



NORWOOD

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State Senate

State Assembly

Department of
Insurance

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Information

Assembly Insurance Committee Votes On Legislation For The First Time This Year

On Wednesday, the Assembly Insurance Committee voted to approve the following measures with unanimous support.

AB 1749 (Daly, Dem-Anaheim) – This bill provides that whenever any peace officer is injured, dies, or is disabled from performing his duties as a peace officer by reason of engaging in the apprehension or attempted apprehension of law violators or suspected law violators within or out of the state, or protection or preservation of life or property within or out of the state, or the preservation of the peace anywhere in this state, but is not at the time acting under the immediate direction of his employer, he or his dependents be accorded by his employer all of the same benefits the peace officer or his dependents have received had that peace officer been acting under the immediate direction of his employer.

AB 2045 (Committee on Insurance) – Current law governs annuities and, for those insurance contracts that provide cash surrender benefits, prescribes the cash surrender benefit available prior to maturity. Current law authorizes an insurer to require a contract owner to complete an administrative form as part of the surrender process and requires the insurer to provide the administrative form to the contract owner within two business days of the request. This bill instead requires the insurer to send or mail the administrative form to the contract owner within two business days of the request.

AB 2046 (Daly, Dem-Anaheim) – Current law requires that funds appropriated by the Legislature that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated to district attorneys, be applied to satisfy for the immediately following fiscal year the minimum total amount required. This bill instead authorizes, rather than requires, funds appropriated by the Legislature that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated to the district attorneys, to be applied to satisfy for the immediately following fiscal year the minimum total amount required, or, subject to appropriation by the Legislature, to be used to augment funding in the immediately following fiscal year.

AB 2802 (Friedman, Dem-Los Angeles) – Beginning January 1, 2020, this legislation requires an insurer to cooperate with the Department of Child Support Services to match claimants with obligors who owe past-due child support, and to report those claimants to the Department. The bill requires an insurer to match and report a claimant if his or her claim seeks an economic benefit, but exempts specified economic benefits, including a claim under a personal automobile insurance policy for actual repair, replacement, or loss of use of an insured vehicle.

Insurance Commissioner Announces Montecito Mudslide Claim Figures

At Monday's Department of Insurance (CDI) Montecito Mudslide press conference, Insurance Commissioner Dave Jones announced that insurers have received over 2,000 insurance claims totaling more than \$421 million in losses from the Montecito mudslide that damaged more than 400 homes and businesses and killed 21 people. Of these losses, 1,415 (\$388 million) were partial residential and 107 were total residential losses; commercial losses amounted to 235 claims at \$27.2 million; and, auto losses have come in at \$6.7 million for 388 claims. Commissioner Jones said these are not estimates, and criticized the media for sometimes characterizing his numbers as such.

One of Jones' recent actions included issuing a formal notice to all property and casualty insurance companies about "their duty" to cover damages from the recent mudslides and debris flows if it is determined that the destruction of the hillsides and vegetation by the Thomas and other fires was the efficient proximate cause of the mudslides. Jones also stated in his notice that there is substantial evidence that the fires were the efficient proximate cause of the mudslides. As a result of notice, insurers have been recognizing the efficient proximate doctrine and have been processing and paying mudslide claims under homeowner policies, according to Jones.

The Department issued a questionnaire in which all the insurers stated that they are recognizing the proximate cause doctrine. CDI has not received reports of any denials of these claims due to exclusion for mudslides. The Commissioner reported that most insurers are expediting home content replacement without excessive inventory reporting.

The foothill regions of the state are showing signs of nonrenewal when there are major weather events. Jones blamed the nontransparent risk models for leaving these areas with fewer insurance options, and called on the Legislature to require the models be furnished to CDI. The National Flood Insurance Program is expected to see premium increases because the US Treasury is currently subsidizing loss payment. One of Jones' closing comments was his view that insurers are in fine financial health and have adequate resources to pay claims.

AB 276 Looks At Digital Marketplace – New Grand Bargain Or Workers' Compensation Lite

The past several years has witnessed a host of litigation throughout the world over the classification of workers in the "gig" economy. Most of the attention has been focused on ride-sharing services. The results of these lawsuits have been mixed, only adding to the confusion. The City of Seattle, meanwhile, attempted to take matters into its own hands by allowing taxicab, flat-rate vehicle and transportation network company drivers to collectively bargain. That ordinance, adopted in 2015, is now working its way through the federal court system.

