



May 18, 2018

Sacramento, California

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State Senate

State Assembly

## Senate Governance & Finance Committee Holds Informational Hearing On Far Reaching Sales Tax On Services Bill

On Wednesday, the Senate Governance and Finance Committee held [SB 993](#) (Hertzberg, Dem-Van Nuys), declining to vote on the bill that proposes to tax services purchased or used by businesses in California. Instead, the Committee plans to hold several additional hearings on the issue. There was diverse testimony from the opposition which addressed all the critical points that the Committee needs to consider, from small business impact to competitive disadvantages and implementation challenges. The next hearing is scheduled for June 13. Senator **Mike McGuire**, (Dem-Healdsburg), who chairs the Committee, said the hearing will include a panel discussion. He said this hearing and others will provide a “deeper dive” into the issue of taxing services.

Senator **Robert Hertzberg** (Dem-Van Nuys) presented SB 993. According to the author, in recent years, consumers have shifted their spending patterns from property, which are taxable, to intangibles and services, which are not. The Legislative Analyst’s Office (LAO) estimates that consumer spending on taxable items peaked in 1979, when consumers spent 53 cents of each dollar on taxable items. Since then, the sales tax base has grown at 1.3%, well below growth in the general economy and personal income. LAO states that the trend is primarily because taxable items have become less expensive relative to nontaxable items, resulting in more discretionary income that can be spent elsewhere. Spending on services such as entertainment, leisure, and recreation increases as income grows, and consumer demand has grown despite consistent increases in service prices that are four times the growth in prices for taxable items. LAO estimates that if consumption patterns had remained the same since 1979, the sales and use tax rate could be more than 3% lower and generate the same amount of revenue, and adds that this trend is likely to continue. Pointing to approximately \$644 billion in currently nontaxable business-to-business sales of services, the author wants to impose a tax on business purchases of services, and reduce the current sales and use tax rate that applies to tangible property. The current sales tax rate is 7.25%.

Specifically, SB 993, beginning on January 1, 2020, imposes the tax on a “qualified business,” defined as “a person, corporation, partnership, sole proprietorship, limited liability company,

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and limited liability partnership engaged in business to provide a product or service for the purpose of producing income taxable under federal income tax law.” The bill assigns the benefit of the service to the location where the business either directly or indirectly receives value from the delivery of the service. Under the bill, the business becomes liable for the tax whenever they receive a benefit of a service in California, which is not extinguished until the tax is paid unless and until they are given a receipt from the retailer of the service. Businesses pay taxes to the California Department of Tax & Fee Administration (CDTFA), which deposits proceeds in the General Fund. SB 993’s tax is measured as a percentage of the sales price of the service, using the following rates by calendar year:

- For 2020, .75%
- For 2021, 1.5%, and
- For 2022 and each year thereafter, 3%

The author contends that this proposal is revenue neutral and will synchronize a reduction in sales taxes on goods by 2%. As a result, he claims lower-income Californians who spend more of their dispensable income on taxable property should pay less tax, while firms that consume services will pay more.

Senate Governance & Finance Staff Analysis

Implementing SB 993 will not be easy either for taxpayers or the state, according to Senate Governance and Finance Committee Consultants. While some sellers of services currently collect and remit sales and use taxes to CDTFA, many do not, and will be required by the bill to collect a tax that measures its purchaser’s benefit of the use of a service. Firms that consume services may have difficulty passing along the tax in prices, especially in competitive markets where margins are small. Service providers will have to determine when services are exempt, whether a resale certificate applies, demonstrating when necessary that the purchaser is not receiving the benefit of the service in California, and applying apportionment regulations when the purchaser received the benefit of the service in more than one state. CDTFA can impose penalties if service providers do not implement the bill correctly.

In particular, determining the benefit of the use of a service for a multistate business will be complex. The bill requires any seller of a nonexempt service to a multistate company to determine at the time of sale whether the purchaser receives a benefit of the use in California of the service sold, the share of the benefit in California compared to its benefit received in other states, charge the tax measured as a percentage of the sales price, and collect and remit the appropriate tax when not exempt. The bill envisions CDTFA regulations apportioning the benefit to California, but the bill’s tax is measured as a percentage of its sales price before any apportionment. Additionally, the benefit of any service could change as quickly as the company’s supply chain does, with potentially different benefits for any given service. For example, a person using YouTube to sell instructional videos will have to determine whether customers are benefitting from the information provided in the videos in California, and if so, how much of their benefit is received in California compared to their benefit in other states. If the person sold videos to a business, the seller would have to determine whether and how much the businesses used the benefits provided by instructional videos in California compared to other states.

