture System or substituting glue for the requisite welds in the repair of damaged frames, as came to light in the Seebachen lawsuit against State Farm in Texas.

Use of inferior parts. Another area that State Farm games the system, and engages in questionable business practices, is in the area of parts. There are manufacturer/OEM parts (new parts from the manufacturer); recycled parts (cheaper OEM parts of cars found in a junkyard or collision center); after-market parts (cheaper because made in China, Mexico, or Taiwan); and reconditioned or remanufactured parts (cheaper, and also found in the junkyard or collision center).

Automobile Manufacturers require that the vehicles they design, engineer and produce be repaired with manufacturer/OEM parts, which are designed, engineered and produced exclusively for their vehicles. Otherwise, the original structural integrity designed into the vehicle will be compromised. Despite that fact, State Farm manipulates and circumvents this requirement by instructing collision repair shops they do business with to use the cheaper, non-OEM parts noted above. This is highly problematic and dangerous given the advanced engineering, high tech, and multiple types of metal and polymers that make up today's vehicles. State Farm disingenuously tells collision repair shops and customers that they need to use such parts because there will be less delay and they are just as good.

Manufacturer OEM/Guidelines and parts are critical for collision repair safety. Collision repair centers need to be able to guarantee the quality of the repair, because they will be held liable for their failure to perform the requisite repairs in accordance with the manufacturers OEM/Guidelines and safety standards. Collision repair centers also have to maintain their reputation and protect consumers. Only well-funded, independent collision repair shops can push back against State Farm in the ongoing battle to ensure that manufactured/OEM parts and proper procedures are utilized for the safety of all consumers.

So, State Farm makes money on the insurance policy. Then, State Farm make money on the parts and process utilized during the repair process. Then, when the foreseeable and inevitable happens, and the part or process they demand be utilized subsequently fails, or problems arise, and loss or harm to consumers occurs as a result, State Farm will not hesitate to point the finger at the collision repair center for any resulting liability. It is a mind-boggling scam!

Real world impact on the consumer. The Dallas Morning News reported on a successful lawsuit against State Farm in Texas where: "State Farm directed shoddy hail damage repair that trapped and severely injured a couple in their car. The lawsuit contends the collision set off a "domino effect" of structural failures within the car, including the collapse of the car's safety cage, which punctured the fuel tank under the driver's seat."

"The car caught fire, and the collapsed roof trapped the Seebachans inside. Matthew Seebachan sustained third-degree burns on his lower legs and feet before he was

rescued from the car. Marcia Seebachen was extracted through the car's passenger-side window. "There were massive crushing injuries to their bodies," Their attorney said. The couple's arms, chests and ribs were injured and internal organs were lacerated. Had the roof been repaired according to Honda's body repair manual, which specified welding at 104 spots, the Seebachans likely would have had only "minor injuries,"

"The John Eagle Collision Center used glue instead of the more expensive welding because it cares more about getting paid by the insurance company than they care about putting a vehicle out there on the road that's safe and reliable," Attorney Tracy said. His firm said State Farm paid the collision center \$8,500 for the repair."

"The shoddy and substandard repair work turned Matthew and Marcia Seebachan's Honda into a bonfire," the lawsuit said. State Farm is "not in the business of designing vehicles, or testing vehicles, or repairing vehicles. And their adjusters are certainly not professional automotive engineers with an expertise in designing vehicles that provide crash-worthiness protection to prevent serious injuries," Tracy said. "No insurance company should ever dictate to a collision center how to repair a vehicle."

State Farm is betting that the car they have required to be repaired in an unsatisfactory manner will never receive another bump and no one will ever find out. But what if someone does find out? State Farm will simply blame the collision repair shop, and someone else will either be stuck with the repairs necessary to make the vehicle safe, or will someone else will have to eat the devalued or worthless vehicle because they are unable to re-sell it. So, while at first glance the vehicle may look just fine, it is actually a structural nightmare, and an accident waiting to happen.

Because of the loss of value due to shoddy and unsafe repairs directed by State Farm, State Farm is also diminishing the value of the vehicle of the consumer, lienholder or long-term leasing company. This is especially problematic for vehicles with high severity claims, such as Mercedes, Cadillacs, and BMW's.

