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State Senate

Note: It has come to our attention that an error is causing This Week in Sacramento to display incorrectly on some mobile devices. We are working to resolve this issue, and have attached a PDF version of this week's edition for those affected. Thank you.

Senator Toni Atkins Sworn in as Senate President pro Tempore; First Woman & LGBT Senator to Hold the Chamber's Most Powerful Position

Senator Toni Atkins (Dem-San Diego) was sworn in Wednesday as head of the State Senate, making her the first woman and first openly LGBT person to lead the upper house of the state Legislature. Senator Atkins replaces termed-out Senator Kevin de León (Dem-Los Angeles), who is challenging fellow Democrat United States Senator Dianne Feinstein in this year's election.

Atkins, whose term ends in 2020, served as Assembly Speaker before moving to the Senate in 2016. The Senator is the 48th President pro Tempore of the Senate and first person in 146 years to have led both the Senate and Assembly. She was elected unanimously to lead the Senate. The Legislative Women's Caucus said Senator Atkins' ascent is a historic moment paved by the 154 women who have held office in the Legislature.

Senator Atkins, 55, grew up in rural Virginia, where her father was a coal miner and her mother a seamstress.

Joint Emergency Management Committee & Senate Insurance Committee Conduct Homeowners Insurance & Fire Insurance Oversight

On Tuesday, Joint Emergency Management Committee Chair Hannah Beth Jackson (Dem-Santa Barbara) opened a homeowners insurance and fire insurance oversight hearing by observing that indicators show the homeowners insurance market is still functioning well, and nonrenewals

State Assembly

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are being filled by other carriers. Senate Insurance Committee Chair Steve Glazer (Dem-Orinda) said preserving a functional insurance market remains vital. Senator Ted Gaines (Rep-El Dorado) shared the view that there needs to be adequate capacity in the homeowners insurance space. Senator Gaines, who is an agent, advised that there is current access to fire insurance. There is an opportunity for the surplus lines market to play a role, and the Fair Access to Insurance Requirements (FAIR) Plan is not seeing a substantial increase in demand, Senator Gaines commented.

Department of Insurance & Department of Forestry & Fire

Dave Jones, Insurance Commissioner, testified insurers and agents in some cases offered inaccurate claim information for those affected by the Bay Area Firestorm and Thomas Fire, which resulted in a Department of Insurance (CDI) formal notice to make corrections. Insurers were responsive and CDI stopped receiving relevant complaints. Commissioner Jones went on to address how to respond to those living in wildland urban interfaces, in addition to neighboring more densely populated areas. This was the subject of a CDI December 2017 report. It finds that of the 13.6 million homes in California, 3.6 million are in wildland urban interfaces. One million are at high risk. More than half of the counties in the state have 25% at high risk.

Consumers and consumer groups have complained in higher number to CDI about high risk fire area homeowners insurance availability and prices. Legislative officials have also weighed in along these lines. These complaints are geared toward admitted carriers, largely. Between 2015-2016 there were 15% nonrenewals in high risk counties. But, the Commissioner acknowledged the admitted and surplus lines markets, as well as the FAIR Plan, have stepped in to write policies.

Regarding the FAIR Plan, in 2016, there were about 121,500 policies in place, of which, 38,000 (or approximately 31%) are in the high risk fire areas of the state. Data shows new business filings in high risk markets doubled and renewals increased by about 30%. Since 2014, the number of FAIR Plan policies has increased by 41% since 2012.

In March 2016, before last year's fire season, homeowner rates increased. Jones did not outline data to this effect, though. It is the case that more insurers are choosing not to cover or renew high risk fire homeowner policies. This conclusion is derived from evaluating underwriting policies as well as insurer reports from high risk areas.