### State Revenue Fiscal Impact

The revenue potential for a sales tax on services is immense: the Board of Equalization estimated annual revenue of \$122.6 billion by taxing all currently nontaxable services, \$57.6 billion of which would flow to the General Fund, with the remainder going to local governments and special districts.

### Registered Support

The Senate Governance and Finance Committee states that formal support is unknown.

### Registered Opposition

There is enormous opposition to SB 993. There are over 140 opponents to the bill, including major industries such as insurance through the Independent Insurance Agents & Brokers of California, Property Casualty Insurers Association of America, Association of California Life & Health Insurance Companies; pharmaceuticals through Biocom and California Life Sciences Association; cable and telecommunications through the California Cable & Telecommunications Association; real estate services through the California Land Title Association; as well as the California Pool & Spa Association.

Other opponents include industry trade groups of professional services ranging from architects to bankers; entertainment; restaurants and retailers; high technology; manufacturing, construction, and engineering; agriculture; automobile and trucking; and, local and cultural chambers of commerce.

## Full Assembly Passes Insurance Replacement Cost Estimate Legislation Pertinent To Wildfire Insurance Coverage

**[AB 1797](#)** (Levine, Dem-Marín) – Insurance Replacement Cost Estimate was approved unanimously on the Assembly Floor this week. It will next be considered by the Senate Insurance Committee in June.

AB 1797 requires an insurer that provides residential property insurance to provide to the policyholder, every other year at the time of the offer to renew the policy, an estimate of the cost necessary to rebuild or replace the insured structure. The legislation also requires this replacement cost estimate to be prepared in compliance with a regulation adopted by the Department of Insurance (CDI).

In addition, the measure provides that an insurer otherwise subject to the requirements above, does not have to comply if the policyholder, within the past two years prior to the offer to renew, has requested, and the insurer has provided, coverage limits greater than the limits that were previously selected by the policyholder. In addition, the bill provides that an insurer does not have to comply if, in connection with its annual offer to renew the policy, has performed the following:

- 1) Offers the policyholder, on an every other year basis, the right to have a replacement cost estimate that complies with the CDI regulation prepared;
- 2) Includes a cost of construction inflation factor to the coverage limit for the dwelling with the offer to renew;
- 3) Specifies that the bill does not preclude the insurer and the policyholder from agreeing to coverage limits that are either higher or lower than the replacement cost estimate; and,
- 4) States that the bill is not intended to change existing law with respect to the duty of the policyholder to select the coverage limits of the policy.

CDI, in prior written comments to the Assembly Insurance Committee, suggested a baseline calculation of the replacement cost that complies with the Department's Insurance to Value regulation as an additional element for insurers that are relying on the construction cost inflation factor exception, which the author added to the bill. CDI maintains this is necessary to address labor and construction materials demand price surge post-natural disaster. Insurers that use construction cost inflation factors object to this additional requirement as unnecessary and costly. The Personal Insurance Federation of California is committed to continuing to work with stakeholders on this issue. And, it is not clear that requiring the use of this regulation compliant baseline results in higher or more accurate estimates that are already in place for these policyholders, Assembly Insurance Committee staff advise in bill analysis.

Before reaching the Assembly Floor, language was deleted, which stated "An insurer that provided an estimate of replacement value shall not be liable to the insured if the policy limit is not sufficient to replace the insured property."

This legislation is supported by the Sonoma County Board of Supervisors. Other counties in support include Mendocino County and Napa County, both of which were devastated by the October 2017 Bay Area Firestorm. There is no registered opposition.

