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State Senate

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Department of
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Industry Activity Update on the Fight Against Bad Employer Bills; AB 889 Particularly Harmful to a Number of Sectors

For perspective, the Chamber of Commerce is monitoring roughly 30 bills that impact economic growth – and they are almost all unhelpful to creating jobs and growing the economy. Given that legislative activity will not occur in earnest until early next month, there are only a handful that are candidates for early action by the Chamber and other trade groups. In the coming weeks, it will become clearer which bills are targeted by Assembly and Senate leadership for movement.

AB 281, authored by Assembly Member Rudy Salas (D-Bakersfield) provides an employer a right to cure a Labor Code violation before the aggrieved employee may bring a civil action. The employer has 65 calendar days to resolve the issue, rather than the 33 in current law. The Chamber is supportive of this bill. AB 1429 and AB 1430, both sponsored by Assembly Member Vince Fong (R-Bakersfield), are also worthy of industry support. These are tort reform bills that require the Labor Agency to look into a prospective employee civil action before the claim can be filed.

The Chamber is opposing AB 1008, Assembly Member Kevin McCarty (D-Sacramento), which makes it unlawful for an employer to include on any application for employment any question that seeks the disclosure of an applicant's criminal history until a conditional offer of employment is made.

In terms of legislation that is harmful, the SB 33 author, Senator Bill Dodd (D-Vacaville), has committed to narrowing the bill to only waiver of forced arbitration when a consumer alleges financial services contract fraud. However, use of the term financial services in the legislation raises concern it could capture the insurance sector. No matter how narrow the bill gets, this measure sets a bad precedent.

AB 889, authored by Assembly Member Mark Stone (D-Santa Cruz), flew under the radar, but has emerged as 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. As the bill is drafted, the standard to keep this information private is very high. And, a potential grievance can go as far as to include workplace stress imposed by an employer.

Official Legislative Information

Companies have long kept legal settlement information private, not only to protect their public image but to reduce follow on litigation from trial attorneys that solicit clients that may (or may not, in reality) have similar grievances.

While the bill is not sponsored by the Consumer Attorneys of California, this group will support it. It remains somewhat of an open question why they would because many consumer lawyers often just want to churn settlement cases on a volume basis so they can collect their fees and secure some nominal sum for their client. This bill actually places them at a disadvantage. Setting a precedent of publicly disclosing lawsuit settlement information exposes trial attorneys that underrepresent individuals that have actually been harmed. Corporate insiders advise that cases often settle for a fraction of what the complainant could be awarded if they were represented by an attorney with skills to resolve the matter in court.

AB 889 impacts nearly every sector of the economy. Employers consider this bill a high priority to defeat.

Lastly, on State Budget 2017-2018 Labor Trailer Bill provisions, the Chamber is working with the Labor Agency to try to reduce the amount of policy in this legislation, which is designed to fund existing agency programs only, so that when the Assembly-Senate Budget Committees hear the budget request the opposition testimony will be less drawn out.

Tree Mortality Epidemic Gets the Attention of Legislators; Some Advocating More Private Insurance Coverage

This last Monday, the Assembly-Senate Natural Resources Committees held a hearing on tree mortality and prescribed fire. The Pacific Forest Trust (PFT) proposes more private insurance and reinsurance as part of the solution to unavailable or nonrenewed policies for homeowners in rural, densely forested areas with high tree mortality rates. The group argues private capital needs to be leveraged as the state alone cannot pay for what needs to be done to protect communities impacted by wildfire. PFT also called for reinstatement of a state-guaranteed insurance program of prior years.

Senate Natural Resources Committee Chair Bob Hertzberg (D-Van Nuys) asked about efforts to reach out to the private insurance and reinsurance markets, to which PFT was not aware of any, and recommended the outreach include the State Treasurer's Office and Natural Resources Agency.

As has been reported in *This Week in Sacramento* previously, this is not true as private insurance carriers are actively participating in the California Department of Fire and Forestry (CalFire) – Tree Mortality Taskforce with respect to shaping a state-organized voluntary homeowner certification program to create defensible space. The Taskforce is considering a program along these lines so that certification could be included in underwriting, eventually leading to lower premiums. The reality is that there are so few homeowners that need coverage there is no current way to keep insurance prices reasonable and protect carriers from major financial exposure.

In other testimony, Placer County commented that the only homeowners insurance alternative is high-cost, unregulated insurance markets – Lloyd’s of London being one carrier. Senator Hertzberg requested insurance data to be provided to the Committee on extraordinary insurance market policies in use. Hertzberg’s view is that federal and state government, and the insurance industry need to work more closely to assist landowners in heavily forested areas.

Other solutions to the problem discussed at the hearing included prescribed burning, but testimony provided claimed this is only part of the answer because homeowners cannot afford to pay for the process. Prescribed fire is best left to large landowners and governments that can afford these insurance costs, according to PFT. Assembly Natural Resources Committee Chair Cristina Garcia (D-Downey) asked about how to help small landowners, to which PFT said people need funding for site preparation. It can cost landowners \$20,000-\$30,000 per project. These people are using homeowner lines of credit to pay for tree thinning.