Regarding the Governor's Tree Mortality Taskforce, insurance industry recommendations have been for carriers to take action on a voluntary basis. The Legislature could act to mandate some of these voluntary actions, Jones pointed out. CDI has some actionable steps for the Legislature to consider, including use of wildfire risk models used by insurers. The Commissioner suggested models be filed with CDI for review, and called for them to more greatly account for homeowner and community defensible space efforts. "Differences in conditions" coverage, which sits on top of the FAIR Plan, is also a recommendation of CDI. This

coverage would be for insureds that are not able to get adequate FAIR Plan protection, effectively requiring insurers to write additional insurance.

Another CDI legislative recommendation is requiring insurers write in high risk fire areas when mitigation steps are established. In this regard, the Legislature would set the defensible standard. An alternative would be for an insurer to provide a “differences in conditions” policy. Jones also advocated a mitigation premium credit the Legislature could define. Additionally, there should be a nonrenew or cancellation appeal process. Lastly, CDI would like industry-wide loss data associated with fires so it can be made available to all industry participants to be used in rates. This data would allow rates to be adequate, but not excessive.

Matthew Reischman, Assistant Deputy Director, California Department of Fire and Forestry (CalFire), testified that sometimes the Tree Mortality Taskforce can be a little stressful. So, now insurers have their subcommittee.

Member Comments

Senator Jackson asked about the nature of recent fire event complaints, to which Jones explained that there have been 374 North Bay fire complaints and 100 or so related to the southern California fires. These are mostly claims complaints, specifically about the process. Early on there were complaints about having to fill out detailed personal property reports. Most insurers have agreed to provide 50% of personal contents coverage, quite a few up to 75%, and some 100%. Other complaints concern ratings, underwriting, and underinsurance. There is no statute that requires insurers to provide a full replacement cost estimate.

Senator John Moorlach (Rep-Costa Mesa) asked about the number of homeowners insurers declining from 191 in 1991 to 107 in 2016, and this relationship to Proposition 103 – CDI Insurance Ratesetting. Specifically, whether this caused 44% of insurers to leave the state because of this 1988 proposition. Jones was not familiar with the source of the existing 107 homeowner insurer marketplace members. The Commissioner was advised by the Committee that the existence of the 107 homeowners insurance participants is data produced by CDI. Jones was only left to say that consolidation of companies is the most significant factor; there is still competition in the market (eg. Allstate has returned to California.)

Senator Glazer inquired about CDI’s interest in seeking more loss data. Jones advised that this data would be used for rating in high risk areas. There would be benefit to collecting across-market data (outside California) to assist insurers in this process, if carriers do not have enough experience points. Glazer understood this data gathering is already conducted by companies.

Local Government Perspective & Consumer Advocate

Staci Heaton, Rural County Representatives of California, testified that when there is a catastrophe, in some cases, insurance is not covering replacement cost. This impacts property

tax revenue. Heaton called for a tiered risk management system, and endorsed many of the recommendations of the Insurance Commissioner, that could lead to lower rates.

Dan Wade, United Policyholders, explained that his organization attempts to keep homeowners insurance affordable and available. Wade was critical of predictive analytics in the industry, claiming this leads to less emphasis on traditional underwriting. Predictive modeling overstates risk in order to justify higher rates, and these do not adequately account for fire mitigation or climate change. It is also necessary to know the areas where insurance is needed, including down to the zip code. It is increasingly prevalent that longtime policyholders are not being renewed. This type of data gathering should apply to the nonadmitted market. There are increased signs of growth in the surplus lines market where policies are unregulated and unbacked by the California Insurance Guarantee Association. Wade expressed the view that the surplus lines market should be subject to nonrenewal data, policy counts, and market share, mandated by legislation, for admitted and nonadmitted markets. He considered the FAIR Plan the insurer of last resort. Wade ended with the organizations efforts to work with insurance agents to help people find affordable coverage.

Member Comments

Senator Glazer endorsed communities now taking steps to permit whether burned regions should be rebuilt regions. Glazer also seemed to acknowledge the insurance market already balancing out insurers that are rating too high based on analytics, indicating an unwillingness to overregulate a self-correcting market.

