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California Links

State Senate
State Assembly
Department of Insurance

Forced Arbitration Bill Introduced

In early December, the first official day of the 2017-2018 Legislative Session, newly elected Senator Bill Dodd introduced SB 33, a bill addressing forced arbitration. This bill has since become one of the most controversial bills of the session, and it hasn't even had a hearing yet.

SB 33 prohibits arbitration agreements made as a condition of a contract for claims involving fraud, identity theft, and wrongful use of personal identifying information. This bill was introduced as a result of the recent Wells Fargo scandal, where the financial institution fraudulently opening approximately 1.5 million bank and credit card accounts in the names of individual customers and possibly another 500,000 business accounts. Those victimized by Wells Fargo have tried to sue the bank to recover losses; however Wells Fargo contended in their defense that customers waived their right to sue and agreed to arbitrate all disputes when opening up their initial and legitimate accounts, including acts of fraud.

While the Senator and his staff argue that this bill is narrowly drawn, a large coalition led by the California Chamber of Commerce believes this applies to all contracts for goods and services and therefore has tagged this bill as a Job Killer. The coalition, which includes everything from insurance interests to retailers to hospitals, met this past week to discuss the implications of the bill and how it could potentially be drafted to address the specific problem at hand and not include others who use the arbitration process in a proper manner.

One main issue the group discussed at the meeting is that SB 33 is likely pre-empted under the Federal Arbitration Act (FAA). According to the Chamber, the United States Supreme Court has been consistently clear that a prohibition of arbitrating certain claims is pre-empted under the FAA. They cite cases in which the FAA has been upheld as recently as 2011.

In addition, the coalition argues that attorneys are generally the biggest winners in class action cases, not the consumers and that arbitration can actually provide individuals with a better remedy than pursuing a lengthy and costly class action litigation. Furthermore, SB 33 will create a worse litigation environment and result in lack of job creation in the state.

Since SB 33 was introduced on December 5, 2016 it was eligible to be heard in committee January 5, 2017. The bill has been referred to the Senate Judiciary Committee, but a hearing date has not yet been assigned. The Chamber of Commerce has delivered a letter of

opposition, which all members of the coalition will likely join. This will be the starting point of discussions between the interested parties and Senator Dodd.

Stay tuned...

Autonomous Vehicle Bill Introduced

This week, Senator Jerry Hill introduced SB 145, a bill that aims to streamline the development and deployment of autonomous vehicle technology in California. SB 1298, passed in 2012, allowed for the testing and operation of autonomous vehicles in California, but it also included many precautionary measures intended to ensure that the state and the Legislature were informed about the development of new autonomous vehicle technology. Additionally, the regulations that were developed by the Department of Motor Vehicles governed the testing of vehicles that had a driver present, while the rules for vehicles without a driver are still being finalized.

Under current law, the DMV must notify the Legislature every time it receives an application for testing of an autonomous vehicle without a driver, and that there must be a waiting period of 180 days after the application has been filed. SB 145 will eliminate both the requirement for the DMV to notify the Legislature of the application, as well as the 180 waiting period. The goal of this is to streamline the process of developing and testing autonomous vehicles for consumer use in California, under the presumption that such vehicles will lead to safer roads and fewer collisions. Autonomous vehicles are in development at several automotive and technology firms, including Google, Tesla, Uber, and BMW.

Senate Expected to Confirm New Attorney General

On January 18, the Senate Rules Committee approved the nomination of 12-term Congressman Xavier Becerra (D-Los Angeles) for Attorney General. A vacancy for the office occurred when Attorney General Kamala Harris was elected US Senator in the last general election. Becerra's nomination is before the full Senate, where he will be confirmed. He has already been confirmed by the full Assembly.

After significant pressure from Senate leadership, Becerra agreed to run for reelection for the same office, a decision he was not previously willing to make. According to Senate President Kevin De Leon (D-Los Angeles), "strong concern about the Trump Administration on a number of policy issues demands a leader not a caretaker of the Office of the Attorney General."

This decision to run for re-election after the completion of his first term also has impacts for others who had hoped to take that office once it was open. Insurance Commissioner Dave Jones had already begun his campaign for the Attorney General's race in 2018, and when Becerra was announced as the appointment he stated that he would continue that effort until Becerra announced that he would run for re-election. With this statement in his confirmation hearing, it appears as though Jones will drop his bid.

DIR Fraud Whitepaper Issued

The Department of Industrial Relations (DIR) Workers' Compensation Fraud Whitepaper issued this week recommends legislation to create a DIR Anti-Fraud Support Unit and maintain a centralized data-intake system for transparency and information sharing. This is to serve as DIR's point of contact with other agencies and stakeholders on fraud issues for data sharing and making referrals for criminal investigation.

To combat premium fraud, the report encourages legislation to require insurers annually obtain copies of Employment Development Department (EDD) payroll reports and compare them to payroll reported to the insurer by the employer, with sanctions against employers who fail to supply their EDD payroll reports and insurers who fail to make the required annual comparison.

