

Proposal on the Restriction of Accident Response Fees

April 2011

Board Action:

OPPOSE

Background:

Historically, local governments throughout California have charged user fees for different types of services. Typical examples of these include: trash collection, building, and licensing fees. Pursuant to State law, California cannot impose fees for services that exceed the cost to provide services without voter approval.²

In the midst of revenue declines, several local governments throughout the nation have resorted to charging for accident responses—police, fire, ambulances, etc. These fees, dubbed “crash taxes”, are intended to be a type of user fee, imposed on those that use the services. These fees can be imposed on nonresidents as well as residents. The State of California’s Government Code, Section 53158³ specifically provides for governments to recover costs related to emergency response (so long as they are “reasonable”⁴).

Furthermore, there are several other provisions in State law that allow for-cost recovery relating to these type of fees, specifically damage to public property⁵ (such as guardrails, signs, etc.) and emergency response services required due to hazardous materials⁶. Hazardous materials are defined in the California Health & Safety Code, Section 25501 as the following:

“Hazardous material” means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. ‘Hazardous materials’ include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.”
(emphasis added)

To-date, ten states have prohibited or restricted the use of accident response fees. Table 1 outlines these prohibitions and restrictions:

Table 1: States Responses to Accident Response Fees

State	Prohibits Fee	Restricts Fee to Insurers Only	Restricts prohibition to first-responder	Restricts fee prohibition to police response	Allows for hazardous material cleanup
Alabama ⁷	<input checked="" type="checkbox"/>				
Arkansas ⁸	<input checked="" type="checkbox"/>				
Florida ⁹			<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Georgia ¹⁰		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Indiana ¹¹	<input checked="" type="checkbox"/> ¹²				<input checked="" type="checkbox"/>
Louisiana ¹³	<input checked="" type="checkbox"/> ¹⁴				<input checked="" type="checkbox"/>
Missouri ¹⁵	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
Oklahoma ¹⁶	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>
Pennsylvania ¹⁷				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Tennessee ¹⁸	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>

Source: Each respective state law. See end notes.

California

In 2009, Assembly Bill (AB) 1004 (Portantino) attempted to restrict emergency-response related expenses by allowing them only under certain circumstances (pursuant to California Government Code, Sections 53150-53159): Those under the influence of alcohol and/or drugs, “whose negligent operation of a” motor vehicle, boat, vessel, or aircraft “caused by that influence proximately causes any incident... and any person whose intentionally wrongful conduct proximately causes any incident... is liable for the expense of an emergency response by a public agency to the incident.”¹⁹

California law stipulates that those who cause an accident due to alcohol and/or drugs will not be reimbursed through insurance, and no expense owed for emergency response will exceed \$12,000.²⁰

AB 1004 would have prohibited the use of emergency response fees except for the aforementioned instances. The legislation would also have prohibited the ability for governments to institute residency as a factor in emergency response charges.

Many agencies bill those responsible for hazardous material cleanup that involves emergency response. Concerns arose in AB 1004 regarding the loss to cities if they were no longer able to recover these costs.

On the third reading in May 2009, AB 1004 passed the Assembly 57-6. The measure has not been acted on since.

The author of AB 1004 gave the following cities as examples of those who currently have accident response fees: the Cities of Roseville, Upland, Forest Hill, Loomis, Pinole, and Nevada City.²¹

The City of Roseville’s ordinance is shown below as an example of a city that has implemented this program.

City of Roseville Municipal Code

9.27.010 Motor vehicle accident cost recovery.

A. The City of Roseville shall initiate user fees for the delivery of fire and rescue services, personnel, supplies and equipment to the scene of motor vehicle accidents and other incidents within the City of Roseville. The rate of user fees shall be that which is usual, customary and reasonable, which may include any services, personnel, supplies, and equipment and with baseline rates established by council resolution. These user fees will only apply to persons not residing within the City of Roseville. Responses involving intoxicated drivers will continue to be billed pursuant to California Vehicle Code Section 53150.

B. The fees shall be billed to the motor vehicle insurance carrier for all vehicles involved in the motor vehicle accident or incident, representing an add-on cost of the claim for damages of the vehicles, property and/or injuries.

C. All amounts collected as a result of this chapter shall be placed into the general fund and may be used for any lawful purpose. (Ord. 4716 § 1, 2009.)

