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John A. Norwood
Counselor at Law

Erin Norwood
Publisher

Contributors
Brittany Trudeau
Ted Wait

Contact Us

info@nalobby.net

Capitol Place
915 L Street, Suite 1110
Sacramento, CA 95814

(916) 447-5053
(916) 447-7516 fax

California Links

State Senate

State Assembly

**Department of
Insurance**

Secretary of State

Bill Introduction Deadline

Today, Friday February 17, 2017, marks the deadline for members of the Legislature to introduce legislation. As of today, 1,646 bills (not including resolutions) have been introduced and we expect approximately another 500-1,000 bills to be introduced today, to be in print tomorrow. Lobbyists will all be putting in the extra hours this weekend sorting through the introduced legislation and sending them out to their clients for review. As we often see, the most controversial bills are introduced last; however, there will also be a large number of "spot/placeholder" bill introduced as well. Once we have gone through the process of reviewing all introductions, we will begin sending out client specific reports of relevant introductions.

Moving forward, all bills must be in print for 30 days prior to being heard. Therefore, all of the bills introduced this week, 923 to be exact (not counting today's influx), will not be eligible to be heard until mid- March. Policy committees have until April 28th to hear and report all fiscal bills and May 12th to hear all non-fiscal bills. Fiscal committees have until May 26th to hear and report all bills to the Floor, then it is Floor Session only from May 30 to June 3rd, the last day for the Floor to pass house of origin legislation.

Senate Bill Creating Single-Payer Health System Introduced

This week, on the final day to introduce new legislation for the year, Senator Ricardo Lara announced that he and Senator Toni Atkins would be introducing a bill that would establish a state-run single-payer healthcare system in California. Although the text of the bill is still forthcoming, Senator Lara stated that SB 562 would be a rough framework for a system to be negotiated and developed by various stakeholders in the issue.

Under a single-payer system, the state would be in control of negotiating the prices for prescription drugs and medical services with providers and pharmaceutical companies. Supporters of the idea of a state-run universal health care system state that this would allow for more affordable health care to be available to all Californians, and that up-front costs would be offset by the savings brought about by eliminating the costs of going through insurance companies. Senator Lara said that the system he hopes to develop would "cut out insurance company waste and duplication that currently exists."

Official Legislative Information

Universal single-payer health insurance is an idea that has been floated in California government for many years now, although it has never gained the traction necessary to be seriously considered. One of the first attempts at creating a single-payer system was in 2003 with Senate Bill 2, which called for the creation of an employer-funded healthcare program for workers who lacked employer-funded health insurance. SB 2 made it through both houses and was signed by Governor Gray Davis, but the narrow defeat of Proposition 72 blocked it from being enacted. Another attempt was made in 2005 when Senator Sheila Kuehl introduced a bill creating a single-payer system, which was vetoed by Governor Arnold Schwarzenegger. The Governor then supported a bill the following year that had many of the same features as the Affordable Care Act, such as requiring a minimum level of health insurance for all people, but it never made it out of the Senate.

This bill comes at a time of particularly charged rhetoric and great uncertainty regarding healthcare in California, as the Trump administration has stated repeatedly that they are going to do whatever is necessary to repeal and replace the Affordable Care Act. This leaves the healthcare of millions of Californians in question, as California was the state that most enthusiastically embraced the ACA in the creation of its Covered California health exchange. Covered California currently has more than 1.5 million people enrolled, all of whom stand to lose their coverage if the Affordable Care Act is repealed without a replacement and California loses its funding for the program.

California has also positioned itself in resistance to the Trump administration, which, along with Senator Lara's recent announcement that he will be running for Insurance Commissioner in 2018, leads some political insiders to believe that this bill is largely an act of political grandstanding. Although support for a government-funded healthcare has swung positively among many voters, with 60 percent of voters saying that the government should be responsible for healthcare for those who cannot afford it according a recent Pew poll, the logistical and historical hurdles in front of SB 562 are many. The healthcare and insurance communities will be watching this bill closely, especially as the text is released and further details are developed.

Insurance Legislation Developments Starting to Unfold

This week, Senator Anna Caballero (D-Salinas) introduced comprehensive Community Organized Investment Network (COIN) reauthorization legislation. As part of the COIN program, each insurer admitted to conduct business in California with annual premiums written in the state in excess of \$100,000,000 must provide information to the California Department of Insurance on all of its community development investments, community development infrastructure investments, and green investments. Most notably, **AB 778** extends existing provisions relating to the authorization of the tax credit and certification by COIN until January 1, 2022.

In terms of an update on **AB 206 (Gonzalez Fletcher) – Day Laborer Worker Compensation**, insurance industry lobbyists have met with the author and she is passionate about the legislation. Assembly Member Lorena Gonzalez Fletcher (D-San Diego) considers it some form of relief to those affected by treatment from the Trump Administration. She projects it will result in 400-600 claims and cost would be minimal when spread across all homeowner's

insurance plans. However, the insurance industry questions the amount of analysis committed to these figures.

