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State Senate

State Assembly

**Department of
Insurance**

Secretary of State

Legislative Panel Takes Expert Testimony on Autonomous Vehicle Insurance Issues

Last Wednesday, the Senate Insurance Committee held a hearing on autonomous vehicle (AV) insurance. Once perfected this technology is expected to make driving much safer, given that 90% of accidents are human-caused. The issue examined by lawmakers was assigning liability in the event of an AV accident. Under Proposition 103 (1988) – Insurance Rates & Regulation, automobile insurance is currently calculated using accident history, years of driving experience, and miles driven per year, none of which are suitable for insuring AVs. If AVs were available today, they could be covered under existing commercial auto insurance. Commercial auto insurance does not require the Proposition 103 rating prioritization mentioned above. Insurers, however, are inclined to create a new insurance line. As an example, there is unique coverage for antique cars. For insurance rating purposes, AV policy prices will change once several years of data exists. Currently, AV manufacturers need to carry \$5 million in financial responsibility or a surety bond.

It is anticipated that an AV victim recovery fund and analysis of no fault models will be part of the liability conversation going forward. The Federal Autonomous Vehicle Commission on Liability and Insurance is analyzing the types of data insurance companies will need to perform AV insurance underwriting. In terms of activity outside California, in Michigan, automakers successfully carved themselves out of some liability, which needs to be avoided in California. Michigan's law also does not adequately require modifications to AVs to be factored into auto policies. The Personal Insurance Federation of California informed the Committee that California's auto insurance laws lack the flexibility of other states. Under California's auto insurance rating system, vehicle safety characteristics, performance, type, among other issues, are down the authorized ratemaking prioritization scheme. These are not allowed to be weighted nearly as heavily as accident history, miles driven, and years behind the wheel. For AVs, these latter three are practically irrelevant, while the former are. AVs require actuarial accounting of unique AV traits. It is essential that insurers have access and flexibility with regard to AV / driver data, while still protecting operator privacy. This data is critical to quality underwriting and claims and liability processing. AVs are in a product

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liability environment now. On insurance industry data access for underwriting, there needs to be clarity on determining if AVs are as safe as advertised.

It is expected consumer attorneys will sue any and all entities involved in AV technology in the event of an accident because there is no judicial restraint to follow yet. The founder of Consumer Watchdog told the Committee he wrote Proposition 103 and urged caution in AV policymaking. AVs and intelligent highways are not right around the corner, according to the consumer group. AVs will be more expensive and insurance companies will request increased rates from the Department of Insurance, but will need to open their books to justify. Consumer Watchdog opposed any no fault insurance option, and said so have the voters on two prior occasions. The insurance industry should be focused on loss prevention through stronger federal AV regulation, but currently have no incentive because it reduces their revenues, the consumer group believes.

The Consumer Attorneys of California (CAC) explained that in California, and in most other states, there is a minimum \$5 million AV manufacturer liability requirement. The CAC attorney called for this to increase to \$25 million. Manufacturers need to be considered the driver of AVs for purposes of strict product liability law, the attorney argued. The CAC maintained that California has a long history of adapting from manual to automated technology, using elevators as an example. The CAC urged lawmakers to reject legal immunities for developers of AV technology, as well as forced arbitration clauses because these proceedings are private and prevent monitoring areas where AVs need to make safety advances.

A legislator asked about liability for drivers that do not maintain their AV, to which the consumer attorneys considered the person to be liable. In terms of upcoming court cases, the July 2016 death of an AV Tesla driver is the only real area to watch. Committee Chair Tony Mendoza, D-Cerritos, found that changing the top three rating factors in Proposition 103 to accommodate AV characteristics was likely necessary.

Other issues discussed at the hearing included AV cybersecurity risk, to which DMV informed that the National Highway Traffic Safety Administration is requiring AV manufacturers follow established privacy best practices that apply across the economy. Also, legislators requested DMV regulations account for how AVs interact with pedestrians at crosswalks and children in school pickup / dropoff zones. In terms of the Legislature's work going forward on AV insurance, it appears the most viable option is similar to handling drones, which is a bill by bill approach. The Committee Chair thanked State Farm Insurance for today's testimony, as other entities in this insurance segment have not been as willing to participate in these types of hearings.