Proposition 26

In November 2010, California voters passed Proposition 26 (“Stop Hidden Taxes”) with 53% of the vote. SDCTA remained neutral on this measure, stating:

“SDCTA recognizes that Proposition 26 could help prevent the passage of taxes disguised as fees. However, the Association is neutral on this measure due to its ambiguity, the potential for litigation should the measure pass, and the unintended consequences that may arise following implementation of the law.”

Language in Proposition 26 places increased restrictions for the passage of discriminatory fees (those charged to some users but not all). An example of a discriminatory fee is an emergency response fee which is charged to non-residents, but not residents, such as in National City and Oceanside. The measure states that a levy is not a tax provided that it is charged for the provision of a benefit or service “that is not provided to those not charged”. Therefore, under this measure discriminatory fees would be considered taxes and subject to increase approval restrictions. For example, emergency response fees that are charged only to non-residents would be subject to voter approval, while emergency response fees charged to all users would not.

San Diego County

In San Diego County, most agencies charge for cost recovery in accidents under two circumstances: 1) The person involved has been under the influence of alcohol and/or drugs; and 2) there has been a release of hazardous materials that requires emergency response.

As of the date of this publication, the **North County Fire Protection District** (NCFPD) is the only *fire district* in the County to impose accident response fees that are broader than the aforementioned. NCFPD will charge residents and nonresidents for motor vehicle accidents and other highway incidents—such as hazardous material cleanup. The bills are sent to the insurance company of those responsible in an accident. The District expects to receive \$143,955 in fiscal year (FY) 2010 as a result of this program.

For motor vehicle accidents, there are five levels of fees:²²

- Level 1 (\$435) – minimum billing level. Includes “scene safety and investigation”. Most frequently issued accident response.
- Level 2 (\$495) – Level 1 services provided with additional clean up and materials.
- Level 3 (\$605) – Occurs if there is a car fire.
- Level 4 (\$1,800) – Level 1 & 2 Services plus extrication with heavy equipment.

- Level 5 (\$2,100) – Levels 1, 2, & 3 services with air crane.

Different fees exist in NCFPD if the accident/incident involves hazardous materials (ranging from \$700 - \$5,900) or pipeline breakage/repairs (\$400-\$1,000+).

San Miguel Consolidated Fire Protection District also charges accident response fees but they have a much more narrow focus, charging those who are found to be grossly negligent, start a fire, or require hazardous material cleanup.

Two cities in the County charge accident response fees—**Oceanside** and **National City**. The City of Oceanside and the City of National City both charge only nonresidents found to be at fault in accidents. The fees charged for motor vehicle incidents in Oceanside and National City are the same as NCFPD, but the level 5 is \$2,200 instead. HAZMAT charges range from \$700 for a basic incident to \$5,900 for advanced responses. The cities are also charging for other emergency responses. Pipeline incidents and power line incidents are charged \$400 for a basic response up to itemized claim charges for advanced responses. Fire investigation teams charge \$275 per hour. Fires will be charged at \$400 per hour, per engine or \$500 per hour per truck. Water incidents are charged at \$400 plus \$50 per hour per rescue person for a basic response up to itemized charges for advanced responses. Any back country or special rescue requires a minimum bill of \$400 for the first response vehicle plus \$40 per rescue person. Additional rates are charged per hour.

According to a March 2010 Independent Budget Analyst report, the City of San Diego pursued a First Responder Fee²³ but the item never received Council approval. “The proposal was for the implementation of a \$175 fee for all Advance Life Support (ALS) services and \$125 for all Basic Life Support (BLS) services. At the time of the proposal, it was estimated that a First Responder Service Fee would generate \$2.1 million in net new revenue for the General Fund.”²⁴

Fire Recovery USA, LLC

Fire Recovery USA, LLC is a Roseville-based billing and collection agency founded in 2006. On their website, Fire Recovery USA purports to provide cost recovery for the following services:

- “Hazmat-based (fluids-on-the-ground) Motor Vehicle Accidents
- Non-Hazmat-based MVAs
- Vehicle Fires
- Structure Fires
- Water Incidents
- Hazmat Calls
- False Alarms
- Pipeline Incidents
- Power Line Incidents
- Fire Investigations”²⁵