The author is willing to change the bill to isolate day laborers, if necessary, and argues current law already requires workers compensation coverage via homeowners for day laborers. The bill only seeks to add undocumented workers. The workers compensation piece of the policy can be done by endorsement. Concerning the AB 206 sponsor, the California Applicant Attorneys Association, have an extensive and aggressive legislative agenda, which could push the bill down the priority list. Also, the author and Assembly Insurance Committee have a full agenda. With Committee staff in study mode on the measure, the bill could be pushed to next year.

In terms of an early feel about how legislators are receiving AB 206, one perspective comes from Democratic Assembly Member Tim Grayson (Concord), who is a licensed contractor. He is concerned it could result in an unlevel playing field by increasing use of less costly undocumented labor. It could also increase the cost of homes via more expensive homeowners insurance and renters' insurance pass through.

Other insurance bills introduced this week include:

AB 553 (Daly): This bill deals with the Return to Work Fund (RTWF), a \$120M fund that is supposed to aid workers with permanent disability (PD) awards that are disproportionately low in comparison to their lost wages. The bill would zero out the Fund at the end of each year, essentially paying out any remaining funds pro rata to workers who had already received a disbursement from the Fund. The RTWF was a last-minute addition to SB 863 (De León), the 2012 reform bill. Currently, eligibility is tied to the receipt of the supplemental Job Displacement Benefit (SJDB). This is an assessment and administered through DIR.

AB 680 (McCarty): This bill would prohibit a study that is conducted or contracted for by the commission (Commission on Health and Safety and Workers' Compensation) from being funded or commenced prior to a public hearing on the purpose and design of the study, the sources from which the required data will be obtained, and the proposed researcher or entity. The bill would require a majority vote of the commission to approve the study and the researcher or entity selected to perform the study. The bill would prohibit payment for a study if those requirements are not complied with.

AB 715 (Wood): This bill requires the Department of Public Health to convene a workgroup to come up with a statewide guideline to address best practices for prescribing opioids.

SB 325 (Mendoza): This bill extends the COIN program.

SB 430 (Mendoza): This bill would allow CIGA to purchase adverse development reinsurance or do a loss portfolio transfer.

SB 444 (Gaines): Insurance Code spot.

CDI Shopping Bill to Mandate Insurers Provide Coverage in High Fire Hazard Zones

It has been learned from a source within the Legislature that the California Department of Insurance (CDI) is seeking an author to its proposal to mandate insurers provide coverage for those residing in a State Responsibility Area (SRA) or high fire hazard zone.

An SRA is a legal term defining the area where the state has financial responsibility for wildland fire protection. Incorporated cities and federal ownership are not included. The prevention and suppression of fires in all areas that are not SRAs are primarily the responsibility of local or federal agencies. There are more than 31 million acres in SRA with an estimated 1.7 million people and 750,000 existing homes.

Regions of the state have been hit hard by catastrophic wildfires and residents have found it difficult to obtain insurance at a reasonable cost because of the risk factor. However, the solution is not insurance mandates. A better alternative is for legislators to work closely with insurance stakeholders on finding solutions for this issue, as mandates usually cause prices to go up and skew the market.

In this case, CDI controls the price per the prior approval rate via the California FAIR plan, standing for Fair Access to Insurance Requirements. The California FAIR plan, based out of Los Angeles, is a fire insurance pool set up by the state to offer fire insurance to property owners who have been denied insurance through the regular insurance channels. The FAIR plan is always there to provide coverage and the law requires the rates charged to be actuarial sound. Essentially, this is a last resort option where CDI has approved the rates.

As the bill introduction deadline is today, CDI representatives are spent considerable time at the Capitol this week seeking legislative sponsors to carry their proposals. It is uncertain whether they were successful in finding an author for this proposal but we will find out shortly given the bill introduction deadline.

An Update on Burdensome Labor & Employment Legislation

Some time ago, Assembly Member Lorena Gonzalez Fletcher (D-San Diego) introduced **AB 5 – Opportunity to Work Act**, which requires an employer with 10 or more employees to offer additional hours of work to an existing nonexempt employee before hiring an additional employee. A California Chamber of Commerce coalition met last week with the author, who advised that the bill came about from a San Jose-based Assembly Women in the Workplace Select Committee hearing that occurred earlier this year. At which, a person provided detailed testimony about being repeatedly passed over for a position.

While the author is willing to work on language that may be of concern, the consensus is that the Assembly Labor Committee will approve the bill and Assembly Member Gonzalez Fletcher will not hold it up for floor consideration should remaining concerns exist. An employee opt-

in provision of some kind related to notice of position openings is alternative bill language that may surface.

Relative to [**AB 44 \(Reyes\)**](#) – **Workplace Violence Workers Compensation**, exempts medical treatment for employees who sustain injury as a result of an act of terrorism or violence in the workplace, a Department of Industrial Relations report on this subject is upcoming, which will inform the discussion.