In response to Senator Jackson, Wade explained that higher risk factor classifications call for enhanced CDI data, including at a granular level for the nonadmitted market and to justify decreases in admitted market policies. However, industry does not always have appetite to provide this information, to which Jackson responded in some cases it is necessary to force insurers, or at least make them admit, they do not want to furnish. Relative to Jackson's interest in any self-insurance program for lower income areas, Heaton advised of Lake County's effort.

Senator Moorlach raised interest in the homeowners and fire insurance interface with the mortgage industry. Wade reported that all mortgage companies require basic hazard insurance at least to protect their collateral. This is usually nonadmitted, costlier insurance. Senator Moorlach also expressed interest in the Butte County Fire being caused by electrical lines, and whether any greenhouse gas emission cap and trade dollars are being sought to harden transmission lines. Reischman informed that there is no pending request. Senator Jackson commented that during the Thomas Fire, there is speculation that utilities cut power to stop additional fire threats from down power lines, but this halted energy to water pumps that resulted in homes that could have been saved with water resources.

Homeowners Insurance Market Perspective

Kara Cross, Personal Insurance Federation of California, provided testimony around the need to continue to let the homeowners market operate without disruptive mandates, even in high risk areas. Evidence outlined by the Insurance Commissioner indicates that the homeowners market is operating in a healthy manner. Also, the FAIR Plan is in strong standing. For insureds, agents and brokers are a key resource to obtain policy renewal.

A primary issue for carriers is overexposure in high risk areas. It is necessary to lower risk in concentrated regions. Insurers have an obligation to protect all customers across the state, regardless of risk area. For high risk areas, it can be the case CDI does not provide an adequate rate, forcing low risk customers to subsidize. On mitigation, this is just one part of underwriting. Some mitigation is not possible, including, for example, in areas with single access roads. In terms of CalFire input, the agency supports more resilient home construction materials. It also reports that firewise communities are operative, but not for all communities.

Lastly, some the 17 fire bills in the Legislature could damage the homeowners market. Following the Northridge earthquake, earthquake insurance was required to be written. This eventually collapsed this line of insurance, forcing the creation of the state-run California Earthquake Authority.

Bill Kleinecke, Sutter Insurance, spoke on behalf of his small domestic insurance company domiciled in Petaluma. The company writes \$20 million to \$30 million in premium, of which \$1 million is California homeowners in fire-prone areas. Sutter is a Pacific Association of Domestic Insurance Companies member.

John Norwood, representing the Independent Insurance Agents and Brokers of California and Surplus Line Association of California, testified that there are in fact around 100 homeowners insurance companies in the state. As in most states, there are six to eight insurers that are the large players in the market, which are well known. However, independent insurance agents and brokers mostly represent the other 90 or so companies. These are not usually household names, but they play a critical role in the market, and, if for some reason insurance cannot be obtained from one of these admitted insurance companies, independent agents turn to insurance wholesalers to place insurance with a nonadmitted insurer through members of the Surplus Line Association.

Recently, there was legislative committee testimony from Public Utilities Commission Chairman Michael Picker relative to the cost and availability of insurance, both for investor owned utilities and homeowners insurance. Insurance is not a perfect science. The idea is to diversify and spread risk. It is not at all unusual for insurers to spread risk in order to stay balanced. When a carrier is out of balance, their risk profile to maintain their financial health and / or satisfy their reinsurers is necessary. It can be the case that the larger insurers restructure by pulling back and the other 90 or so fill in the gaps.

Norwood went on to say that with regard to premiums, the allegation that insurers are raising premiums by multiples is just not accurate. Because of prior approval rate regulation, all insurers must have an approved rate they can charge. In order to change that rate they would

have to apply to the CDI for approval – a process that takes six to 18 months. There are price differences among insurers and that may result in the insured being offered coverage at a higher price, but that is based on coverage and the insurers approved rate.

