NORWOOD & ASSOCIATES
This Week in Sacramento

February 24, 2017 Sacramento, California

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

CDI Officials Lay Out Details of Legislative Agenda

At an insurance lobbyist meeting this week, Department of Insurance (CDI) officials presented their legislative agenda for 2017.

They are as follows:

SB 488 (Bradford) adds veteran and lesbian, gay, bisexual, and transgender business enterprises to the entities for which the following reporting is required: each admitted insurer with premiums written in excess of $100 million must submit to the Insurance Department an outline on its minority, women, and disabled veteran-owned business procurement efforts. The author has some history with issues along these lines.

AB 938 (Cooley) authorizes CDI to adopt regulations applicable to reinsurance arrangements for life policies, longterm care policies, and annuities. With regard to credit for reinsurance ceded by a domestic insurer, the regulation must specify additional requirements setting forth the valuation of assets or reserve credits, the amount and forms of security supporting those reinsurance arrangements, and the circumstances pursuant to which a credit would be reduced or eliminated. CDI Legislative Director Robert Herrell was not aware of any controversy on this bill. It does not directly mirror its NAIC model, as the Department found that some is already codified or unnecessary.

AB 1398 (Kalra) requires insurers to return to the owner all moneys due for annuity contracts that are surrendered by the contract owner after the request for surrender is received, but no later than 45 days from the date of surrender. This is a best practices measure, and many insurers already do this.

Within one of the CDI spot bills, there will be language that follows on last year's AB 1899 (Calderon) that requires the examination for a license as a life agent, life-only agent, and accident and health agent be provided in English and Spanish. This year, this requirement will apply to other lines agents sell.

The CDI omnibus bill language is being developed and will be inserted into a spot eventually. The language will be circulated to the trade associations and companies as applicable. One element will be a request for more financial resources / personnel positions funded by relevant insurance line.

Official Legislative Information

There is no sponsor for draft language mandating fire insurance in tree mortality areas. The bill draft was circulated to 10-12 rural legislators for their consideration. Herrell said the draft was to continue the conversation about how best to reduce insurance nonrenewals for these homeowners. Colorado's program is considered the most viable model at this time. This entails homeowner certification of defensible space and the like, which would then hopefully make them eligible for a more affordable policy. Insurance industry representatives assured that they are participating in the dialogue and trying to find solutions in nonmandated form, including through the CalFire Tree Mortality Taskforce.

On AB 206 (Gonzalez Fletcher) – Day Laborer Workers Compensation, CDI has no position. On the state Community Organized Investment Network program, which is a program to increase insurance industry investment in underserved and rural communities, CDI does not have a bill it is sponsoring. Also, a child support intercept bill is not expected this year.

Applicant Attorney Findings: Undocumented Immigrants Injured on the Job File Less Workers Compensation Claims

Speaking of AB 206 (Gonzalez Fletcher), the California Applicants Attorneys Association report that there is an underestimation of the number of Latinos who fail to receive workers compensation, who fail to report their injuries, or who receive nominal, if any, compensation for them. Latinos who are undocumented fare far worse.

Seventy-nine percent of the nation's undocumented immigrants are Latino with 2.4 million (22%) residing in California. In California's workforce, it is estimated that one in 10 workers is undocumented. In 2014, Latinos accounted for 59.4% of injuries and 37.8% of deaths in California's workplaces. Some believe this circumstance could worsen under the Trump Administration, largely from lowering labor standards. The Mexican-American Legal Defense and Educational Fund believes that home raids and work raids will increase, as well as more coercion and the threatening of immigrants.

The Applicant Attorneys find that the place where workers compensation claims are significantly unreported is in California's agricultural fields. Latinos and other immigrant workers experience a higher rate of injuries in California because of their type of employment. While a large portion are farm workers, most move out of farm work to take jobs in packing sheds, food processing plants, or as truck drivers. Immigrant women are also susceptible to dangerous working conditions because of the type of industries they are more heavily concentrated in: hotel maids, restaurant cooks, waitresses, and farm workers. These positions require moving 100 pound beds and scrubbing hotel bathrooms in awkward positions, resulting in injured backs, knees, and arms.

Labor organizations maintain that what makes workers compensation claims less reported among undocumented immigrants is the way their immigration status is used as a weapon of intimidation across all job sectors. Despite the passage of strong labor laws, they are rarely enforced.

That is why Assembly Member Lorena González-Fletcher, D-San Diego, has presented a bill that she alleges will bring worker's compensation coverage for day laborers who are injured on the job by effectively eliminating the exclusion of workers who are employed or contracted to be employed for less than 52 hours. AB 206 is intended to lead to the creation of a new workplace protection for day laborers by making them eligible to receive workers compensation. However the insurance industry has concerns about this proposal, which will likely be one of the more controversial bills this year.

Consumer Attorneys Sponsor Unfriendly to Business Legislation

Now that the bill introduction deadline has passed, there is clarity around the legislative plans of the Consumer Attorneys of California (CAOC). A bill reacting to the fraudulent behavior of Wells Fargo Bank's fictitious bank accounts is at the center of legislation sponsored by the Consumer Attorneys.

