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State Senate

State Assembly

Department of  
Insurance

Secretary of State

Official Legislative  
Information

Today, the California Legislature adjourned for summer recess. The Assembly and Senate will reconvene August 6. Up to August 17, each body will only be able to consider legislation in their respective Appropriations Committees or the full chambers. Policy committee activity has concluded for the year.

### Legislative Leaders Announce Net Neutrality Compromise Legislation Will Move Forward In August

Yesterday, Senate President Pro Tempore Emeritus Kevin De Leon (D-Los Angeles), Senator Scott Wiener (D-San Francisco), and Assembly Members Rob Bonta (D-Oakland) and Assembly Communications and Conveyance Chair Miguel Santiago (D-Los Angeles) held a press conference to announce compromise legislation implementing net neutrality, the strongest in the nation according to these legislators.

According to Senator Wiener, when the Legislature reconvenes from summer recess on August 6, [SB 460](#) (De Leon) and [SB 822](#) (Wiener) will be unified and pursued in the Assembly. Both measures have been approved by the Full Senate. Amendments will be formerly submitted August 6 because bills cannot be amended during recess. Senator Wiener said the bill will be organized differently than SB 460 and SB 822, but no substantial consumer protections were removed from the two measures.

Senate President De Leon maintained unfettered internet access is essential for low income community members. The Electronic Frontier Foundation said \$20 billion in profits by ISPs, specifically AT&T, shows these companies do not need to generate more profits by offering different levels of service at different prices. The California Labor Federation commented in support as well.

The compromise bill will include the following:

- No paid prioritization
- No internet service provider access fees
- Ensuring net neutrality begins at the point of interconnection
- No blocking
- No throttling
- No zero rating

## In The Wake Of Sweeping Online Privacy Legislation Signed By The Governor Last Week, A Far Reaching Data Breach Lawsuit Bill Gutted By Committee

On Tuesday, [SB 1121](#) (Dodd, D-Napa) passed the Assembly Privacy and Consumer Protection Committee 9-1 with only Republican Assembly Member Kevin Kiley (Rocklin) opposing. In SB 1121, Senator Bill Dodd was pursuing two causes of action for data breaches. The first cause of action provided that any consumer could bring a claim against a company if their personal information was breached, alleging the company had acted unreasonably in protecting the data. This cause of action was entirely captured by [AB 375](#) (Chau, Enacted 6/28/18) – Personal Information Privacy.

AB 375 includes provisions to provide no proof of data breach injury and substantial statutory damages related thereto. The second cause of action in SB 1121 pertained to the notice required in the wake of a breach – that someone whose personal information was breached could bring a claim for statutory damages, without proof of injury, and allege that the company did not properly notify consumers of a breach (not soon enough, not accurately). Senator Dodd’s SB 1121 has now been gutted via amendment.

SB 1121 no longer contains liability for data breach language. Instead, it will be used as the vehicle for short-term changes to AB 375, including to perform the following:

- Clarify that the private right of action is limited to the data breach provision of AB 375;
- A business is not required to retain any personal information collected for a single, one-time transaction, if such information is not sold or retained by the business;
- Clarify that the rights and obligations in AB 375 not be construed to infringe on 1<sup>st</sup> Amendment protected newsgathering activities;
- Replace the term “verified request” with “verified consumer request” throughout AB 375 to reflect the definitions contained therein; and,
- Reorganize certain paragraphs to provide clarity, strike duplicative sentences, and grammatical correction.

Assembly Privacy Committee Chair Ed Chau (D-Alhambra) said SB 1121 clarification that private right of action be limited to the data breach provision of AB 375 remains in a placeholder state, subject to further negotiation by stakeholders. This could occur this session or through new legislation next year. The measure was referred to the Assembly Floor where any changes to the bill this year would occur.

At hearing, the Privacy Rights Clearinghouse commented in support of the measure as a vehicle to resolve areas that lack clarity created by expedited AB 375 drafting. The Consumer

Attorneys of California expressed support for “tightening” language around limiting private right of action to data breach so as to not change existing statutory litigation rights.

The California Chamber of Commerce thanked the author for removing duplicative data breach provisions in SB 1121 that are now found in AB 375, and for the author ensuring the business community would be part of the discussion around changes to AB 375 via SB 1121. The Association of California Life & Health Insurance Companies and California Bankers Association requested the measure exempt their member companies pursuant to the federal Gramm, Leach, Bliley Act. Others sharing the Chamber’s view: CompTIA, Internet Association, TechNet, California Life Sciences Association, and Personal Insurance Federation of California.

### Residential Property Replacement Cost Estimate Bill Moves Forward

**AB 1797** (Levine, Dem-Marín) requires an insurer that provides replacement cost residential property insurance to provide to the policyholder, every other year at the time of the offer to renew the policy, an estimate of the cost necessary to rebuild or replace the insured structure. The bill passed the Senate 35-0 and will be referred to the Assembly for likely consideration of amendment concurrence.