Concluding thoughts about the homeowners market, it should be noted that it is necessary to be careful not to create a homeowners association availability problem, Norwood argued. Also, the Insurance Commissioner has notified insurers that they may need to refile to account for the reduction in costs from the federal tax bill. At the same time, California is one of only two states that do not allow insurers to count an increase in cost of reinsurance as a reason to support a rate increase. There is little doubt that reinsurance cost for homeowners insurance will increase by 15%-20%.

Robb Daer, George Petersen Insurance Agency, Santa Rosa, is a rural independent broker with 12 offices in northern California. These offices service wildfire-prone areas. Written premium amounts to about \$250 million with 12,500 personal lines policyholders. During the Tubbs Fire, eight of 85 Agency employees could not make it to work. Everyone else was evacuated. Hundreds of friends and clients were also naturally affected. Nineteen-hundred claims have been processed by George Petersen Insurance and there have been 254 total losses, translating to \$550 million monetarily. What has been experienced is tremendous carrier response. Hundreds of insureds were processed through the Agency to have first notice of claim filed, and obtain money advances. Of the approximate 600 people seen through the first week of the event, half were not George Petersen Insurance clients. These individuals were just asked to meet with an adjuster and obtain some near-term financial help.

Regarding nonrenewals, 115 nonrenewals came from one carrier based on fire risk. That was about four weeks ago; about 100 now have found insurance. In terms of re-underwriting and mitigation, inspections for clients are underway. Three new carriers are working with Daer's office. Some have more risk than feasible to participate in the market. On the other hand, efforts to provide more coverage values have not been a problem with carriers. Because of the quality of the policies that have been written by the Agency, a spike in business has resulted.

Relative to underinsurance, there are less than a handful of circumstances. It may be the case of the start of a home business that was admittedly not reported, for example. There are carriers that are providing 50%-100% extended replacement cost coverage.

Tim Burnett, Surplus Line Association of California (SLA), explained the Association has roughly 5,300 surplus lines brokers. Last year, 650,000 policies were opened in the state, encompassing \$6.5 billion in processed market maker premium for industries such as cannabis and autonomous vehicles. The SLA was appointed by the Insurance Commissioner to examine every extraordinary line in the state to ensure a healthy, fair, and competitive market in California. Homeowner surplus lines policies in California doubled from 2013-2017, but only a small fraction of these exist in California – less than 24,000 (3.7% of total surplus lines policies in the state in 2017.) Surplus lines homeowners insurance premium written in

the state represents 7/10 of 1% of premiums. Wildfires are the result of the increase in surplus lines policies, as minimal as they are.

Member Comments

Senator Jackson asked about circumstances under which insureds seek surplus lines coverage. A Burns & Wilcox homeowners insurance policy writer accompanying SLA representative Tim Burnett advised this is the case for homes with heavy losses from water, as well as home location. To the suggestion that the state should be open to more nontraditional insurance carriers, Senator Jackson asked John Norwood. Norwood explained that admitted and nonadmitted insurance carriers have a comfortable balance because there is an understanding traditional insurers are not data-prepared to assess new market risks. So, specialty risk writers are suitable and welcomed until these unique markets mature and ready for admitted insurers to write policies. The protections for surplus lines are there. In fact, some of the most solvent insurers are surplus lines carriers. To Senator Jackson's question that despite the heavy insurance industry regulation there is a robust surplus lines carrier marketplace, Norwood referred to the Committee hearing background paper that explains there used to be 200 homeowners insurance companies in the state, but now there are 107. Senator Jackson expressed the view industry consolidation has had an impact.

Senator Jackson also followed up on Robb Daer's note that three new carriers have entered the George Petersen Insurance Agency market area, to which Daer saw this circumstance the result of departed insurers being overexposed to risk to fire prone areas. New carriers with less exposure to the region have shown a willingness to enter.