But this is not a new issue. The first effort to deal with the benefit question for hired drivers was the successful New York Black Car Operators' Injury Compensation Fund created in 1999. Today, the Fund provides workers' compensation coverage, including death benefits, and safety services for 300 member bases (dispatchers) covering over 70,000 drivers. The Fund is a nonprofit corporation financed by surcharges on fees charged to passengers.

This national debate has found its way into the California Legislature. [AB 2765](#) by Democratic Silicon Valley Assembly Member Evan Low establishes a regulatory and benefit framework for "digital marketplaces." A digital marketplace links customers to service providers through an Internet website. The service providers are known as "marketplace contractors" who enter into an agreement with the digital marketplace. If the digital marketplace elects to provide a benefit plan for marketplace contractors, the marketplace becomes a "participating digital marketplace." As might be

expected, the details are both sketchy and complex at this stage of the legislative process. However, it should be noted that the legislation acknowledges that the marketplace contractors may be represented and that the designated representatives of the participating digital marketplace must meet and confer with marketplace contractor representatives at least four times a year.

CalChamber Announces Measures That Inhibit Job Creation; Designated As Job Killers

To help lawmakers focus on the full ramifications of proposed laws, the Chamber of Commerce identifies each year the legislation that will hinder job creation. The Job Killer list highlights those bills that are going to cost the state jobs. Since starting the Job Killer bill list in 1997, the CalChamber has prevented 92% of these onerous proposals from becoming law.

There are 21 total measures, some of which affect Norwood Associates clients more than others. The full list is identified below to provide perspective on the overall legislative concerns to the greater economy. The Chamber will periodically release Job Killer watch updates as legislation changes. The 2018 list of Job Killer bills follows, including the positional perspective the Chamber provides.

AB 1745 (Ting, Dem-San Francisco) bans the sale of combustion engine vehicles in the state by prohibiting the registration of a new vehicle in the state after 2040 unless it is a zero-emission vehicle.

AB 1761 (Muratsuchi, Dem-Torrance) denies hotel guests due process, by requiring hotels to create a blacklist of guests who have been accused, yet not proven, to have engaged in inappropriate behavior toward hotel employees, and precludes the hotel from allowing those guests on the blacklist to enter their properties for three years.

AB 1902 (Levine, Dem-San Rafael) discourages and reduces “personal service contracts”, by increasing the contract price for these services based upon an undefined and unspecified “area income” rate that presumably will include wages from different industries and different occupations that are not comparable to personal services. It also provides the Department of Industrial Relations with authority to value companies, determine “similar services” to be included under the provisions of this bill, and what constitutes “area income.”

AB 2069 (Bonta, Dem-Oakland) provides a safe and drug-free workplace by creating a new protected classification of employees who use marijuana for medical purposes, and exposes employers to litigation under the Fair Employment and Housing Act whenever the employer terminates an employee in this new protected class who has created a safety hazard in the workplace.

AB 2351 (Eggman, Dem-Stockton) increases the personal income tax rate from 13.3% – which is already, by far, the highest income tax rate in the country – to 14.3% for one category of taxpayers (including some proprietors), who already pay half of California’s income taxes, forcing them to mitigate these costs through means that include reducing workforce, in order to provide more funding for higher education.

AB 2527 (Muratsuchi, Dem-Torrance) exposes small businesses who are seeking financial investors in their company to class action litigation by banning the use of arbitration agreements, which is preempted by the Federal Arbitration Act, prohibiting class action waivers, allowing for the award of treble damages, punitive damages, and attorney’s fees, and interferes with contractual negotiations between sophisticated parties by dictating the choice of forum and choice of law for such litigation.

AB 2571 (Gonzalez-Fletcher, Dem-San Diego) seeks to publicly shame investment managers and the hospitality companies in which they invest, by forcing them to submit an annual report subject to a public review, that discloses employee wage information according to gender, ethnicity, and race, exposing such companies to costly litigation.