## Assembly Passes Measure Addressing Insurance Agent-Broker Commission Payment

On Monday, the Full Assembly passed (73-2) a bill, [AB 2844](#) (Cooley, Dem-Rancho Cordova), that provides that a commission payable to a broker-agent be at the rate and in accordance with the terms specified in the written contract between the insurer and broker-agent. It also provides that there is a rebuttable presumption that a commission is lawful if it complies with the following provisions of law:

- 1) Laws protecting the broker-agent's property interest in the business in the event the insurer is terminating an agency appointment, including the right to commissions and the broker-agent's right to place policyholders with a different insurer;

- 2) A provision of law that guarantees the right of the broker-agent to commissions on the policy for one renewal period in the event the broker-agent is unable to place the policy with a different insurer; and,
- 3) A provision of law adopted to implement Proposition 103's "take all comers" rule that bars insurers from discriminating on commission levels for the placement of automobile insurance policies with limits at the minimum Financial Responsibility Law requirements.

Existing law provides statutory protections for a broker-agent in the event the insurer is either terminating the appointment of an agent, or cancelling the contract it may have with a broker. It further establishes a nondiscrimination rule with respect to commissions paid for minimum limits policies to policyholders who qualify as a "good driver" pursuant to Proposition 103.

According to the sponsor, Mercury Insurance, the bill is needed to ensure that unwarranted litigation is not filed challenging contractual arrangements between insurers and agents or brokers. The goal of the bill is to ensure that contractual agreements voluntarily entered into between broker-agents and insurers control in the event of disputes. Proponents argue the bill is, essentially, a preventative measure designed to guarantee that contractual arrangements voluntarily entered into are not frivolously challenged in court.

In terms of tangible wrongs in the marketplace, the justification for the adoption of a conclusive presumption appears to be based on inchoate fears of future frivolous lawsuits, Assembly Insurance Committee staff observe. Staff adds that the use of a conclusive presumption is usually reserved to address a specific problem where it is concretely established that a wrong requires a strong procedural remedy. To address this concern, the bill was amended to provide for a rebuttable presumption, in lieu of the conclusive presumption previously proposed.

Other than the sponsor, there is no other registered support. And, there is no formal opposition. The bill will be referred to the Senate Insurance Committee in the coming days.

## Senate Approves Bill Requiring Insurance Policies Cover Landslide Events

Yesterday, the Full Senate passed, by a largely party line vote of 25-11, a bill that requires insurance policies cover loss from landslide events. Republican Senator Anthony Cannella (Merced) voted in favor of [SB 917](#) (Jackson, Dem-Santa Barbara). The legislation provides that if loss or damage results from a combination of perils, one of which is a landslide, mudslide, mudflow, debris flow or other similar earth movement, coverage must be provided if an insured peril is the efficient proximate cause of the loss or damage and coverage would otherwise be provided for the insured peril. The measure also requires such coverage to be provided under the same terms and conditions as would be provided for the insured peril. The last provision provides that this is declaratory of existing law.

According to the author, this bill will help prevent the confusion in situations such as Montecito where homeowners are left to wonder whether the loss of their largest single asset, their home, will be covered by insurance. Consumer Attorneys of California supports SB 917 because it codifies longstanding California case law, which requires property insurers to provide coverage whenever an insured peril is the “efficient proximate cause” of a loss. Other supporters include the Rural County Representatives of California, California State Association of Electrical Workers, and United Policyholders.

The state’s largest insurance trade organizations oppose SB 917 unless it is amended because it, as currently drafted, does not reflect existing law. The American Insurance Association, National Association of Mutual Insurance Companies, Pacific Association of Domestic Insurance Companies, Personal Insurance Federation of California, and Property Casualty Insurers Association of America explain the bill appears to require insurers to cover a loss whenever a covered peril is the efficient proximate cause even if there is some other reason that they are not required to provide coverage, such as if there has been fraud or concealment by the insured, or other legal and enforceable policy terms or conditions that would void coverage. This could lead to increased costs for all policyholders, or a decision by insurers to limit their books of homeowners insurance.

## Assembly Appropriations Committee Passes CEA Insurer Assessment Bill; Previewing Next Week’s Deadline, Assembly & Senate Appropriations Committees Move Insurance Legislation To Suspense File For Potential Vote

Next Friday, May 25 is the Assembly and Senate’s deadline for the chambers’ Appropriations Committees to decide whether to vote to send a bill to the respective Floors. The following measures are pending consideration by the two Committees.