It would be more palatable for them to pay 10% and the state cover the rest through a grant program, PFT argued. Currently, the voluntary California Forest Improvement Program (CalFIP) through CalFire is a program to help manage the state’s 32 million acres of forest land. CalFIP provides 90% cost reimbursement for thinning and forest rejuvenation. This is available to private landowners. CalFIP is funded at \$2 million annually, but landowners need capital of their own to put up front. CalFire also has a vegetation management program that conducts planned burning.

According to the University of California Center for Fire Research, fires in California occur every five to 15 years, but are anticipated to increase because California is getting warmer and drier due to climate change. Tree mortality is occurring at an unprecedented level in part because of the proliferation of western pine beetle infestation. Twenty to 50 per acre tree density is manageable, but today there can be 500-100 trees per acre. There is a decade to two decades worth of work to address tree mortality and fire risk, UC estimated. There are currently 102 million trees that have died.

Department of Insurance Annual Omnibus Bill Overreaches; Some Policy Recommendations Need Thorough Review

AB 1696 (Insurance Committee) is this year’s Department of Insurance (CDI) multi-faceted policy bill, which includes everything from technical, nonsubstantive changes to clean up the Insurance Code to inappropriate policy changes that require thorough vetting. This is not just the perspective of insurance carriers, it is the view of the expert legislative staff that advises legislators on the Assembly Insurance Committee. Areas that are not omnibus material include a proposal to treat business entity applicants and licensees equally if the controlling person has a restricted license, allowing CDI to restrict the business entity licensee without a hearing; and, provide the CDI Fraud Division clear authority to conduct audits directly of third-party administrator’s so CDI can examine their overall practices directly. The latter is a particular problem for insurance companies, and will be pushed back on.

On recent legislative developments, the Community Development Financial Institutions Fund is sponsoring AB 778 (Caballero) – Community Organized Investment Network tax credit reauthorization. CDI is in support. The bill will be heard next month, then will be incorporated in State Budget 2017-2018 Trailer Bill language once the Assembly-Senate Budget Committees complete their work. This is intended to get around being bogged down in the Budget Committees. Only if the Budget Chairs and relevant Subcommittee Chairs permit, does this legislative strategy prevail – which seemingly is in place.

Lastly, at a meeting on SB 488 (Bradford), which adds veteran and lesbian, gay, bisexual, and transgender business enterprises to the entities for which the insurance industry needs to report procurement activity to CDI. Apparently, the author said the insurance industry is not adequately embracing cultural diversity in business practices, going so far as to say some companies are racist. An influential legislative player in personal insurance lines, who happens to be African American, let the author know this is not an accurate portrayal. On the bill itself, there is concern it is too broad. Industry is not comfortable gathering personal, private information of this type so it can file the required CDI reports.

Mobile Phone Disabling Tech Company Seeks Insurance Industry Support

At a gathering this week of the major legislative players in the California property and casualty market, Katasi Corporation provided a presentation on the company's mobile phone disabling technology utilized in cars, called Groove. It is a device inserted into a car steering column that disables registered cell phones when the vehicle exceeds five miles per hour. In disabling, it does not allow for incoming texts, emails, calls, and app notifications. It can be turned off, but the person / company that registered the phone receives a text indicating so (this alert is sent to parents / companies that register their drivers such as Coca Cola etc). The technology has been subject to a 50,000 driver pilot program and will launch in Australia in June. North American product trials are taking place now, including with Sprint in August utilizing a major pizza chain's delivery drivers.

According to Katasi, the investment by wireless companies is \$3 million to update their networks, and there is an income stream opportunity for cell service companies. Currently, though, wireless companies are not considering this a high priority business focus. Katasi itself does not intend to harvest customer data for resale via the device. Katasi has a public patent on the technology, so there is no market monopoly goal. Regarding competition, there is similar app technology that cell carriers developed but it is aged (5 years old) and in some cases either not updated or out of operation. It also does not have the parent / employer alert mechanism when disabled.

Katasi is sponsoring a spot measure (AB 970) by Assembly Member Jim Frazier (D-Fairfield). The Frazier bill will require cell phone carriers to accommodate the Katasi technology for a fair price (\$8-10 / mon). Law enforcement is expected to be supportive, and Katasi is hopeful the Personal Insurance Federation of California (PIFC) will be as well, but not from an investment perspective. Katasi will not be going to PIFC member companies individually for their support. Katasi is not seeking PIFC-member company policy discounts for those that utilize the technology.

Krause advised that the technology was created to help address findings by the National Safety Council that highway deaths have risen 14% since 2014, the most dramatic two-year escalation in 53 years. In 2015, 10% of 35,000 traffic fatalities involved distracted drivers, an increase of 8.8% from the prior year. Of the 5.6 million nonfatal crashes in 2014, 16% were distraction-affected. There have been positive media reports from the Washington Post and New York Times about the phone disabling device.