AB 2765 (Low, Dem-Campbell) imposes mandates on companies in the gig economy labeled as the “digital marketplace” by adding them under the provisions of the Fair Employment and Housing Act (FEHA) and expands the protected classifications under FEHA for contractors of the digital marketplace to include “familial status.” The Chamber is concerned this will increase the amount of litigation under FEHA and the Private Attorneys General Act for the digital marketplace.

AB 3080 (Gonzalez-Fletcher, Dem-San Diego) significantly expands employment litigation and increases costs for employers and employees by banning settlement agreements for labor and employment claims as well as arbitration agreements made as a condition of employment, which is likely preempted under the Federal Arbitration Act.

ACA 22 (McCarty, Dem-Sacramento) increases California’s 8.84% corporate tax rate, already one of the highest in the nation, to 18.84%, which will encourage companies to leave the state and discourage companies from expanding or relocating here.

SB 1284 (Jackson, Dem-Santa Barbara) requires California employers to submit paydata to the Department of Industrial Relations, creating a false impression of wage discrimination or unequal pay where none exists and, therefore, subjecting employers to unfair public criticism, enforcement measures, and significant litigation costs to defend against meritless claims.

SB 1300 (Jackson, Dem-Santa Barbara) increases litigation by removing the standing requirement for a plaintiff alleging failure to prevent harassment or discrimination when no harassment even occurs, limits the use of severance agreements, and prohibits the use of a general release or non-disparagement clause in employer/employee contracts.

SB 1398 (Skinner, Dem-Berkeley) increases the corporate tax rate on publicly held corporations and financial institutions up to 15% according to the wages paid to employees in the United States, and threatens to increase that rate by 50% thereafter, if the corporation or institution reduces its workforce in the US and simultaneously increases its contractors.

2017 Job Killer Carry-Over Bills

AB 127 (Committee on Budget) threatens energy reliability and will lead to the elimination of jobs by mandating the closure of the Aliso Canyon natural gas storage facility.

ACA 4 (Aguiar-Curry, Dem-Winters) reduces the voter threshold from two-thirds to 55% for local governments to enact special taxes, including parcel taxes, for the purpose of improving public infrastructure and affordable housing, which creates an opportunity for discriminatory and higher taxes to be imposed against disfavored industries and commercial property owners.

ACA 11 (Caballero, Dem-Salinas) exposes the retail industry to increased taxes by imposing a quarter-cent sales tax increase to fund affordable housing and homeless shelters, without creating greatly needed market-rate housing.

SB 49 (de León, Dem-Los Angeles) gives broad and sweeping discretion to state agencies to adopt rules and regulations more stringent than the federal rules and regulations in effect on January 19, 2017 through an expedited administrative procedure without public participation or input, when the state agencies determine that federal action leads to less stringent laws and regulations than those in effect on January 19, 2017; and, increases the potential for costly litigation by creating private rights of action under California law, which may be triggered when a state agency takes the foregoing discretionary action.

SB 538 (Monning, Dem-Carmel) discriminates against arbitration agreements by restricting the formation of antitrust arbitration agreements in hospital contracts, leading to litigation over preemption by the Federal Arbitration Act.

SB 562 (Lara, Dem-Bell Gardens) penalizes employers and individuals and results in significant new taxes on all Californians and California businesses by creating a new single-payer government-run, multibillion-dollar healthcare system financed by an unspecified and undeveloped “revenue plan.”

SB 774 (Leyva, Dem-Chino) exposes permittees to unknown, increased fees by providing the Department of Toxic Substances Control a blank check to impose additional fees on permittees to implement and perform its statutory requirements when its primary sources of funding have structural deficits and creates substantial uncertainty and delay of facility permitting by interjecting a new board into the organizational structure.

SCA 6 (Wiener, Dem-San Francisco) reduces the voter threshold from two-thirds to 55% for local governments to enact special taxes, including parcel taxes, for the purpose of providing transportation services, which creates an opportunity for discriminatory and higher taxes to be imposed against disfavored industries and commercial property owners.

CalChamber Positions On Labor & Employment Legislation Revealed

CalChamber Support Bills

AB 2482 (Voepel, Rep-El Cajon) Flexible Work Schedules

This bill permits an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and allows an employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday.