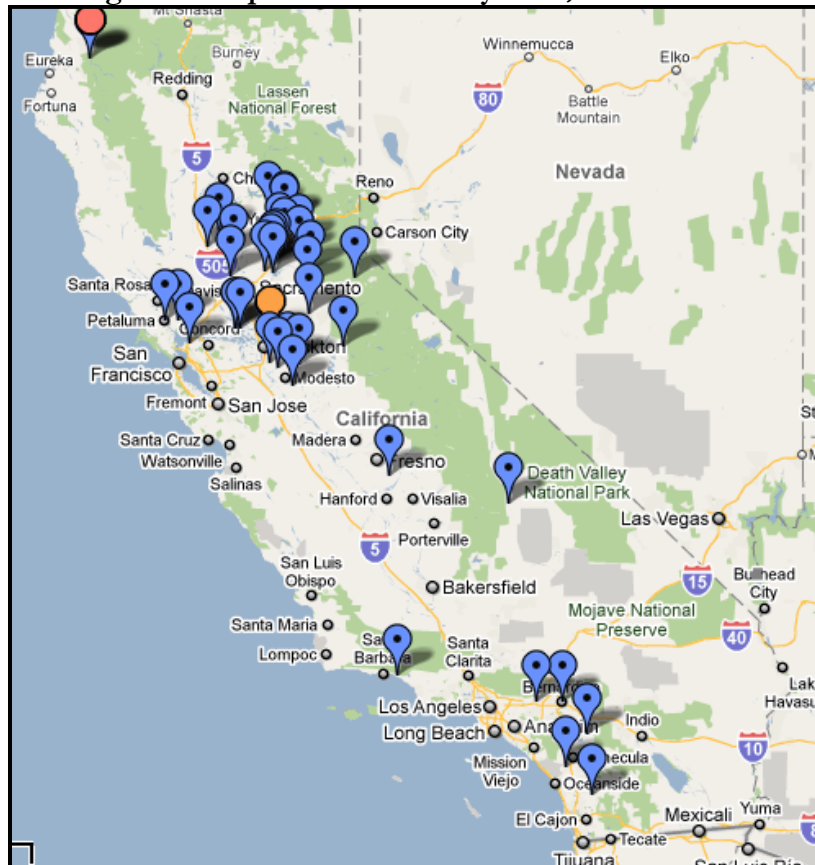
Fire Recovery USA notes that they are able to receive a much higher rate of collection than most fire department that attempt collection on an in-house basis—“typically over 70%” is what is reported on their website.²⁶

According to a recent Chula Vista staff report, the following agencies contract with Fire Recovery USA, LLC.:²⁷

- Arbutle - College City Fire Protection District
- Carpinteria-Summerland Fire Protection District
- City of Hemet Fire Department
- City of Manteca Fire Department
- City of Petaluma Fire Department
- City of Pinole Fire Department
- Meridian Fire Protection District
- Mokelumne Rural Fire District
- Montezuma Fire Protection District
- Nevada City Fire Department
- Nevada County Consolidated Fire District
- Newcastle Fire Department
- North County Fire Protection

- City of Roseville Fire Department
- City of San Bernardino Fire Department
- City of Selma Fire Department
- City of Upland Fire Department
- City of Woodland Fire Department
- Dobbins-Oregon House Fire Protection District
- El Dorado County Fire Protection District
- Escalon Consolidated Fire District
- Foresthill Fire Protection District
- Georgetown Fire Protection District
- Higgins Area Fire Protection District
- Intermountain F&R Department
- Keyes Fire Protection District
- Kirkwood Volunteer Fire District
- Loomis Fire Protection District
- District
- Oakdale Rural Fire Protection District
- Olancho Cartago Fire Department
- Penryn Fire Protection District
- Pioneer Fire Protection District
- Placer Hills Fire District
- Rio Vista Fire Department
- Ripon Fire District
- River Delta Fire District
- Schell Vista Fire Protection District
- South Placer Fire Protection District
- Sutter-Basin Fire District
- Tuolumne Fire District
- Waterloo Morada Rural County Fire Protection District
- Willow Creek Fire Protection District

