



June 22, 2018

Sacramento, California

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November General Election Ballot No Longer Will Include Consumer Privacy Initiative; Deal Reached To Address Issue Via Legislation

Yesterday, the sponsor of a proposed November 6, 2018 General Election ballot initiative, the California Consumer Privacy Act, regarding data privacy agreed to withdraw the measure in favor of a lighter version included in [AB 375](#) (Chau, Dem-Alhambra). AB 375 is also coauthored by Senator Robert Hertzberg (Dem-Hertzberg), an influential member of the upper chamber. The decision by the proponent, Alastair Mactaggart, a San Francisco real estate developer, avoids a costly ballot measure campaign against opponents such as Comcast, AT&T, Amazon, Google, and other internet giants.

The initiative, which many believed was likely to be approved for the November ballot, would require large companies to disclose the type of information gathered on consumers and provide consumers the right to prevent businesses from selling their personal data. Under the terms of the agreement between Mactaggart and other proponents, legislators gutted and amended AB 375. AB 375 is planned for a vote next week. Mactaggart agreed to withdraw the California Consumer Privacy Act if Governor Jerry Brown agreed to sign the bill by June 28 of this year, the deadline to withdraw measures from the November ballot.

Mactaggart provided a public statement yesterday stating that the bill will accomplish most, but not all of what was sought in the initiative. Mactaggart used \$3.5 million of his own money to pay signature gatherers to qualify the initiative. Opponents were prepared to spend up to \$100 million to defeat the measure. To date, opponents of the initiative spent \$2.2 million.

Specifically, AB 375 grants, beginning January 1, 2020, a consumer a right to request a business to disclose the categories and pieces of personal information that it collects about the consumer, the categories of sources from which that information is collected, the business purposes for collecting or selling the information, and the categories of 3rd parties with which the information is shared. The bill requires a business to make disclosures about the information and the purposes for which it is used. The legislation also provides a consumer the right to request deletion of personal information and requires the business to delete upon receipt of a verified request.

In addition, AB 375 grants a consumer a right to request that a business that sells the consumer's personal information, or discloses it for a business purpose, disclose the categories of information that it collects and categories of information and the identity of 3rd

Official Legislative Information

parties to which the information was sold or disclosed. The bill additionally requires a business to provide this information in response to a verifiable consumer request. The bill authorizes a consumer to opt out of the sale of personal information by a business and prohibits the business from discriminating against the consumer for exercising this right, including by charging the consumer who opts out a different price or providing the consumer a different quality of goods or services, except if the difference is reasonably related to value provided by the consumer's data.

The bill prohibits a business from selling personal information of a consumer under 16 years of age, unless affirmatively authorized through an opt in provision, as well as prescribes requirements for receiving, processing, and satisfying these requests from consumers. AB 375 is to be enforced by the Attorney General and includes a private action in connection with security breaches. The measure creates the Consumer Privacy Fund in the General Fund with the moneys in the fund to be applied to support the purposes of the bill and its enforcement.

Lastly, AB 375 conditions its operation on the withdrawal of the California Consumer Privacy Act initiative from the November 2018 ballot.

Assembly Judiciary Committee Approves Data Breach Litigation Bill

By a party line vote of 6-3, the Assembly Judiciary Committee passed [**SB 1121**](#) (Dodd, Dem-Napa). The bill was introduced in the wake of several well-publicized thefts of highly confidential personal information as a result of breaches of a business's data security systems. Following last year's Equifax data breach, in which millions of Americans had their personal data stolen, despite not having any direct commercial relationship with the company, the author and sponsors of this bill claim that many Californians have no recourse against Equifax because they were not customers of the company.

This bill revises and recasts provisions of the California Customer Records Act to clarify that a person need not have purchased a good or received a service from an entity that failed to properly maintain the security of their personal data in order to have a cause of action against that entity. This bill provides consumers with a remedy, regardless of whether or not the theft of their personal information results in subsequent fraud. Finally, this bill establishes causes of action for victims of a data breach for failure to secure personal information and provide consumers with timely notice that their data is stolen.

This measure is cosponsored by the Consumer Attorneys of California and the California Public Information Research Group, and is supported by a coalition of privacy and labor organizations. This measure is strongly opposed by the California Chamber of Commerce and a coalition of several dozen business and technology-focused advocacy organizations who explain that the bill exposes them to significant liability without requiring a would-be plaintiff to demonstrate actual harm.

As a result of the author's negotiations with his Senate colleagues, this bill was recently amended to address several of the opposition's concerns. The potential causes of action were narrowed to include only incidents in which a business failed to maintain its duty to

properly protect private information and cases in which the business failed to notify consumers of a breach in accordance with existing law.

The bill is now in the Assembly Privacy and Consumer Protection Committee where additional discussions with stakeholders regarding data security provisions of the measure will take place.

