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California Links

**State Senate**

**State Assembly**

**Department of  
Insurance**

## Assembly Holds Workers' Compensation Fraud Hearing

On Wednesday February 28, the Assembly Insurance Committee held a much-anticipated informational hearing on workers' compensation fraud. The purpose of the hearing was to review the report of State Auditor Elaine Howle completed late last year, "Workers' Compensation Insurance – The State Needs to Strengthen Its Efforts to Reduce Fraud" at the request of Assembly Insurance Committee chair Tom Daly (D-Anaheim) and authorized by the Joint Legislative Audit Committee. Chairman Daly set the tone of the hearing by pointing out the high cost of fraud to both injured workers and employers. He also noted pending legislation, AB 1697 (Insurance Committee) establishing a fraud support unit in the Division of Workers' Compensation (DWC) and AB 2046 (Daly) that will be amended to include various parts of the Auditor's recommendations.

The testimony from the Auditor's Office noted that 8 insurers, totaling almost \$4 billion in premium, had few or no fraud referrals within the timeframe the auditors examined. Their recommendations included a more focused audit of carriers' Special Investigative Units (SIUs) on large market share insurers that have few referrals. In addition, the Auditor recommended a public report from the Department of Insurance (CDI) listing the fraud referral numbers from carriers.

As it related to the Department of Industrial Relations (DIR), the testimony identified the need for DIR is to more fully document its policies and procedures in terms of what data it will be acquiring and what predictive analytics it will be using as it starts acquiring significant amounts of transactional data on claims, especially relating to medical provider fraud.

The auditor also recommended insurers be required to provide explanations of benefits (EOB) to injured workers as is done in most other health and disability insurance programs. They claimed that the benefits in terms of fraud identification would outweigh the costs.

Finally, the Audit also noted the problems CDI has in terms of recruitment and retaining investigators for their fraud unit. The vacancy rate has had the effect of underutilization of resources both at the CDI and local district attorney offices and limiting the number of fraud referrals that result in active prosecutions. A series of recommendations by the Auditor regarding salary augmentation and recruitment/retention of investigators were agreed with by the CDI and they are working towards implementation of these recommendation.

## Secretary of State Official Legislative Information

The CDI and DIR presented their responses to the report and largely focused on areas of agreement with the Auditor. It should be noted that DIR disagreed strongly with several issues in the report, especially on the issue of EOBs. This did not come up in the hearing.

By the time the stakeholders (labor, employers, and insurers) testified at the hearing, only Chairman Daly was present. Christie Bouma from the California Professional Firefighters argued that insurers were not doing enough to fight fraud. Employer representatives from the California Chamber of Commerce and the Coalition for California Workers' Compensation (CCWC) offered basic comments stating their support for anti-fraud efforts. CCWC advocate Jason Schmelzer did question the viability of the EOB concept.

Finally, insurers were represented by Jeremy Merz from the American Insurance Association (AIA) and Mark Sektnan from the Property and Casualty Insurers Association of America (PCIAA). AIA questioned the efficacy of both the EOB and publicizing fraud referrals. PCIAA talked about previous dialogues with the CDI and practical issues with reporting fraud and suggested ranking carriers by convictions rather than referrals and supported the data analytics efforts by DIR.

The final panel included the California Applicant Attorneys Association (CAAA), the California Medical Association, and the California Society of Industrial Medicine and Surgery. CAAA supported the EOB concept, pointing out that Disney uses them. Medical provider organizations raised concerns about data analytics to ensure appropriate use of data and protections of privacy. The CMA supported the EOB. CSIMS raised a number of issues regarding fraud, arguing that the current utilization review process is creating payer fraud and should be added to the agenda of these discussions.

### New Ballot Measures Impacting California Business

With the next elections still several months away, potential ballot measures are already beginning to stack up as they vie for voters' approval. Several of these measures have the potential to change the landscape for California employers, affecting everything from taxes to personal privacy. While some of these proposals may not meet the requirements to qualify for the November ballot, recent election trends have shown an increasing trend in lengthy proposition ballots even in non-presidential election years.

There are two proposals that call for increasing taxes, one on upper-level income earners and the other attempting once again to institute a split-roll tax on commercial properties. The United Healthcare Workers union has proposed an additional 1% income tax on all earners over \$1 million a year, which would raise approximately \$2.5 billion annually to be diverted to health care programs. The new tax rate for top earners in California would be 14.3%, the highest of any state. Another proposed ballot measure would institute a split-roll tax on nearly all commercial properties, calling for all commercial and industrial properties other than those for agricultural production, to be reassessed to full market value. Those properties would then be re-assessed every three years, side-stepping the protections of Proposition 13 and collecting an estimated \$10.5 billion annually.

A separate proposal would require all business to give customers the option to request a copy of all the information that business has collected about them, and additionally to opt

out of any and all information gathering. This also includes information that carries no personal identifiers, and would apply to all businesses regardless of their business model or operations. If approved, it already appears that this will be one of the most contested and expensive proposition battles, as it has the potential to affect nearly every business in California.