[**AB 387 \(Thurmond\)**](#) – **Health Professional Intern Minimum Wage** expands the definition of “employer” to include a person who exercises control over the wages, hours, or working conditions of a person engaged in a period of supervised work to satisfy requirements for licensure, registration, or certification as an allied health professional. The United Healthcare Workers is the sponsor. Overall, this bill sets a bad precedent surrounding internships.

[**AB 450 \(Chiu\)**](#) – **Employment Regulation** is a placeholder vehicle that prohibits an employer from unfair immigration-related practices against an employee. The bill is sponsored by the Service Employees International Union in response to recent federal immigration raids. AB 450 is expected to contain lengthy employer mandates and penalties language, the details of which are largely unknown outside notices and employment handbook detail about US Immigration and Customs Enforcement authority. This bill will also attempt to accomplish unsuccessful California Department of Labor regulatory action.

[**SB 33 \(Dodd\)**](#) – **Contractor Fraud Arbitration Prohibition** allows a person receiving contractor services that has been subject to fraud to avoid arbitration to recover damages. This will be amended soon to apply to just financial institutions, but the CEC remains unsure how to arrive at a satisfactory resolution to major concerns about it being abused by those that want to avoid forced arbitration in cases where fraud really does not occur. The CEC coalition on this will meet with the author on February 23, which will be the first of other meetings with legislators.

And lastly, with respect to State Budget 2017-2018 Trailer Bill labor legislation, it includes substantial policy changes inappropriate for a budget measure. The effort to narrow its scope is being led by a multitude of trade associations with labor interests. The Chamber of Commerce and others will work with Assembly Budget State Administration Subcommittee Chair Jim Cooper (D-Sacramento) on attempting to bring the bill back to its original purpose of funding the Labor Department. Hearings in this regard will occur the third week of March.

Assembly Bill Introduced Prohibiting Pregnancy in Workers’ Comp Claims

This week, Assembly Member Lorena Gonzalez Fletcher introduced AB 570, a bill that would prohibit the California workers’ compensation system from considering either a current or past pregnancy during the apportionment process. The bill is intended to prevent pregnancies from being used to minimize the severity or extent of an injury sustained while working. Assembly Member Gonzalez Fletcher stated that while current law prohibits the denial of claims based on age, gender, and other factors, there are no protections in place

that prevent women from being compensated for less because of pregnancy and other conditions that primarily affect women. In a statement regarding the bill, the Assembly Member said that “There are employers who cross the line by invading the privacy and personal lives of women who work for them, and far too often women are punished financially for becoming pregnant and having children.”

Assembly Member Gonzalez Fletcher has introduced other bills regarding similar issues recently, with varying success. In 2015, she introduced a bill that would have broadly prevented the use of gender-based characteristics in the calculation of permanent disability benefits, but it was vetoed by Governor Brown. Last year however, she introduced AB 1643, which prohibited the apportionment of permanent disability benefits due to pregnancy, osteoporosis, menopause, or carpal tunnel syndrome. This bill was introduced soon after a class action lawsuit that claimed that female employees in California were subject to discrimination in the apportionment process and made many concerned that employers would be liable for non-occupational injuries and disabilities.

Appeals Court Affirms Insurance Commissioner’s Authority

The California Court of Appeal has ruled in favor of Insurance Commissioner Dave Jones by rejecting a suit brought by the Association of California Life and Health Insurance Companies. The suit was a challenge to regulations issued by the Commissioner that were stated to protect consumers from the unlawful cancellation of the health insurance, and claimed that the Commissioner did not have the authority to institute regulations that were inconsistent with current statute. This case is the third so far this year in which major appellate court decisions have been found in favor of the Insurance Commissioner and against the insurance industry.

In the court’s decision, the court specifically upheld a requirement that health insurers provide a 30-day grace period in which consumers may pay their premiums before their health policies are cancelled. If the consumer pays their premium during that period, they are entitled to keep their health coverage. It also upheld the regulation that when an insurer seeks to cancel a health policy, they must send a notice to consumer notifying them of their right to request review by the Insurance Commissioner. Additionally, an insurer attempting to end health coverage for any reason other than nonpayment of premiums must still provide coverage to the consumer during the period in which the consumer’s request for review is being considered, as long as the consumer makes the request within 30 days of the notice being sent. Finally, in the case that the Insurance Commissioner finds that the plan has been unlawfully terminated, the health coverage must be retroactively reinstated as long as the consumer has paid their premiums.

Insurance Commissioner Jones issues a statement regarding the case, saying that “This is the third major case this year in which an appellate court has rejected a lawsuit challenging my authority to protect consumers. In this case, the court of appeal rejected all the health insurers’ arguments challenging regulations I issued to protect consumers from unlawful cancellations of their health insurance policies.”