Figure 1: Map of Fire Recovery USA, LLC. Clients



San Diego County Accident Response Fees

Charge	North County Fire protection District	San Miguel Consolidated Fire Protection District	National City
Charges	All at-fault parties	All at-fault parties	Only nonresidents for motor vehicle incidents and vehicle fires—all for hazardous material cleanup
Motor vehicle incidents	L1: \$435 (basic); L2: \$495; L3-Car Fire: \$605; L4: \$1,800; L5: \$2,100		(per hour) L1: \$435 (basic); L2: \$495; L3-Car Fire: \$605; L4: \$1,800; L5: \$2,200; L6: itemized.
<i>Other Charge</i>			
Hazardous Material Cleanup	L1: \$700 (basic); L2: \$2,500; L3: \$5,900 (plus disposal fees)	\$416 initial cost; extra \$258 if duty chief comes out.	(per hour)L1: \$700 (basic); L2: \$2,500; L3: \$5,900
<i>Other Charge</i>	\$300 for each additional hour of a HAZMAT team	\$300/hour + cost of damaged equipment; \$200/hour if duty chief remains there.	\$300 for each additional hour of a HAZMAT team
Vehicle Fire	\$605	\$389 initial cost; extra \$258 if duty chief comes out.	\$605
<i>Other Charge</i>		\$300/hour + cost of damaged equipment; \$200/hour if duty chief remains there.	

Policy Implications:

- Collection companies²⁸ usually charge for their services through a percentage of fees collected.
- A perverse incentive may exist with accident response fees, whereby a higher level of emergency response is sent for than needed.
- Many insurance companies may not cover these types of fees; thereby placing the fee burden on the individual or facing the risk of not being collected. A list of these companies that do not cover these fees cannot be released as the information is proprietary.²⁹
- As a result of high fees assessed to accidents, accident response fees could result in less people reporting accidents or driving away from the scene of an accident.
- As an increasing number of cities are proposing such a fee, insurance companies could elect to not cover the fee at all or increase insurance premiums to recoup costs.
- A poll conducted by SurveyUSA posed the following question to 500 adults: “There is a proposal by one local city to charge those involved in an accident an additional fee for emergency response and clean-up within the city limits. Do you agree? Or disagree with this proposal?” The poll found that 73% of those surveyed disagreed with the method of charging those involved in accidents; 17% agreed; and 10% remained unsure. There was a margin of error listed as $\pm 4\%$.³⁰
- According to a Progressive claims study released in 2002, most accidents occur near one’s home (only 17% of accidents occur more than 20 miles away from the person’s home). A large portion of accidents—23%—occur one mile or less from a person’s home.³¹
- Agencies that contract with Fire Recovery USA have roughly the same fee structure. Given that agencies are seeking “cost recovery”, it is suspect that agencies throughout the State of California have the same costs.

Proponent Arguments:

- “Limiting the incidents for which a public agency can seek reimbursement for the expense of emergency response services is too constraining.”³²
- “When cities seek reimbursement for the costs of emergency response services, it is not done to boost revenue but rather to cover costs.”³³
- “There is ample precedence for charging fees for the use of services or facilities in government and these are not considered double taxation in those similar instances.”³⁴

Opponent Arguments³⁵:

- Accident response fees are a form of double taxation. Local taxes are already meant to cover accident response fees.
- Penalizes drivers that have insurance as many crash taxes do not have provisions that charge individuals directly but rather their insurance company.³⁶ (National Association of Mutual Insurance Companies)
- Penalizes tourists.
- Crash taxes are hidden taxes.
- “These fees take advantage of unsuspecting drivers and their insurers at a vulnerable time after being involved in an auto accident.”³⁷
- Ordinance for crash taxes are vendor-driven. “Some billing fee companies help write the city ordinance that authorizes them, on behalf of your city police or fire department, to bill your insurance company.”³⁸
- “Potential abuses that could be created from these programs include arbitrary and unreasonable charges, minimum number of responders sent to an accident scene, or over responding to minor accidents.”³⁹

End Notes

² California Government Code, Section 66016.

³ California Government Code, Section 53158 states: “it is not the intent of the Legislature, in enacting this article, to occupy the field of recovery of the expense of an emergency response by a public agency, nor is it the intent of the Legislature to preempt local regulations or to otherwise limit the remedies available to any public agency to recover the expenses of an emergency response to any incident not involving persons who operate a motor vehicle, a boat or vessel, or a civil aircraft while under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug. It is the intent of the Legislature that the recovery of the expenses of an emergency response under this chapter shall supplement and shall not supplant any other provisions of law relating to the recovery of those expenses.”

⁴ Expense of an emergency response is defined in California Government Code, Section 53156 to mean:

“reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising because of the response to the particular incident. Reasonable costs shall include the costs of providing police, firefighting, rescue, and emergency medical services at the scene of the incident, as well as the salaries of the personnel responding to the incident.”