As has been reported previously, SB 33 – Fraud & Identity Theft Arbitration Waiver, authored by Senator Bill Dodd (D-Napa), prohibits financial institutions from forcing customers to use arbitration when the bank has committed fraud or identity theft. It was written in response to the scandal in which at least 3,500 Wells Fargo employees opened approximately 1.5 million bank accounts and approximately 565,000 credit cards without the consent of their customers, creating additional fees for customers and damaging their credit ratings.

The measure ensures that fraud cases are heard in the public setting of a court instead of secret arbitration hearings. Customers have been trying to sue Wells Fargo over these fraudulent accounts since at least 2013. The bank successfully argued that its customers were bound to arbitration agreements in accounts they never agreed to open. Critics of arbitration contend by requiring these cases to be private arbitration proceedings, Wells Fargo kept the scandal out of public view, allowing the fraud to continue, and the bank to continue to profit while evading accountability.

SB 33 prohibits the use of forced arbitration only in cases involving fraud or identity theft, but industry is concerned that fraud will be used loosely to avoid arbitration in other grievances. This is in conflict with established federal law and legal rulings of the United States and California Supreme Courts, and will lead to costly litigation, as well as further straining our over-burdened court system.

It is co-sponsored by the Consumer Federation of California.

Other bills sponsored by CAOC include:

AB 859 (Eggman): This bill would protect seniors physically abused in nursing homes by discouraging facilities from intentionally destroying legal evidence in violation of the law. Normally, to show elder abuse, the victim must show "reckless neglect" by clear and convincing evidence. However, some nursing homes intentionally destroy that very evidence to prevent victims from proving their case. Under AB 859, when a judge has found that a nursing home has intentionally destroyed legal evidence, the victim's burden of proving the

case is by a preponderance-of-evidence standard, and not the higher clear-and-convincing standard. This bill has the support of California Advocates for Nursing Home Reform.

SB 755 (Beall): This bill would limit the length of time that a civil defendant's paid expert can conduct psychological testing of a child under age 15 where there exists credible evidence that the child has been sexually abused.

SB 658 (Wiener): This bill would ensure that the proper procedures are in place to ensure fair and impartial juries by addressing the issue of unreasonable and arbitrary restrictions on attorney examination of potential members of a jury during the process known as voir dire. Some courts have limited voir dire to as little as 30 minutes in unlimited civil jurisdiction cases. Under current law, in order to select a fair and impartial jury, each party in civil cases has the right to examine prospective jurors without a blanket time limit.

SB 632 (Monning): This bill would clarify that dying asbestos victims receive the benefit of current law that sets a time limit for the deposition for victims with a terminal illness. Despite the clear intent of the California Legislature in 2012 to protect dying victims from abusive depositions, courts dealing with asbestos cases used broad language permitting "judicial discretion" to ignore time limits. As a result, dying victims can be subjected to marathon sessions that are physically and psychologically debilitating.

AB 644 (Berman): This bill is co-sponsored by CAOC and the California Defense Counsel as a vehicle to address civil procedure and court function issues with the goal of improving current litigation procedures. The exact language has yet to be developed.

Effort to Close a Budget Loophole Brought Forward; Intended to Lead to Timely Budget Passage

This week, Assembly Member Jay Obernolte, R-Hesperia, introduced a Constitutional Amendment (ACA 9) requiring legislators to forfeit their salaries unless a balanced state budget is enacted by midnight on June 15th each year. This was the intent of Proposition 25 (2010), which closes a loophole in this requirement, and extends it to all budget related bills (referred to as budget "trailer bills") so that the entirety of the budget must be passed by June 30th.

Proposition 25 authorized the Legislature to pass the annual budget and trailer bills by a simple majority vote rather than a two-thirds vote. Proposition 25 also sought to encourage on-time budgets by mandating that legislators forfeit their salary and any expense reimbursement for every day past the deadline that the Legislature has not passed a budget bill. However, the Legislature has found ways to circumvent, making legal clarification necessary to carry out the intent of Proposition 25.

In 2011, only a year after Proposition 25 was enacted, a budget was passed on a party-line vote that was not balanced as required by the California Constitution. Governor Brown returned it without his signature, becoming the first in nearly a century to veto a spending plan enacted by the Legislature. Legislators sued the State Controller and continued to receive their paychecks.

If ACA 9 passes the Legislature, it would be placed on the ballot for voter approval.

Appeals Court Elects Not to Block Division of Workers Compensation Action

Workers' Comp Executive, an authoritative news source in the subject matter, reports the First District Court of Appeal rejected a convicted chiropractor's request to stop the state from suspending providers from the workers' compensation system, and staying their medical liens when the providers are linked to fraudulent activities. The Division of Workers Compensation (DWC) is moving to suspend providers and stay liens under new authority granted to it by the passage last year of SB 1160 and AB 1244.

Chiropractor Michael Barri, his company Tri-Star Medical Group and a newly formed nonprofit called the Coalition for Sensible Workers' Compensation Reforms, filed a constitutional challenge last week seeking to block the state's action. The court took just two days to respond with a denial.