Some insurance industry observations on AB 970 are that privacy issues need to be resolved; legislation designed to assist a single company is typically difficult to sell; and, Sprint is on board to do a pilot this year so what is the need for the bill.

Department of Insurance Unveils its 2017-2018 Budget

At the annual Department of Insurance (CDI) Fiscal Briefing this week, it was explained that of the \$270 million annual budget, which is special fund assessments on industry not state general taxpayer dollars, 46% is spent on fraud control, 31% on regulation, and 22% on consumer protection. This year's budget request does not include any fee increases and is flat relative to last year.

California Department of Insurance - FY 2017-2018 Budget Proposals

Proposals	Summary	Positions	FY 2017-2018 Funding
CDI Menu Modernization	Requests resources to complete year 4 implementation of a 5 year project to upgrade the legacy CDI Menu & Integrated Database	6	\$2.06 million
IT Infrastructure	Requests resources ongoing for hardware, software, and maintenance to upgrade the CDI's statewide Voice over Internet Protocol (VoIP) system, including its call center functions.	0	\$1.3 million
Rate Regulation Restructure & Rate Review - Predictive Model Analysis	Requests resources to address workload demands and to engage outside actuarial consultants to assist in the technical analysis and additional workload associated with the review of complex predictive models.	2	\$586,000
Enhanced Auto Consumer Services	Requests resources for a 4 year period to support consumer services workload related to auto insurance and AB 60 (2013) – Undocumented Immigrant Drivers Licenses.	4	\$749,000
Sacramento Headquarters	Requests ongoing funding to lease additional space at 300 Capitol Mall	2	\$430,000

Expansion	to implement a public counter, provide sufficient hearing, meeting, and training space, as well as accommodate additional staff.		
Workers Compensation Fraud Program	Requests ongoing funding and positions to fund workers compensation fraud investigation and prosecution workload increases. This increase is consistent with the increased assessment approved by the Governor-appointed Fraud Assessment Commission on September 7, 2016.	8	\$3.42 million Within above: \$1.68 million (State Ops) \$1.75 (Local Assist)
Out-of-Network Coverage	Requests ongoing funding and positions to comply with the mandates of AB 72 (2016), which requires a health insurance policy to provide that if an enrollee receives services from a contracting health facility noncontracting individual health professional, the enrollee is required to pay the noncontracting individual health professional only the same cost sharing required if the services were provided by a contracting individual health professional.	2.5	\$751,000
Insurance: Spanish License Examinations	Requests resources through FY 2023-2024 to address the increased workload to comply with AB 1899 (2016), which requires the exam for a license as a life agent, life-only agent, and accident and health agent be provided in English and Spanish.	0	\$49,000

In addition, there was a reasonably lengthy discussion about pay parity for CDI Fraud Investigators, relative to those at the Department of Justice (DOJ). There have been signals that this 5% delta, causing CDI investigators, once trained to move to DOJ, could close some. Apparently, this is in the form of a State Budget 2017-18 Side Letter. At this time, the right time for carriers to engage is being contemplated. Regarding CDI's budget, it will be heard in the Senate Budget State Administration Subcommittee on March 23 and in the Assembly companion subcommittee on April 25. Spring Finance Letters will focus on fraud prevention.

Trump Administration Considers Business Legislation

It is expected that soon President Donald Trump will begin the process of reviewing bills that would significantly change the litigation process in favor of business interests. The package of

legislation includes six bills that have long been pursued by business groups and resisted by consumer advocates, including major changes to class action lawsuits and tools for punishing attorneys that file bad claims.

The effort to push these initiatives through, known as tort reform, has been underway for over a decade. In 2005 the Class Action Fairness Act was put into law, which made the process of moving class action lawsuits to federal courts easier for defendants. Business groups have worked since then to try and pass legislation reform at the federal level, but until now have not had the support to make it happen. This year, however, tort reform has been elevated to “must pass” status by the Speaker of the House Paul Ryan, and it’s looking more likely than ever that the bills will make it into law.

President Trump’s position on the legislative package is still unknown however, and requests for comment from the White House have gone unanswered. While his position as a businessman makes many think that he would support the reforms, the popularity of such legislation is still in question and the President’s support is not guaranteed. No matter the White House’s position, it is likely that tort reform will be a contentious and hard-fought battle in Congress this year, with many more developments to come.

Legislative Action Update: When to Expect Movement

As reported last week, 30% of the 800 bills introduced near the deadline are spot bills (legislation with no new proposed changes to existing law) awaiting amendments before they are referred to committees. Since this last Wednesday was the deadline for authors of these placeholder bills to submit their amendments to the Legislature’s in-house legal team, officially referred to as Legislative Counsel, for drafting, the coming days and weeks will reveal more about what issues will emerge this session.

Bills that were introduced before the February 17 introduction deadline are subject to a 30 day waiting period from the date in print before they can be heard by committee, making most ineligible until early April. Bills that are amended are subject to a 15 day waiting period before further action, so there is time to review the legislative changes. For spot bills, if they are amended with 15 or more days within the 30 day waiting period this is sufficient to be eligible for hearing.

Stay tuned...