### **AB 2927 (Nazarian, Dem-North Hollywood) California Earthquake Authority Insurer Assessment**

Summary: Current law authorizes the California Earthquake Authority (CEA) to surcharge all CEA policies, in a net amount not to exceed \$1 billion plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit, to secure funds to repay the bonded indebtedness or other debt, and requires a CEA policy to include a specified notice of the surcharge to its policyholders.

This bill revises that provision to require the CEA, with the Treasurer as its agent, to sell investment grade revenue bonds or issue or secure other debt financing in an amount up to \$1 billion plus costs of issuance and sale of revenue bonds or other debt financing, if existing sources of capital plus risk transfer provided through capital market contracts are exhausted.

Support & Opposition: This CEA sponsored bill is the only registered support and there is no formal opposition.

Status: This bill previously passed the Assembly Insurance Committee and Assembly Appropriations Committee without opposition, and was been referred to the Assembly Floor Consent Calendar on May 16.

### **AB 1875 (Wood, Dem-Santa Rosa) Home Insurance Finder**

Summary: This measure requires the Department of Insurance (CDI) to establish the California Home Insurance Finder on its website to help homeowners connect with an insurance agent or broker for residential property insurance. The bill requires the Department to survey agents, brokers, insurers, and appropriate trade associations about inclusion in the finder, and post participants' names, addresses, phone numbers, and websites to the finder on or before July 1, 2020.

The legislation also requires the Insurance Commissioner to use social media and other tools to promote the finder, to create materials in multiple languages, and to develop a pamphlet no later than July 1, 2020, that provides information on how to accurately estimate dwelling replacement costs.

Support & Opposition: There is no support or opposition.

Status: The bill previously passed the Assembly Insurance Committee on a party line vote and was referred to the Assembly Appropriations Committee Suspense File on May 16.

### **AB 1923 (Limón, Dem-Santa Barbara) Fire Insurance Debris Removal**

Summary: This bill requires an insurer for a residential property insurance policy, if a consolidated debris removal program in which a residential property owner who has insurance in effect at the time of a wildfire that provides coverage for debris removal voluntarily assigns any rights, benefits, and proceeds for that coverage to a county or designated agency, is implemented following a state of emergency, to provide the assignee with relevant policy and claim information and to issue payment directly to the assignee.

Support & Opposition: The Department of Insurance is the sponsor and there is no other support. The opposition is the American Insurance Association, National Association of Mutual Insurers, Pacific Association of Domestic Insurers, Personal Insurance Federation of California, and Property Casualty Insurers Association of America.

Status: The bill previously passed the Assembly Insurance Committee unanimously and was referred to the Assembly Appropriations Committee Suspense File on May 16.

### **AB 2276 (Burke, Dem-Inglewood) Automobile Body Rate Survey**

Summary: Current law requires any insurer that conducts an automobile body repair labor rate survey to determine and set a specified prevailing auto body repair labor rate in a specific geographic area to report the results of that survey to the Department of Insurance, which is required to make the information available upon request. This bill deletes this provision and instead requires an insurer to report the results of the survey to CDI at least every 12 months. The legislation provides insurers flexibility relative to the modeling used to conduct surveys.

**Support & Opposition:** This bill is supported by the American Insurance Association, National Association of Mutual Insurers, Pacific Association of Domestic Insurers, Personal Insurance Federation of California, Property Casualty Insurers Association of America, and California Chamber of Commerce. It is opposed by the California Autobody Association and Consumer Federation of America.

**Status:** The bill previously passed the Assembly Insurance Committee unanimously and was referred to the Assembly Appropriations Committee Suspense File on May 16.

## **Labor Developments On Legislation That May Be Heard Before Next Week's Fiscal Committee Passage Deadline**

As mentioned in a prior article, next Friday, May 25 is the Assembly and Senate's deadline for the chambers' Appropriations Committees to decide whether to vote to send a bill to the respective Floors. The following measures are pending consideration by the two Committees.

### **AB 2946 (Kalra, Dem-San Jose) Labor Standards Enforcement Division Complaint Filing**

**Summary:** Current law authorizes a person who believes has been discharged or 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.