Net Neutrality Bill Causes Controversy During The Communications & Conveyance Committee Hearing

SB 822 (Wiener, Dem-San Francisco) was heard Wednesday morning by the Assembly Communications and Conveyance Committee.

SB 822 addresses net neutrality, which prohibits Internet Service Providers (ISPs) from offering different levels of service to customers. This comes after the Trump Administration withdrew the 2015 Federal Communications Commission (FCC) Order in 2017 and established the RIF – Restoring Internet Freedom – Order. SB 822 establishes comprehensible and enforceable net neutrality standards to ensure all California residents have the right to freely choose how they use the internet. So, the bill would prohibit certain ISPs from deciding which websites would be easy or difficult to access, have slow access, or would be blocked.

This bill is very controversial, having wide support and opposition by many organizations and companies. In the hearing, two witnesses spoke in support of Senator Scott Wiener's bill, while four witnesses spoke in opposition on behalf of their companies. Those in opposition still opposed the bill, even amended, stating that it is more restrictive than the FCC's 2015 Open Internet Order, and they strongly opposed the restriction on zero-rating and interconnection agreements.

In an unusual beginning to the hearing held on Wednesday of this week, Assembly Member Eduardo Garcia (Dem-Carmel) made a motion to move amendments drafted the night before to SB 822 prior to allowing the author to present the bill. The motion passed with a vote of 8-0. Verbally frustrated, Senator Wiener continued on with the hearing, stating multiple times how inappropriate it was of the Committee to pass the motion to add the amendments made before hearing his side; he made a point that SB 822, if passed, would now be a "weak net neutrality bill" due to the added language.

After a back and forth conversation between Senator Wiener and both Committee Chair Miguel Santiago (Dem-Los Angeles) and Assembly Member Garcia, Chair Santiago moved to pass the bill, disregarding Senator Wiener's request to withdraw the bill. The motion had a final vote of 5-2, and will move on to the Assembly Privacy and Consumer Protection Committee where it will be heard next week. Even as amended, SB 822 would be the strongest net neutrality bill passed by any state. Committee amendments were designed to make the bill consistent with the 2015 FCC Order, and nothing more.

Homeowners Insurance Renewal Requirement Measure Passes Assembly Insurance Committee

SB 824 (Lara, Dem-Bell Gardens) was approved by 8-0 (Republicans not voting), by the

Assembly Insurance Committee on Wednesday. The bill is keyed fiscal, requiring it to be referred to the Assembly Appropriations Committee.

The legislation requires an insurer to renew homeowners' insurance policies after a declaration of emergency and requires insurers to submit wildfire loss data to the Department of Insurance (CDI). Specifically, the bill makes specified findings regarding the increasing risk of catastrophic wildfires due to climate change and the need for CDI to collect more data. It also prohibits an insurer from canceling or refusing to renew a homeowners' insurance policy for one year from the date of a declaration of a state of emergency, based solely on the fact the property is in a county where a state of emergency has been declared.

In addition, SB 824 provides that an insurer does not have to renew a policy if the renewal threatens the financial solvency of the insurer and the insurer reports that solvency issue to the CDI. The legislation requires insurers with written premium of \$10 million or more to report to CDI every 2 years residential property experience data for policies written in California.

The author accepted amendments to prohibit the cancellation or nonrenewal of a homeowner's policy for a home within the fire perimeter or in a zip code adjacent to the fire perimeter. Amendments also strike "threaten the financial solvency of the insurer" as an exemption to the requirement to renew homeowners' policies in the fire zone and replace it with language providing an exemption to mandatory renewal if the renewal of all of an insurer's policies in the fire zone would have a material, adverse impact on the insurer's reasonable rate of return. In addition, new language specifies that the premium threshold used to determine whether an insurer must respond to the data call is increased from \$10 million to \$12 million in 2025 and will increase by 20% every 5 years thereafter.

The bill is supported by CDI, Consumer Attorneys of California, and the League of California.

All the major property and casualty insurer trade associations – the American Insurance Association, National Association of Mutual Insurance Companies, Pacific Association of Domestic Insurance Companies, and Personal Insurance Federation of California – opposed the bill. But, the bill has been substantially amended to make it more workable, creating the real possibility industry will move to a neutral position.

Senator Ricardo Lara stated in the hearing that he is willing to meet with the insurance industry on resolution of applicability to residential and / or commercial property. Senator Lara said he is leaning toward limiting the bill to residential property.

Bill To Provide Breast Cancer Survivors Workers Compensation Passes Senate Labor Committee

On Tuesday, [AB 479](#) (Gonzalez-Fletcher, Dem-San Diego) was approved unanimously by the Senate Labor and Industrial Relations Committee. It requires that, if an injured worker suffers breast cancer as an industrial injury, the impairment rating must include all of the following: 1) the presence or absence of the organ; 2) any loss of function of the upper extremity or extremities, including loss of the range of motion, neurological deficits, and lymphedema; 3) skin disfigurement; 4) pain; and, 5) other impairments caused by the breast

cancer, lack of the organ, or treatment related to the injury.