The legislation provides that an insurer does not have to comply if the policyholder, within the past 2 years prior to the offer to renew, has requested, and the insurer has provided, coverage limits different than the limits that were previously selected by the policyholder. The bill also permits an insurer to not furnish the replacement cost estimate if the policyholder was offered, on an every other year basis, the right to have a replacement cost estimate; and, an inflation factor that reflects the cost of construction in the policyholder’s geographic area to the coverage limit for the dwelling with the offer to renew is provided.

The bill has no opposition and is supported by the Department of Insurance (CDI), California Association of Realtors, as well as Mendocino, Sonoma, and Napa Counties. According to CDI, although current Department regulations outline what a replacement cost estimate must include, these do not require insurance companies to provide these estimates.

### Distracted Driving Legislation Passes Key Legislative Hurdle

On Monday, the Senate Appropriations Committee unanimously approved legislation to, commencing January 1, 2020, makes use of an electronic device while driving a motor vehicle a violation point against a driver’s record. **AB 1698** (Daly, Dem-Anaheim) is now before the Full Senate.

Under the Negligent Operator Treatment System program, the Department of Motor Vehicles (DMV) assigns “points” to an individual’s driving record for certain traffic offenses to identify a driver as a negligent operator. DMV assigns points upon receipt of conviction notices from courts and collision reports from law enforcement indicating that the driver contributed, was at fault, or was responsible to any degree for the collision. Each occurrence

remains on the driver's record for at least 36 months, depending on the type of conviction. The driver may present credible evidence at an administrative hearing to refute such reports.

The author states that distracted driving is equally as dangerous as driving while intoxicated, and needs to be penalized in a similar manner. This bill aims not only to curb this dangerous behavior but also to cut down on the number of deadly car crashes caused by distracted driving. Teen drivers especially are at risk and are reported to be distracted almost a quarter of the time they are behind the wheel.

Distraction is among the top three factors that commonly result in deadly crashes for teen drivers.

Distraction plays a role in six out of 10 teen crashes, according to the American Automobile Association.

This bill has no opposition, and is supported by Liberty Mutual Insurance, Personal Insurance Federation of California, Property Casualty Insurers Association of America, American Insurance Association, Pacific Association of Domestic Insurance Companies, AAA Northern & Southern California, and California Association of Highway Patrolmen.

### **Department of Insurance Orders Rate Filings For Federal Tax Cuts & Jobs Act**

On Monday, Insurance Commissioner Dave Jones ordered workers' compensation insurers to make rate filings reflect savings from the reduction in the corporate tax rate signed by President Donald Trump late in 2017. Per the Insurance Commissioner's news release, "Any savings to insurers should be passed along to California businesses," said Commissioner Jones. "This order will allow my Department to examine workers' compensation insurers' savings and rates and provide transparency to the public. I urge insurers to pass these savings along to policyholders."

As suggested in the release, the Commissioner has no authority to require any tax savings to be passed along to policyholders. What is not reflected in the release, or in the May 29 pure premium rate ruling that preceded it, is an acknowledgement of the various factors that go into calculating what, if any, tax reduction is actually going to be seen by a particular insurer. The pure premium filing thought it appropriate to say that an additional 5% rate reduction would maintain the profitability of the workers' compensation line of insurance prior to the enactment of Tax Cuts & Jobs Act.

In states where the insurance rating laws require a filing of fully developed losses and expenses from the National Council on Compensation Insurance, the resulting reductions were as follows: Arizona (down 4.7%), Florida (down 1.8%), Iowa (down 1.9%), Idaho (down 3.4%), and Illinois (down 3.3%).

### **Committee Panel Passes Bill To Prohibit Sexual Harassment Lawsuit**

## Confidentiality Agreements

On Tuesday, the Assembly Judiciary Committee passed 8-2, with Republican Assembly Member Brian Maienschein (San Diego) voting in favor, [SB 820](#) (Leyva, Dem-San Bernardino), which prohibits the inclusion of a settlement provision that prevents the disclosure of factual information related to a cause of action for any of the following: sexual assault, acts of sexual harassment or discrimination, and retaliation for reporting such harassment or discrimination.

Like many bills that have come before the Committee this session, this measure is in reaction to high profile allegations of sexual harassment in educational, professional, and political settings, including the California Legislature. This measure addresses confidentiality agreements in sexual harassment cases. In a joint letter from the California Chamber of Commerce and a number of other organizations, opponents of the bill explain it will interfere with the settlement of claims alleging sexual harassment or assault, by forcing companies to trial in order to preserve their public image.

As the Chamber points out, settling a case is often a business decision where the employer calculates the amount of time and expense it will take to litigate the case versus the amount of money to settle. Allegations in a complaint are often disputed and up to the trier of fact to ultimately determine merit. Settlements are often based upon the risk that either party could lose at trial – not just the employer. Also, employers are often named as a party in any sexual harassment action not just those involving supervisors, regardless of their culpability because the employer has more financial resources or “deeper pockets” from which to extract a settlement. By potentially eliminating confidentiality, SB 820 exposes employers to a public presumption of guilt even though the decision to settle was not based upon merit at all.

The California Women’s Law Center and Consumer Attorneys of California are cosponsors. Opponents include the American Insurance Association, Construction Employers Association, and Civil Justice Association of California. The bill has been referred to the Assembly Floor.

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