In addition, the report supports a bill to extend the Labor Commissioner's authority to cite employers for failure to secure workers' compensation coverage to include employers who under-report payroll or misclassify workers for the purpose of reducing insurance premiums. Lastly, the DIR calls for Workers' Compensation Judges to apply applicable anti-fraud provisions, as well as follow protocols for reporting and referring incidents of fraud.

It is unclear at this time if any of these proposals will be introduced in legislation. The deadline for bill introductions is February 17th.

Speculation on the Future of Independent Contractors

Much has been made over the status of drivers in recent years, with the rapid rise of Uber and other ride-hailing services intensifying the debate over whether or not they are employees or independent contractors. Many states have even moved to pass legislation defining the status of those drivers, the effects of which have spilled out into other arenas such as freight delivery and other motor carriers. Some of the many issues have arisen from the Federal Aviation Administration Authorization Act of 1994 (FAAAA), which prevented states from controlling interstate motor carriers in regards to their "rates, routes and services." However despite this protection, many state laws and judicial rulings have carved out exceptions and created a series of different laws for each state.

What remains to be seen is how the incoming Trump administration will handle these issues. Many believe that the Trump administration will favor independent contractors and work to restore the blanket protections that have been provided in the past, along with the potential for a Republican-controlled Congress to pass bills to that effect that have previously stalled. The question in many cases will come down to an issue of states' rights versus the power of the federal government, much of which will certainly be fought out in courts in the months and years ahead.

Committee Appointments Released

This week, the office of Assembly Speaker Anthony Rendon released the list of committee appointments for the upcoming session, which is as follows:

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Assemblymember Susan Eggman, Chair
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Assemblymember Autumn Burke
Assemblymember Heath Flora
Assemblymember Jim Frazier
Assemblymember Jose Medina
Assemblymember Sharon Quirk-Silva

Aging and Long-Term Care

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Assemblymember Randy Veopel, Vice Chair
Assemblymember Dante Acosta
Assemblymember Anna Caballero
Assemblymember Mike Gipson
Assemblymember Todd Gloria
Assemblymember Adam Gray

Agriculture

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Assemblymember Devon Mathis, Vice Chair
Assemblymember Cecilia Aguiar-Curry
Assemblymember Heath Flora
Assemblymember James Gallagher
Assemblymember Adam Gray
Assemblymember Jacqui Irwin
Assemblymember Reginald Jones-Sawyer, Sr.
Assemblymember Bill Quirk
Assemblymember Rudy Salas, Jr.

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Assemblymember Richard Bloom
Assemblymember Raul Bocanegra
Assemblymember Rob Bonta
Assemblymember Bill Brough
Assemblymember Ian Calderon
Assemblymember Ed Chau
Assemblymember Susan Eggman
Assemblymember Vince Fong
Assemblymember Laura Friedman
Assemblymember James Gallagher
Assemblymember Eduardo Garcia
Assemblymember Adam Gray
Assemblymember Al Muratsuchi
Assemblymember Jay Obernolte

Assemblymember Eloise Reyes

Arts, Entertainment, Sports, Tourism, and Internet Media

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Assemblymember Marie Waldron, Vice Chair

Assemblymember Dante Acosta

Assemblymember David Chiu

Assemblymember Laura Friedman

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Assemblymember Adrin Nazarian

Banking and Finance

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Assemblymember Phillip Chen, Vice Chair

Assemblymember Autumn Burke

Assemblymember Sabrina Cervantes

Assemblymember Timothy Grayson

Assemblymember Monique Limón

Assemblymember Melissa Melendez

Assemblymember Sebastian Ridley-Thomas

Assemblymember Marc Steinorth

Assemblymember Mark Stone

Assemblymember Shirley Weber

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Assemblymember Travis Allen

Assemblymember Richard Bloom

Assemblymember Anna Caballero

Assemblymember Rocky Chávez

Assemblymember David Chiu

Assemblymember Steven Choi

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Assemblymember Christina Garcia

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Assemblymember Jacqui Irwin

Assemblymember Reginald Jones-Sawyer, Sr.

Assemblymember Tom Lackey

Assemblymember Monique Limón

Assemblymember Devon Mathis

Assemblymember Kevin McCarty

Assemblymember Jose Medina

Assemblymember Melissa Melendez

Assemblymember Kevin Mullin

Assemblymember Patrick O'Donnell

Assemblymember Jim Patterson

Assemblymember Blanca Rubio
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Assemblymember Jim Wood

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Assemblymember Jim Wood
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Assemblymember Jay Obernolte, Republican Alternate

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Assemblymember Monique Limón
Assemblymember Jose Medina
Assemblymember Patrick O'Donnell
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Budget Subcommittee No. 3 on Resources and Transportation

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Assemblymember Jim Patterson
Assemblymember Phil Ting, Democratic Alternate
Assemblymember Jay Obernolte, Republican Alternate

Budget Subcommittee No. 4 on State Administration

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Assemblymember Travis Allen
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Assemblymember Jay Obernolte, Republican Alternate

Budget Subcommittee No. 5 on Public Safety

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