The legislation requires that, for the purposes of determining an impairment rating due to an injured worker suffering breast cancer as an occupational injury, whether the person is of childbearing age or not cannot be a determining factor when determining impairment.

Supporters, which include the California Applicants' Attorneys Association (cosponsor), California Professional Firefighters (cosponsor), and the California School Employees Association, argue the bill ensures that physicians consider all impairments resulting from breast cancer, including those caused by breast cancer treatment, when assessing an employee's workers' compensation claim. Additionally, AB 479 further addresses gender bias in workers' compensation by precluding physicians from using child-bearing age as a determining factor when calculating an employee's permanent disability rating.

There is no registered opposition to the bill. It will next be considered by the Assembly Appropriations Committee, which the author chairs. Similar bills have been vetoed by the Governor over the last 3 years.

Assembly Insurance Committee Approves Bills Without Opposition

The Assembly Insurance Committee voted unanimously to approve the following legislation.

SB 30 (Lara, Dem-Bell Gardens) Insurance Natural Infrastructure Investment

Status: Referred to Assembly Appropriations Committee

SB 30 requires the Insurance Commissioner to convene a working group to recommend market mechanisms to invest in natural infrastructure that can reduce the risk of climate change related to catastrophes. It requires the taskforce to address the following areas: California analogies to examples in other countries for creating incentives for investment in natural infrastructure as part of insurance policies that mitigate elemental risks; whether insurance creates incentives for wetland restoration to help defend coastal areas against storm surge; and, can incentives be created for forests to be managed to reduce the risk of major fires.

The taskforce must also examine whether exposure of insurance companies to climate change-related losses through innovative state policies or insurance pricing mechanisms reward good behavior and result in premiums for actions that increase public safety risks or losses of property or environmental attributes; and, whether a rating system based on community risk factors to climate events and insurance incentives make a community more resilient.

The bill is supported by the Nature Conservancy and has no opposition.

SB 1046 (Roth, Dem-Riverside) Longterm Care Insurance Coverage Limits

Status: Referred to Assembly Appropriations Committee

This bill permits longterm care (LTC) insurance policyholders to retain their coverage limit

when altering the inflation protection provision in the policy. It requires an LTC policy to include a provision that allows the policyholder to reduce or eliminate the inflation protection provision in their policy. The measure also requires an LTC policy to include a description of the process required for a policyholder to reduce coverage. In addition, the legislation requires that insurers notify LTC policyholders of the process required to reduce coverage. Additionally, SB 1046 permits a policyholder who changes the inflation protection provision in an LTC policy to retain the benefit levels that have accrued at the date of change.

Further provisions requires that, after a premium increase, an insurer offer a policyholder at least one alternative policy with a premium reasonably equivalent to the policy in force. Also included in the bill is a requirement that, after a premium increase, an insurer offers a policyholder with a policy offered under the California Partnership for Longterm Care Program, an alternative policy that is offered under the partnership. Policyholders are to be informed that premium increases as a result of offering alternative LTC coverage result in losing the Medi-Cal benefits associated with a partnership policy.

No support or opposition exists for the bill.

SB 1086 (Atkins, Dem-San Diego) Workers Compensation Statute of Limitations

Status: Referred to Assembly Floor

The purpose of the bill is to delete a sunset clause that was adopted in order to allow time for a fiscal impact study to be completed by the California Health and Safety and Workers Compensation Commission. At the time the extended statute of limitations was signed into law, concerns were expressed mostly by local governments that the costs of the bill could run into the hundreds of millions of dollars. While data from that study have not yet been released, it has been reported that only 2 cancer claims have been filed that would have been barred by the prior shorter statute of limitations. Thus, the author argues that there is no cost basis to argue against the fairness of taking care of the dependents of fallen safety officers.

The bill is supported by the California Professional Firefighters (sponsor) and California Police Chiefs Association. It is opposed by the California Coalition on Workers Compensation, California State Association of California, and League of California Cities.

Assembly & Senate Committees With Labor Jurisdiction **Pass Legislation Impacting Employers**

This week, the following bills were passed by several committees in the upper and lower legislative chambers that have varying degrees of implication to California employers.

AB 1867 (Reyes, Dem-Fontana) Employee 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. The bill authorizes the Department of Fair Employment and Housing to seek an order requiring an employer that violates the recordkeeping requirement to comply.

- The Chamber does not foresee the author accepting favorable amendments, and anticipates this legislation being difficult to stop.

Support & Opposition: The bill is sponsored by the California Teamsters and the California Employment Lawyers Association. Opponents include the Chamber, Associated Builders & Contractors Association, and 23 other trade groups.