⁵ California Vehicle Code, Section 17300 also outlines the following:

“(a) A person who willfully or negligently damages a street or highway, or its appurtenances, including, but not limited to, guardrails, signs, traffic signals, snow poles, and similar facilities, is liable for the reasonable cost of repair or replacement thereof.

(b) A person who willfully damages or destroys a memorial sign placed by the Department of Transportation, including, but not limited to, a sign memorializing a victim under Section 101.10 of the Streets and Highways Code, is liable for that damage or destruction for the highest of the following amounts:

(1) One thousand five hundred dollars (\$1,500).

(2) The actual repair cost or replacement cost, whichever is applicable.

(c) A person who willfully or negligently causes or permits the contents of a vehicle to be deposited upon a street or highway, or its appurtenances, is liable for the reasonable costs of removing those contents from the street or highway or its appurtenances.”

⁶ Section 13009 of the California Health and Safety Code outlines the following: “Those expenses of an emergency response necessary to protect the public from a real and imminent threat to health and safety by a public agency to confine, prevent, or mitigate the release, escape, or burning of hazardous substances described in subdivision (c) are a charge against any person whose negligence causes the incident, if either of the following occurs:

(A) Evacuation beyond the property where the incident originates is necessary to prevent loss of life or injury.

(B) The incident results in the spread of hazardous substances or fire posing a real and imminent threat to public health and safety beyond the property of origin.”

⁷ Alabama – HB 306 (2010): An Act “To prohibit any person or other entity from imposing an accident response service fee for the investigation of a motor vehicle accident on an insurance company, the driver or owner of a motor vehicle, or any other person or entity.”

⁸ Arkansas (2009) – HB 1895: “Notwithstanding any provision of law to the contrary, a person or entity shall not impose an accident response service fee on or from an insurance company, the driver or owner of a motor vehicle, or any other person.”

⁹ Florida (2009) – SB 2282: “A county may not impose a fee or seek reimbursement for any costs or expenses that may be incurred for services provided by a first responder, including costs or expenses related to personnel, supplies, motor vehicles, or equipment in response to a motor vehicle accident, except for costs to contain or clean up hazardous materials in quantities reportable to the Florida State Warning Point at the Division of Emergency Management, and costs for transportation and treatment provided by ambulance services licensed..”

(1) Where the coverage for such services is expressly provided by an insurance company to the insured and the services are lawfully billed to the insured;

(2) Where emergency medical services are provided to the insured by the county or municipal corporation, whenever the insured's medical insurance covers the services provided and the insured assigns the right to collect to the service provider; or

(3) Where other services are provided to the insured by the county or municipal corporation which are expressly authorized by state or federal law to be billed directly to an insurance company."

¹⁰ Georgia (2008) – SB 348: "It shall be in contravention of public policy for a county or a municipal corporation that levies taxes for county or municipal purposes on foreign, alien, and domestic insurance companies doing business in this state, as provided in subsection (a) of this Code section, to impose additional taxes or any other fees of any kind for services provided by such county or municipal corporation to such insurance companies for accidents involving motor vehicles except for the following:

(1) Where the coverage for such services is expressly provided by an insurance company to the insured and the services are lawfully billed to the insured;

(2) Where emergency medical services are provided to the insured by the county or municipal corporation, whenever the insured's medical insurance covers the services provided and the insured assigns the right to collect to the service provider; or

(3) Where other services are provided to the insured by the county or municipal corporation which are expressly authorized by state or federal law to be billed directly to an insurance company."

¹¹ Indiana (2008) – SB 81: "A political subdivision or a local law enforcement agency of a political subdivision may not impose or collect, or enter into a contract for the collection of, an accident response service fee on or from: (1) the driver of a motor vehicle; or (2) any other person; involved in a motor vehicle accident."

¹² Indiana specifically states that fees cannot be imposed on "the driver of a motor vehicle... or any other person... involved in a motor vehicle accident." The measure does not expressly prohibit charging insurance companies.

¹³ Louisiana (2009) – HCR 147: "To direct all local governing authorities and public emergency service providers to cease assessing accident response fees or any similar assessment against persons utilizing emergency services and to express intent of the legislature that such fees and assessments are contrary to state law."

"WHEREAS, it is not the intention of the legislature that, in addition to the authorized revenue streams, the local government entities or emergency service providers charge additional fees to those who require the services; the point is that these services are public goods that should be made available to the public at large whenever they are needed; they are not private goods available based on ability to pay; and

WHEREAS, thus the practice of accident response fees and similar fee-for-service assessments that are being implemented in some jurisdictions around the country is not appropriate in Louisiana..."

