

March 25, 2010

Assemblymember Dave Jones  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0009

Re: Assembly Bill 1868 (Jones) – SUPPORT

**Board of Directors**

**Amy Bach**  
Executive Director

**Alice J. Wolfson**  
Chair, Board of Directors

**Hon. Stanley G. Feldman**  
Chief Justice (RETI)  
Arizona Supreme Court

**Larry P. Ginsburg, CFP®**  
Ginsburg Financial Advisors, Inc.

**William H. Hedden**  
Consolidated Adjusting, Inc.

**Jim Jones**  
Scale Venture Partners

**E. Gerard Mannion**  
Mannion & Lowe

**Shirley Roberson**  
Non-Profit Consultant

**Deborah Senn**  
Insurance Commissioner (1983-2001)  
Washington State

**William M. Shernoff**  
Shernoff, Bidart, Darras & Echeverria LLP

Dear Assemblyman Jones,

We are writing to express our strong support of AB 1868, prohibiting discretionary clauses in life and disability policies.

This bill pertains to life insurance, disability insurance or disability income protection policies, and would prohibit insurers engaging in the unfair practice of inserting language in their products that give themselves authority to override a treating doctor's views and interpret their own policy terms as to whether or not an insured is entitled to benefits.

California's Commissioner currently has authority to challenge such clauses on a case by case basis and while they are disfavored, they are not clearly banned under California law. The National Association of Insurance Commissioners issued a model law (MDL-42) banning such clauses in 2002, and many states have acted to adopt it since that time. California should adopt the ban by enacting AB. 1868.

A discretionary clause allows the insurer to override an insured's own doctor's certification of disability or cause of death when considering whether or not to grant benefits. Discretionary Clauses render the contract "fraudulent or unsound insurance" within the meaning of CIC section 1029.5 because it makes payments under the contract contingent on the unfettered discretion of the insurer.

Moreover, discretionary clauses have great legal significance because they act to nullify the bargained for contract provisions and create an illusory contract. They place an unfair burden on insureds and insurers use them as a legal shield to avoid liability for denying meritorious claims.

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United Policyholders, ("UP") is a non-profit 501(c)3 organization founded in 1991 that helps solve insurance problems and advocates for fairness in insurance transactions. Through an *Advocacy and Action* program, UP advocates for policyholders legal rights by filing amicus curiae briefs and working with elected officials in legislative and regulatory proceedings. Through a *Roadmap to Recovery*<sup>™</sup> program, UP helps disaster victims recover fair insurance settlements and find qualified professional help. Through a *Roadmap to Preparedness* program, UP promotes disaster preparedness and insurance literacy through outreach and education in partnership with civic, faith-based, business associations and the Red Cross. United Policyholders' work is funded by donations and grants from individuals, businesses and foundations.

United Policyholders strongly urges the passage of Assembly Bill No. 1868.

Sincerely,

A handwritten signature in black ink that reads "Amy Bach". The signature is written in a cursive, flowing style.

Amy Bach, Esq.  
Executive Director