Insights & Developments on Labor & Employment Legislation

[AB 1867](#) (Reyes, Dem-San Bernardino): [Employee Sexual Harassment Complaint Records](#)
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 author agreed to amendments, but did not provide specifics. The Chamber of Commerce wants a 5 year record storage amendment and narrowed definition of complaint, the latter of which was not detailed by the CalChamber. This stands at an oppose, unless amend currently by the Chamber.

[AB 1870](#) (Reyes): [Unlawful Employment Practice Complaint Time Extension](#)
Current law, the California Fair Employment and Housing Act, makes specified employment and housing 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.

This bill is moving. The Chamber has an oppose, unless amend position. The Chamber is seeking 2 years, but the author will reject. Priority kill target.

[AB 1938](#) (Burke, Dem-Inglewood): Job Candidate Parental Status Inquiry

Current law prohibits an employer or employment agency from printing or circulating a publication, or making a nonjob-related inquiry of an employee or applicant, either verbally or on an application form, that expresses any limitation, specification, or limitation based upon a person's race, religion, national origin, or gender. This bill in addition prohibits an employer or employment agency from printing or circulating a publication, or making a nonjob-related inquiry of an employee or applicant, that expresses any limitation, specification, or limitation based upon a person's familial status.

This bill is intended to prohibit employers from asking job candidates whether they have a child. The author pulled the bill from hearing to redraft to narrow to this effect.

[AB 1976](#) (Limón, Dem-Santa Barbara): Workplace Lactation Accommodation

Current law requires every employer to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child and requires an employer to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private. This bill instead requires an employer to make reasonable efforts to provide an employee with use of a room or other location, other than a bathroom, for these purposes.

This bill was approved 6-0 March 14 by the Assembly Labor Committee. The Republican Vice-Chair voted aye and the one other Republican on the Committee did not record a vote. Not good; has strong support across party lines. The Chamber will seek to define "room or location."

[AB 2016](#) (Fong, Rep-Bakersfield): Employee Grievance Noticing

Hearing: April 4 Assembly Labor Committee

The Labor Code Private Attorneys General Act authorizes an aggrieved employee who complies with notice and filing requirements to bring a civil action to recover civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency. The Act requires that the aggrieved employee or representative give written notice to the Agency and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. This bill instead requires the notice to include a statement setting forth the relevant facts, legal contentions, and authorities supporting each alleged violation and an estimate of the number of current and former employees against whom the alleged violation or violations were committed and on whose behalf relief is sought.

A Chamber support letter is forthcoming.

[AB 2282](#) (Eggman, Dem-Stockton): Employee Salary History Inquiry

Current law prohibits an employer from relying on the salary history information of an applicant for employment as a factor in determining whether to offer an applicant employment or what salary to offer an applicant. Existing law requires an employer, upon reasonable request, to provide the payscale for a position to an applicant applying for employment. This bill defines “payscale” to mean a salary or hourly wage range. It defines “reasonable request” to mean a request made after an applicant has completed an initial interview with the employer. And, “applicant” to mean an individual who is seeking employment with the employer and is not currently employed with that employer in any capacity or position.

The Chamber is seeking to amend out the latter two definitions. This has a Chamber oppose position, currently.

[AB 2366](#) (Bonta, Dem-Alameda): Employee Family Member Sexual Harassment Counseling Leave

Current law prohibits an employer from discharging, or discriminating or retaliating against, an employee who is a victim of domestic violence, sexual assault, or stalking and who takes time off from work to obtain any relief to help ensure the health, safety, or welfare of the victim or his or her child. Current law additionally prohibits an employer with 25 or more employees from discharging, or discriminating, or retaliating against an employee who is a victim, in this regard, who takes time off to obtain specified services or counseling. Existing law makes it a misdemeanor for an employer to refuse to rehire, promote, or restore an employee who has been determined to be so eligible by a grievance procedure or legal hearing. This bill extends these employment protections to victims of sexual harassment.