The arguments, in this case, are similar to the constitutional challenges that providers made in the Angelotti Chiropractic case – an unsuccessful attempt to have the state's lien activation fee struck down. The plaintiff's petition was denied as premature, given that a hearing on the suspension is scheduled for today, before a hearing officer of the DWC, and the suspension is stayed pending the outcome of that hearing, the First District wrote. The court also questioned whether the First District is the proper appellate district to file the petition, given that none of the petitioners reside or have their principal place of business in this district.

Barri was caught up in the Pacific Hospital spinal surgery kickback scheme and is linked to the compound drug scheme allegedly perpetrated by Landmark Medical Management. Barri pled guilty to receiving illegal kickbacks to refer patients to Pacific Hospital over a four-year period. The US District Attorney says that during one nine-month period, Barri admitted to receiving nearly $160,000 for referring a dozen patients to the hospital run by Michael Drobot. As a result of the subsequent spine surgeries, Pacific Hospital billed carriers for $3.9 million.

Barri's petition to the Court of Appeal claims that he and other similarly situated providers face the loss of their constitutional right to counsel, and lien claimants across the state risk the cancellation of their valid workers' comp liens and irreparable harm to their business. The petition challenged a provision in the enacted SB 1160 (Mendoza, 2016) that imposes an automatic stay on all workers' comp liens filed by a provider who is criminally charged with workers' comp fraud, medical billing fraud, insurance fraud or fraud against the Medi-Cal or Medicare programs.

The petition also challenged a provision in AB 1244 (2016, Gray) for suspending providers from the workers' comp system for fraudulent or abusive behavior or for losing their license, as well as AB 1244's provisions for creating a new adjudication process for the liens filed by these providers.

Workers' Compensation Fraud Savings Announced

Assembly Member Adam Gray has announced this week that AB 1244, which he carried into law last year, has so far prevented over $59 million in workers' compensation fraud. AB 1244 calls for the state of California to suspend medical providers who have been convicted of workers' compensation and other kinds of fraud from participating in the workers' compensation system, which allowed for the Division of Workers' Compensation to suspend seven medical providers who had filed over 8,500 fraudulent claims that totaled over $59 million.

Gray stated that "This is an example of a common sense policy actually working to make doing business in California cheaper and easier. Since becoming law, we have seen a reduction of more than $1 million of fraud per day."

Recent Flooding Emphasizes Importance of Flood Insurance

The record levels of precipitation in California in recent weeks have underscored the importance of flood insurance for both homeowners and renters. Although flood insurance is required for anyone who has a federally-backed mortgage living in a specially designated flood zone, changes in flooding patterns have shown that many people at risk of flooding do not live in these zones and very often do not have any form of flood insurance. For example, during the recent crisis at the Oroville Dam, most of the 200,000 people who were evacuated did not live in a flood risk zone. This led to a spike in interest in flood insurance immediately following the event, even though there is a 30 day waiting period after filing for flood insurance.

The cost and coverage for flood insurance varies widely from area to area, although outside of flood risk zones the costs are usually more consistent. Inside of a flood risk zone, premiums ranging from $1,200 to $2,000 per year are the most common, although they can rise as high as $3,200 if the risk is higher. However homes outside of flood risk zones, as most are, generally can purchase flood insurance for around $450 per year, an investment that can make the difference between a family being able to return to their home or not. Standard policies cover up to $250,000 in damages to a home, with additional coverage for up to $100,000 for the contents of the home also available. When the scale of the potential damage from a dam failure estimated at around $13.3 billion for over 50,000 single and multi-family homes, the beneficial impact of flood insurance becomes even more clear. And with shifting weather patterns and aging water infrastructure contributing to new and elevated flooding, agents can expect the interest in flood insurance to keep rising.

There will be an informational hearing hosted by the Joint Senate Committees on Natural Resources and Water and Emergency Management on February 28th at 9:30 A.M. in room 4203 covering the recent flooding incidents. Although it is unknown whether or not insurance issues will specifically be addressed, the subject of the hearing will be "The Incident at Oroville Dam: What Happened and What Happens Next?"

Unusual Number of Bills in 2017 Session

With the passing of the Legislature's bill introduction deadline on February 17th, lawmakers now have a clearer view of the growing amount legislation they will be deliberating in the upcoming year. Analysis of the bills introduced shows a nearly 25% increase in the bills introduced for the 2017 session from last year, with 2,495 bills introduced in 2017 as compared to 1,993 in 2016.

Although it is common for more bills to be introduced in the second year of a two year session, this first year of the two year session saw more bills introduced than any in the last five years. This was due in part to the increase in the number of bills that can be introduced by each legislator, up to 50 bills every two years instead of the 40 that had been the rule in previous sessions. This led to a scramble to introduce bills close to the deadline, culminating in over 800 bills being introduced on the final day. Additionally, around 30% of the bills introduced near the deadline were spot bills that are awaiting amendments before they are referred to committees, meaning that even after the deadline for introducing new legislation has passed many new bills may arise as amendments are made.