Regulatorily, the Department of Motor Vehicle AV regulations have been in process for four years. The testing rulemaking is in place and deployment will be ready at the end of the year. This deployment regulation is intended to cover all AV levels of technology. Currently, 26 companies have DMV permits to test AVs. These are largely automakers. To date, 25 AV accidents have been reported. The fault in these cases has largely been that of another human-operated car. At this time, the only people permitted to operate an AV are employees of the 25 registered companies. Today, there is some form of AV technology in use, such as parking assist, emergency braking, and lane alignment. Earlier on it may be the case that these cars could only operate in automated form in certain areas and outside regions would need to be human operated. The Alliance of Automobile Manufacturers predict that in the 2020s there will be two percent to five percent AVs on the road, 10%-20% in the 2030s, and 40%-60% of the fleet will exist in the 2040s.

No Shortage of Bad Labor Bills; Early in Session So Legislative Activity Forthcoming

It is early in the legislative session so committee action on bills has not yet ramped up, but there are measures that industry coalitions are getting out in front of to defeat. One of these is AB 5, authored by Assembly Member Lorena Gonzalez Fletcher, D-San Diego, which requires an employer with 10 or more employees to offer additional hours of work to an existing employee before hiring a new employee. Chamber of Commerce coalition meetings have resulted in mixed Legislator support or opposition. Most of the Assembly has been met with. Bill narrowing is expected by the author, but the Chamber will oppose on principle.

In terms of AB 387, Assembly Member Tony Thurmond, D-Oakland, 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. A healthcare industry coalition is leading the opposition. Overall, this bill sets a bad precedent surrounding internships. The good news is that the author understands the negative ramifications and is willing to amend. Whether the United Healthcare Workers does is another matter.

As reported last week, AB 889, Assembly Member Mark Stone (D-Santa Cruz) is problematic for many Chamber members. It provides that in an action based upon the existence of a danger to the public health or safety of a person, information relating to the danger that was discovered during the course of litigation cannot be kept secret. Assembly Member Stone’s staff believes attorney fees and settlement amount can be kept private, but experts that have looked at the language need more assurance.

In terms of other harmful legislation, SB 33, Senator Bill Dodd (D-Napa) is still committed to narrowing the bill. Currently, it allows for waiver of forced arbitration when a consumer

alleges financial services contract fraud. The term “financial services” is still too broad, particularly given the bill is supposed to address the Wells Fargo fake account setup scandal. Financial services could mean insurance products. New language is expected soon. There are a multitude of sectors working on changes.

Lastly, on State Budget 2017-2018 – Labor Budget Trailer Bill, the Chamber is opposing because it misuses the budget process to make policy changes. The analyst team that advises legislators on policy, known as the Legislative Analyst’s Office, agreed with this assessment, so it looks like the trailer legislation could be narrowed and the policy parts placed in individual bills.

Bill Seeks to Tax Income from Overseas Corporate Subsidiaries

Sizable corporations conducting business in California, but also with significant international presence are mobilizing to defeat legislation that seeks a waters’ edge repeal. In doing so, SB 567, sponsored by Senator Ricardo Lara (D-Long Beach), requires all corporate taxpayers to include subsidiaries and affiliates in one combined tax report. The author claims tax havens are widely used to stash profits in offshore accounts to avoid taxation on profits generated in foreign operations. In the face of Affordable Care Act rollbacks federally, Senator Lara is sponsoring the bill hoping its revenues will finance single payer healthcare legislation he is also authoring.

The California Taxpayers Association considers this one of the most harmful bills introduced this session. The most prudent strategy at this point is to advocate no consideration of the bill until federal tax reform shakes out, which is said to be in August. The US Senate Leader Mitch McConnell said as much recently. SB 567 has been attempted in prior years and it has taken a significant amount of work and a big coalition to defeat.

Workers Compensation for Day Laborers Legislation & Shoddy Insurance Supplier Diversity Report Headline this Week’s Insurance Developments

Seven to eight insurance trade associations and companies are strategizing to defeat AB 206, Assembly Member Lorena Gonzalez Fletcher (D-San Diego). The bill provides workers compensation for day laborers such as nannies and landscape maintenance workers. The Assembly Insurance Committee legislators will all have been met with over the next two weeks by the team.