Status: On Wednesday of this week, the Senate Judiciary Committee passed the bill 5-1 for referral to the Senate Appropriations Committee.

AB 1870 (Reyes, Dem-San Bernardino) Unlawful Employment Practices

The Fair Employment and Housing Act makes specified employment practices unlawful, including discrimination against or harassment of employees. 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 or housing practices may be filed with the Department.

- The Chamber is seeking amendments to ensure claims are prospective.

Support & Opposition: This bill is supported by the American Civil Liberties Union, California Employment Lawyers Association, and California Teamsters, among 16 other unions and consumer groups. The opposition is led by the Chamber, 15 large industry trade organizations, as well as multiple local chambers of commerce.

Status: On Wednesday of this week, the Senate Judiciary Committee passed the bill 5-2 for referral to the Senate Appropriations Committee.

AB 2963 (Kalra, Dem-San Jose) Workplace Blood Level Reporting

This bill provides that if blood lead levels are above the standard set by the Department of Public Health's Occupational Lead Poisoning Prevention Program then it is a serious violation by the employer for Occupational Safety and Health Administration purposes.

- A coalition of businesses explain this bill transforms an existing, well-functioning public health program into an enforcement program that creates an allegation of a serious violation where none exists in Cal-OSHA law, and where the workplace may not even be the source of the exposure. Opponents contend that Cal-OSHA targets workplaces with the highest probability of serious, imminent risk to employees and this bill skews the inspection priorities to direct scarce resources to workplaces for which no evidence exists to suggest a serious violation.

Support & Opposition: This bill is supported by 11 organizations, including California Teamsters, Service Employers International Union – California, and the Environmental Working Group is the sponsor. There are 14 registered opponents, including the Chamber, Associated General Contractors, and National Federation of Independent Business.

Status: On Wednesday of this week, the Senate Health Committee passed the bill 7-2 for

referral to the Senate Labor Committee.

AB 3080 (Gonzalez-Fletcher, Dem-San Diego) Employment Discrimination Enforcement

This legislation prohibits an employer from, as a condition of employment or as a condition of entering into a contractual agreement, prohibiting an employee or independent contractor from disclosing to any person an instance of sexual harassment that the employee or independent contractor suffers, witnesses, or discovers in the workplace or in the performance of the contract.

- This measure prohibits arbitration of labor and employment claims and creates significant litigation exposure and expense to employers. It is also preempted by federal law.

Support & Opposition: This bill is sponsored by the California Labor Federation and supported by the American Civil Liberties Union of California and California Employment Lawyers Association. The opposition consists of the Chamber, the 15 largest industry trade groups, and the Civil Justice Association of California.

Status: On Wednesday of this week, the Senate Judiciary Committee passed the bill 5-2 for referral to the Senate Labor Committee.

SB 937 (Wiener, Dem-San Francisco) Workplace Lactation Accommodation

This bill requires a lactation room or location to include prescribed features and requires an employer to provide access to a sink and refrigerator in close proximity to the employee's work space. The bill requires an employer to develop and implement a policy regarding lactation accommodation and make it available to employees.

- The Chamber argues the bill unnecessarily duplicates the Fair Employment and Housing Act by placing lactation accommodation requirements in the Labor Code, but is much more expansive and deals with a broader scope of issues such as document retention, employee policies, and lactation room requirements

Support & Opposition: The bill is supported by the California Employment Lawyers Association, California Labor Federation, and California Teachers Association. Opponents include the Chamber, American Insurance Association, and 8 large industry trade groups.

Status: On Wednesday of this week, the Assembly Labor Committee passed the bill 5-2 for referral to the Assembly Business and Professions Committee.

SB 1284 (Jackson, Dem-Santa Barbara) Employer Paydata Reporting

This bill requires private employers with more than 100 employees to submit an annual paydata report to the Department of Industrial Relations. This bill requires the Department to make the reports available to the Department of Fair Employment and Housing upon request. It imposes a civil penalty of \$500 on any employer who does not comply with the reporting requirement, and requires any penalties collected to be deposited into the Labor

Enforcement and Compliance Fund, to be allocated upon appropriation by the Legislature to the Division of Labor Standards Enforcement to enforce wage differential laws.

- Opponents advise these paydata reporting requirements present confidentiality, accuracy, and fairness concerns. The potential disclosure of paydata could lead to the public shaming of employers because, while aggregate data might disclose wage disparities, wage disparities do not automatically equate to wage discrimination or a violation of law.

Support & Opposition: The bill is supported by the Consumer Attorneys of California and the Service Employees International Union – California. There are 20 local chambers in opposition, in addition to the Chamber, as well 11 large industry trade organizations.

Status: On Wednesday of this week, the Assembly Labor Committee passed the bill 5-2 for referral to the Assembly Judiciary Committee.

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