AB 1679 deletes the following consumer protection provisions of existing law: (1) an insurer requiring an auto body repair shop, as a condition of participation in the insurer's direct repair program (DRP), to pay for the cost of an insured's rental vehicle that is replacing an insured vehicle damaged in an accident, or to pay for the towing charges of the insured with respect to that accident (a DRP is a business relationship that is formed between an insurance company and an auto body shop where rates are reduced in exchange for a high volume of referrals); (2) requires any insurer that conducts an auto body repair labor rate survey to determine and set a specified prevailing auto body repair labor rate in a specific geographic area to report the results of that survey to the CDI, which is required to make the information available upon request; (3) an insurer requiring an auto body repair shop, as a condition of participation in the insurer's DRP, to pay for the cost of an insured's rental vehicle that is replacing an insured vehicle damaged in an accident, or to pay for the towing charges of the insured with respect to that accident; (4) any insurer that conducts an auto body repair labor rate survey to determine and set a specified prevailing auto body repair labor rate

in a specific geographic area to report the results of that survey to the CDI, which is required to make the information available upon request; (5) prohibits insurers from requiring that an automobile be repaired at a specific automotive repair dealer; but an insurer may suggest or recommend a specific automotive repair dealer under specified circumstances, including when a referral is expressly requested by the claimant; (6) authorizes an insurer to provide a claimant with specific truthful and non-deceptive information regarding the services and benefits available to the claimant during the claims process; (7) prohibits insurers from requiring that an automobile be repaired at a specific automotive repair dealer, as defined; (8) an insurer may suggest or recommend a specific automotive repair dealer under specified circumstances, including when a referral is expressly requested by the claimant; and (9) authorizes an insurer to provide a claimant with specific truthful and non-deceptive information regarding the services and benefits available to the claimant during the claims process.

AB 1679 allows insurers to also do the following: (1) include in the survey shops that do not meet the minimum equipment requirements set by the state Bureau of Automotive Repair (BAR); and that do not have proof of body shop's liability insurance and workers' comp insurance (for example, insurers may use unlicensed and unregulated entities found in the underground economy to establish labor rates); (2) use DRP rates which will suppress market rates and skew results; (3) Use an artificially large geographic area that does not accurately reflect the local market resulting in a statistically invalid survey; (4) use labor rates that are on shop invoices or third-party software where the labor rate was forced upon the shop (enhancing the manipulation of the survey results); (5) cherry pick and survey insurer chosen auto repair shops rather than all the licensed and properly equipped and insured shops in the local market place; (6) keep unreliable survey results secret from public view (the insurance industry will not be held accountable); (7) make the unfair and unreliable surveys achieve a rebuttable presumption status under the law (an intentionally manipulated survey by the insurance industry will have a non-rebuttable presumption of being statistically valid and unable to be challenged); (8) consumers may have to travel over 15 miles in urban areas and over 25 miles in other areas to even obtain an estimate or to have their vehicle repaired; (9) deletes the requirement that insurers inspect a damaged vehicle within 6 business days, thus creating delays for weeks, or even months; (10) requires consumers to obtain a second estimate from an insurer (DRP) shop even though the consumer already obtained an estimate from their chosen shop (consumers are currently only required to obtain one estimate); and (11) opens the door for insurers to make misleading statements to consumers about their chosen shop.

In Closing

State Farm has crunched the numbers and knows how much quantifiable upside there is in steering and managing the entire collision repair process versus the possible downside of defending against a consumer lawsuit when the consumers' steering fails, or frame collapses. State Farm knows that it takes many years and tens of thousands of dollars to prosecute a lawsuit and recover damages from them. State Farm holds all the cards; and they like their chances.

The nefarious, deceptive and unscrupulous conduct of State Farm is a major argument for why up-front consumer protection regulations are so vital. There is a far better chance of preventing such conduct from happening in the first place, than trying to catch them in the act after-the-fact. Plus, it clearly defines the code of conduct that State Farm must follow in order to do business in California; and sets forth the laws State Farm can be held accountable for when they violated them. AB 1679 even takes away the state regulatory authority's ability to try and prevent such harm to consumers. That is the very reason why State Farm wants these consumer protection regulations eliminated by your bill.

State Farm has institutionally incentivized probable financial and physical harm to their insureds.

If enacted, AB 1679 (Burke) would allow State Farm - and all other insurers - to provide consumers with only one choice: "You may go to one of 'our' shops, or your claim will receive 'heightened scrutiny', it will take more time to fix, you will pay more, and it will be far less convenient. In essence, do what we tell you or else ... no matter how much it may cost or harm you."

Unfortunately, there are serious adverse consequences arising from this bill. Accordingly, we must ask all members to OPPOSE this bill; and ask you to withdraw it from any further consideration.

Best Regards,

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