AB 2907 (Flora, Rep-Modesto) Wage Statement Right to Cure

This measure authorizes an employer to cure any statutory violation regarding itemized wage statements by using a cure procedure to be developed during the legislative process. The Chamber supports this bill because it goes to the broader goal of reforming tort statutes, but in reality it is not expected to lead to much change to the status quo, according to the Chamber’s lead labor lobbyist.

Chamber Oppose Bills

AB 1867 (Reyes, Dem-San Bernardino) Employer Sexual Harassment Recordkeeping

This legislation requires an employer with 50 or more employees to maintain records of employee complaints of sexual harassment for 10 years from the date of filing.

AB 1870 (Reyes, Dem-San Bernardino) Unlawful Employment Practice Complaint Filing Extension
Current law authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred. This bill extends the period to 3 years for which complaints alleging unlawful employment practices may be filed with the Department. It is anticipated the Governor will sign this bill, so the Chamber will seek to lower the filing deadline to 2 years.

AB 2079 (Gonzalez-Fletcher, Dem-San Diego) Janitorial Worker Sexual Harassment Training
Current law, effective July 1, 2018, requires employers of employees who provide janitorial services to register with the Department of Industrial Relations – Division of Labor Standards Enforcement (DLSE) and prohibits them from conducting business without a registration. This measure requires the DLSE to develop a sexual harassment training program for this vocation. Chamber Employment Coalition members are concerned the training for this specific occupation could lead to other vocations being subject to specific training, as opposed to the standard video used for all job types. The Chamber is opposing more peripheral provisions that were not discussed today, not specific training language.

AB 2613 (Reyes, Dem-San Bernardino) Wage Payment Failure Penalty
Current law requires employers pay wages to their employees, twice per calendar month, on days designated in advance as regular paydays. However, employees defined as executive, administrative, or professional may be paid once per month. Existing law makes a violation of these provisions a misdemeanor and subject to civil penalties recovered by the Labor Commissioner. This bill additionally imposes a \$100 per violation fine with escalators, payable to the affected employees, on employers who violate these provisions.

AB 3081 (Gonzalez-Fletcher, Dem-San Diego) Sexually Harassed Employee Discrimination
AB 3081 prohibits an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's status as a victim of sexual harassment. The bill establishes a rebuttable presumption of unlawful retaliation if an employer takes actions within 90 days following the date an employee files a sexual harassment claim. The bill authorizes an employee to file a complaint with the Division of Labor Standards for a violation of that prohibition within 3 years from the date of occurrence of the violation.

Other Items of Import

The following will be Senate Floor fights because of inevitable committee passage.

SB 1300 (Jackson, Dem-Santa Barbara) Employment Discrimination Lawsuits
This bill provides that a plaintiff in an action alleging that a defendant failed to take all reasonable steps necessary to prevent discrimination and harassment from occurring is not required to prove that the plaintiff endured harassment or discrimination and provides that it suffices for the plaintiff to show that the employer knew that the conduct was unwelcome to the plaintiff, and that the defendant failed to take all reasonable steps to prevent the same or similar conduct from recurring.

SB 1284 (Jackson, Dem-Santa Barbara) Paydata Reporting
This legislation requires, on or before September 30, 2019, and on or before September 30 each year thereafter, an employer that has 100 or more employees to submit a paydata report to the Department of Industrial Relations. This bill requires the Department to make the reports available to the Secretary of State, the Department of Fair Employment and Housing, and the Commission on the Status of Women and Girls upon request.

The Chamber designated the following measure a “Job Killer,” which has significant influence in the Legislature.

AB 2765 (Low, Dem-San Jose) Digital Marketplace Contractor Benefits

This measure provides contractor benefits, including medical care and liability insurance, to digital marketplace contractors (eg. website developers.) The bill requires a participant in the digital marketplace to enter into a written plan agreement with a plan administrator to establish and maintain a benefit plan to provide benefits to the contractors who use the digital marketplace.

Note: The Chamber of Commerce is not weighing in on sexual harassment training-specific provisions in legislation because of its conflict of interest. It provides training videos and manuals on the subject to its members at a cost or at least as part of membership dues.