Backchannel intelligence indicates that the ultimate fate of the bill could be turning the legislation into a study of the costs to carriers to provide workers compensation to this segment of the workforce. However, outright defeat of the bill remains the priority. The California Labor Federation will not support the bill because it proliferates the underground economy, and the union does not want to turn homeowners into employers. The bill specifically provides workers compensation for undocumented immigrants. To give some insight into the priority to the author, bill management responsibility has been provided to a junior level staff person.

The other substantive topic concerns the Greenlining Institute Supplier Diversity Report, which is to be released on Monday March 13. Apparently, it is surprisingly badly drafted as it uses cherry picked, outdated 2013 data even though insurers have been reporting robustly over the last two years. The Association of California Health & Life Insurance Companies is urging strong push back. It does not reflect Insurance Commissioner Dave Jones' point of view that carriers are making progress, which he articulated last week in southern California.

Industry will be active in the Monday media cycle articulating the Greenling Report problem areas and the progress in supplier diversity.

Repeal of Obamacare Could Financially Pressure the Workers Compensation System

Possible changes to the Affordable Care Act (ACA) by the Trump Administration could cause medical costs to be shifted from group health coverage to workers compensation insurers as workers seek to replace lost health insurance. Plans to repeal and replace the ACA could lead to uninsured individuals seeking healthcare under various social programs including workers comp.

Workers affected by a repeal of the ACA will have to buy very high-deductible insurance and may not be able to afford it because tax breaks could be taken away, the subsidies used to help people who could not afford their policy.

This perspective was offered by former California Congressman Henry Waxman (D-Santa Monica) at last week's Workers Compensation Research Institute's Annual Issues & Research Conference in Boston.

He added that losing coverage under a repeal of the ACA could prompt people to seek care under workers comp claims. If somebody can get into the workers comp system, they are going to do that. Republican thoughts at the conference revolved around the high ACA deductibles.

Republicans Unveil Affordable Care Act Replacement; Significant Work Remains on Securing GOP Support

The Republican plan backed by President Donald Trump to overhaul America's healthcare system faces a great deal of scrutiny ahead. Two US House of Representatives committees debated the plan late into the night this week. The legislation aims to repeal and replace the Obamacare law, which Republicans call a government overreach that has ruined healthcare in the United States.

The replacement plan faces resistance from conservatives in their own party who have condemned the bill as too similar to the law it is meant to supplant. Democrats, meanwhile, have denounced it as a gift to the wealthy that will take insurance away from millions of people.

Doctors and other providers say the bill would probably cause many patients to lose insurance and raise healthcare costs. The American Medical Association (AMA) urged senior lawmakers in a letter to reconsider drastic changes to Medicaid, the government health insurance program for the poor. The AMA, which supported Obamacare, said the replacement of income-based subsidies with age-based tax credits to help people buy insurance would make coverage more expensive, if not out of reach, for poor and sick Americans.

Obamacare enabled 20 million previously uninsured people to obtain coverage, about half through a Medicaid expansion the new bill would end.

Insurers are worried about the affordability of the tax structure and proposed major changes in Medicaid financing. America's Health Insurance Plans indicated that was still a concern, despite many aspects of the draft that would help stabilize the individual insurance market. Seven hospital groups, including the American Hospital Association, America's Essential Hospitals and the Catholic Health Association of the United States, also voiced opposition. They wrote in a letter to lawmakers that the proposal could lead to tremendous instability for people seeking affordable medical coverage, including children, the elderly, and disabled.

Republicans control both chambers of Congress and the White House for the first time in a decade. But the bill's fate is far from certain, with a number of Republican conservatives saying it is not a full repeal and sets up new entitlement programs.

The House Ways and Means Committee, with jurisdiction over taxes, and the House Energy and Commerce Committee, which oversees health issues, kicked off what could become marathon sessions working on the legislation. They plan to scrap the Obamacare requirement that most Americans obtain medical insurance and would replace its income-

based subsidies with a system of fixed tax credits to coax people to buy private insurance on the open market.

The most conservative faction of the House GOP might support the bill if two changes are made. The first brings forward the end of enrollment in Medicaid expansion by two years to January 2018. The second makes age-based tax credits for purchasing health insurance partially rather than fully refundable.

Republicans insisted on committee action even though the nonpartisan Congressional Budget Office had not yet done its customary assessment of the cost of the measure and how many people it would cover.

Stay tuned...