The Chamber opposes this bill and will seek to narrow the definition of sexual harassment because it potentially could apply to legal code outside the Fair Employment and Housing Act. This bill allows employees to take time off because a family member was victimized, which is unprecedented scope and opens the door to any number of unforeseen, unfortunate events that could happen to one’s spouse, children or siblings.

[AB 2482](#) (Voepel, Rep-El Cajon): Employee Flexible Work Schedule

Permits an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and allows an employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday.

The Chamber supports this bill.

[AB 2770](#) (Irwin, Dem-Thousand Oaks): Employer Sexual Harassment Reference Disclosure

Current law makes communications regarding employee job performance or qualifications privileged, including employer to prospective employee references. This bill authorizes an

employer to answer whether or not a decision to not rehire a person is based on the employer's determination that the former employee engaged in sexual harassment.

This Chamber-sponsored bill is facing opposition arguments that employers could be able to spread false employee information.

[AB 2946](#) (Kalra, Dem-San Jose): Terminated Employee Grievance Filing Extension

Current law authorizes a person who believes he or she has been discharged or otherwise discriminated against in violation of any law under the jurisdiction of the Labor Commissioner to file a complaint with the Division of Labor Standards Enforcement within 6 months after the occurrence of the violation. This bill extends the period to file a complaint to within 3 years after the occurrence of the violation.

This bill is a major problem.

[AB 3081](#) (Gonzalez-Fletcher): Contractor Liability for Subcontractor Sexual Harassment Claims

This placeholder legislation will include language that holds contractors liable for sexual harassment claims against its subcontractors. Hold on to your hat (and your wallet) on this one.

[SB 937](#) (Wiener, Dem-San Francisco): Employer Lactation Accommodation

Hearing: April 4 Assembly Labor Committee

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 establishes a procedure for an employer with fewer than 5 employees to apply to the Division of Labor Standards Enforcement for an undue hardship exemption from the lactation room or location requirement. The bill also requires an employer to develop and implement a policy regarding lactation accommodation and make it available to employees.

The bill is derived from a San Francisco ordinance. This Legislator holds up liberal appearances for political purposes (represents San Francisco), but in negotiation can be practical and open to implementation concerns. In this case, the author seems willing to amend the measure. The Chamber is working to do so. It stands as an oppose, unless amend.

[SB 1223](#) (Galgiani, Dem-Stockton): Construction Contractor Sexual Harassment Training

This spot measure will require construction contractors to provide sexual harassment training to employees.

[SB 1284](#) (Jackson, Dem-Santa Barbara): Employer Pay Data Reporting

Hearing: April 11 Assembly Labor Committee

Requires, on or before September 30, 2019, and on or before September 30 each year thereafter, an employer that is incorporated under the laws of this state that has 100 or more employees to submit a pay data report to the Department of Industrial Relation. This requires the Department to make the reports available to the Secretary of State, the Department of

Fair Employment and Housing, and the Commission on the Status of Women and Girls upon request.

The Chamber is concerned that the measure does not limit use of this data, including perhaps posting on their respective websites.

[SB 1412](#) (Bradford, Dem-Sacramento): Employer Criminal History Information Access

Hearing: April 11 Assembly Labor Committee

Current law prohibits an employer from asking an applicant for employment to disclose, from seeking from any source, or from utilizing as a factor in determining any condition of employment, information concerning participating in a pretrial or post-trial diversion program or concerning a conviction that has been judicially dismissed or ordered sealed. This bill specifies that these provisions do not prohibit an employer from asking an applicant about, or seeking from any source information regarding, a particular conviction of the applicant if it is unrelated to job duties.

An example in this regard is a solar panel installer convicted of driving under the influence, but has a license reinstated. This does not impact the contractor from performing the job of putting panels on a home.