¹⁴ Louisiana does provide that charges may be submitted to persons if their actions caused an "unusual and extraordinary expenses on the part of the responder."

¹⁵ Missouri (2007) – SB 66: "This act provides that no person or entity shall impose an accident response service fee on or from an insurance company, the driver or owner of a motor vehicle, or any other person. An accident response service fee is a fee imposed for the response or investigation by a local law enforcement agency of a motor vehicle accident."

¹⁶ Oklahoma (2009) – HB 2013: "Notwithstanding any other section of law to the contrary, no person or entity shall impose an accident response fee for the response or investigation of a motor vehicle accident by law enforcement."

¹⁷ Pennsylvania (2007) – HB 131: "A municipality shall not charge a fee for or seek reimbursement of costs or expenses incurred as a result of municipal police responding to a motor vehicle accident, including, but not limited to, costs incurred for labor, materials, supplies or equipment used or provided in the response."

¹⁸ Tennessee (2008) – HB 2547: "Notwithstanding any other provision of law to the contrary, no person or entity shall impose an accident response service fee on or from an insurance company, the driver or owner of a motor vehicle, or any other person. Nothing in this part prevents any county, municipality or other local government from billing an insurance company, the driver or owner of a motor vehicle, or any other person for ambulance services provided in response to or in conjunction with emergency response to motor vehicle accidents."

¹⁹ California Government Code, Sections 53150-53153.

²⁰ California Government Code, Sections 53154-53155.

²¹ Note: this is not an updated list of all cities in the state that charge these fees.

²² North County Fire Protection District, Resolution 2009-05.

²³ First responder fees can be a type of accident response fee, whereby the agency “first responding” is eligible for cost recovery. These programs are usually more specific to emergency medical services.

²⁴ Independent Budget Analyst. “Revenue Options for the City of San Diego.” Available from http://www.sandiego.gov/iba/pdf/10_29.pdf. Accessed on May 5, 2010.

²⁵ Fire Recovery USA Fund Recovery. “How Are We Different?” Available from <http://www.firerecoveryusa.com/howaredifferent.html>. Accessed on May 7, 2010.

²⁶ Fire Recovery USA Fund Recovery. Available from <http://www.firerecoveryusa.com/home.html>. Accessed on May 7, 2010.

²⁷ City of Chula Vista City Council Agenda Statement. Item 16-1. May 4, 2010.

²⁸ Through research conducted in this analysis, the two most frequently referenced accident response fee collection companies were Fire Recovery USA and Cost Recovery Corporation.

²⁹ Interview with Bill Packer. Association of California Insurance Companies. May 6, 2010.

³⁰ Available from <http://www.surveyusa.com/client/PollReport.aspx?g=75aebecd-bc29-4e0e-bbb2-0f9997fd12e9>. Accessed on May 6, 2010.

³¹ Progressive.com. “Claims Survey Finds There’s No Place Like Home—For Vehicle Crashes.” May 6, 2002. Available from <http://newsroom.progressive.com/2002/May/fivemiles.aspx>. Accessed on May 6, 2010.

³² Assembly Floor Analyses for AB 1004. Available from http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1001-1050/ab_1004_cfa_20090530_134804_asm_floor.html. Accessed on May 5, 2010.

³³ Ibid.

³⁴ Fire Recovery USA. “Is Billing Legal.” Available from <http://www.firerecoveryusa.com/isbillinglegal.html>. Accessed on May 6, 2010.

³⁵ Most insurance companies and trade associations oppose accident response fees. Property Casualty Insurers Association of America, National Association of Mutual Insurance Companies, Association of California Insurance Companies.

³⁶ A frequent response to this criticism by proponents is that most states have strict financial penalties for not having insurance.

³⁷ Property Casualty Insurers Association of America. “Accident Tax Fact Sheet.” Available from [http://www.pciaa.net/web/sitehome.nsf/lcpublic/412/\\$file/Accident_Tax_Fact_Sheet.pdf](http://www.pciaa.net/web/sitehome.nsf/lcpublic/412/$file/Accident_Tax_Fact_Sheet.pdf). Accessed on May 5, 2010.

³⁸ Accidentresponsefees.com. “Why Communities Are Lured Into These Programs.” Available from <http://www.accidentresponsefees.com/>. Accessed on May 5, 2010.

³⁹ Ibid.