There is also a push to repeal the gas tax that was approved and passed into law last year, creating \$5 billion in funding for road improvement and new transportation projects. The tax has been controversial ever since it was passed, leading to a recall campaign against one Senator and proving to be a flashpoint among many legislators and voters. Petitions will not be submitted to election offices until May, leaving some months before the elections begin in earnest. More developments and proposals will certainly come, so stay tuned for more.

## California Paves Way for Driverless Cars

This week, the California Office of Administrative Law approved draft regulations assembled by the Department of Motor Vehicles regarding the licensing and testing of autonomous cars. Current law allows for the testing of driverless cars as long as there is a backup driver present and able to take control of the vehicle, but companies may now apply for permits to test truly autonomous vehicles. The first permits will possibly be available as soon as April 2<sup>nd</sup>.

The new regulations leave the determination for the vehicle's safety up to both the companies and federal regulators. Companies applying for permits must self-certify that their vehicles are capable of operating without a driver present, and that they comply with federal safety regulations. For cars to be truly autonomous – i.e. those without any backup steering wheels or accelerators – companies must obtain waivers from the National Highway Traffic Safety Administration. The regulations drafted by the DMV do have some additional requirements, such as requiring that the cars must be linked to remote operators who can take control of the car if necessary. Companies are also required to notify local jurisdictions that they are performing tests, have a plan in place for communicating with law enforcement, and carry \$5 million in insurance.

Both regulators and companies have expressed optimism on the fate of autonomous cars in California, stating that these new rules pave a new path forward for driverless cars and consumer safety. Jean Shiimoto, the director of the California DMV, stated that, "This is a major step forward for autonomous technology in California. Safety is our top concern and we are ready to begin working with manufacturers that are prepared to test fully driverless vehicles in California."

However some technology experts and consumer advocates are worried that the process may be moving too quickly and leaving some crucial security measures behind. The fact that there are no federal vehicle safety standards that have been written specifically for driverless cars means that there are certain issues that have not yet been addressed, such as requiring vehicles to be secured against hacking. There are also no requirements that they be certified to take road conditions such as obstructed lane markings or inclement weather into account. However the fate of these regulations ultimately remains to be seen, as Congress is working on the AV Start Act to regulate autonomous vehicles that may overrule California law.

## House Bill Could Encourage Private Flood Insurance

Despite the ongoing and rising risk of flood in the United States, flood insurance continues to be one of the most problematic insurance segments to manage. Nearly all of the flood insurance policies in the country are managed by the National Flood Insurance Program, which has fallen into nearly \$30 billion of debt as it is not able to charge enough in premiums to cover the risk it holds. However a new bill moving through Congress, HR 2874, has the potential to open the doors to private flood insurance offerings, easing the burden on the NFIP and offering more options to consumers.

The proposal would make it easier for financial institutions to accept private flood insurance policies, hopefully creating increased demand for policies not written by NFIP. This will be accomplished by opening up the claims data into an open-source format, providing information on everything from elevation and historical flooding to local flood mitigation programs. This will allow private insurers to create their own property ratings, and much more easily craft pricing structures and vulnerability assessments to more confidently write policies.

This would also allow NFIP to move away from its fixed limits on coverage for homes, which are currently set at \$250,000 for the building and \$100,000 for the contents. There is currently an insurance gap for many individuals whose homes exceed the coverage limits put forth by NFIP, but who have no other readily available options for coverage. While premiums may be more expensive than what is offered by NFIP, the option to easily purchase coverage that fits their needs will likely be an attractive proposition for many homeowners.

## Record Number of Applications for Earthquake Grants

The California Earthquake Authority announced this week that they had received a record number of grants for their earthquake retrofit program, Earthquake Brace + Bolt. Following the close of registrations on last week, the program stated that over 7,500 homeowners had applied for 2,000 grants, something that the program managers are hopeful is a sign of increasing awareness regarding earthquake preparedness.

The Earthquake Brace + Bolt program by granting \$3,000 to eligible homes towards seismic retrofitting, targeting those built before 1979 and especially emphasizing those built before 1940. Qualifications include having a raised concrete foundation, and many houses also possess wood-framed walls in their crawls spaces. The \$3,000 grant allows home owners to install brace and bolt retrofits that shore up the weak walls and ensure the house is fixed to the foundation, preventing it from collapsing or moving during an earthquake.

So far, the Earthquake Brace + Bolt program, which is managed by both the California Earthquake Authority and the Governor's Office of Emergency Services, has funded over 4,200 retrofits. Despite the danger that earthquakes pose, California has an exceedingly low rate of earthquake insurance takeup by homeowners. With fewer than 10% of homeowners holding an earthquake insurance policy, officials hope that by offering this grant program people will be educated on the dangers of unsafe homes and take further action to protect themselves.