**Support & Opposition:** This bill is supported by 20 organizations, including the Employee Rights Center, the National Immigration Law Center, and the Service Employees International Union. The opposition consists of 38 industry trade groups and local chambers. The Chamber is opposed to the legislation, as well as the California State Association of Counties and Civil Justice Association of California.

**Status:** The bill previously passed the Assembly Judiciary Committee on a party line vote, and was referred to the Assembly Appropriations Committee Suspense File on May 16.

### **AB 3087 (Kalra, Dem-San Jose) Healthcare Pricing Commission**

**Summary:** This bill establishes the Healthcare Cost, Quality and Equity Commission to control in-state healthcare costs and set the amounts accepted as payment by health plans, hospitals, physicians, and physician groups. Healthcare rates would be based on what the government pays for services under Medicare. Also, the Commission is charged with determining methods for state government to reduce the cost of prescription drugs and medical devices paid for by private purchasers in the commercial market.

- While Chamber members believe it is possible that it may pass the Assembly Appropriations Committee by the May 25 deadline, Assembly Speaker Anthony Rendon (Dem-Long Beach) has signaled it will be held before reaching the Full Senate.



Support & Opposition: In total, AB 3087 is supported by 29 organizations, including the state's major labor organizations, consumer advocacy groups, and health access groups. These include the California Labor Federation, Service Employees International Union, California Teachers Association, Consumers Union, and Health Access California. The bill is opposed by 280 hospitals and providers, as well as major the state's largest business advocacy organizations – the Chamber and National Federation of Independent Business.

Status: The bill previously passed the Assembly Health Committee on a party line vote and referred to the Assembly Appropriations Committee. It is scheduled to be heard by the Committee by May 25.

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

Summary: 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.

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: The bill previously passed the Senate Judiciary Committee on a party line vote. In the Senate Housing Committee, where it passed 8-4, Republican Senators Anthony Canella (Merced), Ted Gaines (El Dorado Hills), and Mike Morrell (San Bernardino) did not register votes. It was referred to the Senate Appropriations Committee Suspense File on May 14.

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

Summary: 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.

- The Chamber remains concerned that this information could make its way to a courtroom via subpoena, despite the author stating in committee the data is not intended to be used as legal evidence. So, the Chamber is seeking legislative intent language to explain that this data is to be protected and used only for analysis. The author has also stated in committee that the reporting is voluntary, but Senator Hannah Beth Jackson's staff says the bill mandates paydata reporting.

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

Status: The bill previously passed the Senate Judiciary Committee on a party line vote and referred to the Senate Appropriations Committee Suspense File.

### **Sexual Harassment Legislation**

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

Summary: 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.

- Given that Republican Assembly Members Catherine Baker (Walnut Creek) and Marie Waldron (San Diego) are coauthors, other Republican Assembly Members are informing of their likelihood to take these two Members lead on votes. The political environment is such that Republicans are hesitate to vote against bills that address sexual harassment.

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: The bill previously passed the Assembly Labor Committee with a unanimous vote and was referred to the Assembly Appropriations Committee Suspense File.

#### **AB 2366 (Bonta, Dem-Alameda) Sexual Harassment Protections**

Summary: 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, or attempt to obtain, any relief to help ensure the health, safety, or welfare of the victim or his or her child. Current law also prohibits an employer from discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking because of the employee's status as a victim, if the employer has notice or knowledge of that status. This bill extends these employment protections to victims of sexual harassment.

- The Chamber has made negotiation progress with the author's office to require legal documentation of the harassment, or perhaps a physician's confirmation the harassment requires work leave.

Support & Opposition: Legal Aid at Work is the sponsor of this bill, and it is supported by the California Employment Lawyers Association, the California School Employees Association, women's' rights organizations, and 40 others. The opposition consists of the Chamber, 13 large industry trade organizations, 10 local chambers, 30 other business entities, and the Civil Justice Association of California.

Status: The bill previously passed the Assembly Judiciary Committee 8-0, with only two of the four Republicans, Assembly Members Jordan Cunningham (San Luis Obispo) and Kevin Kiley (Rocklin) abstaining. It was referred to the Assembly Appropriations Committee Suspense File on May 16.

### **AB 3081 (Gonzalez-Fletcher, Dem-San Diego) Workplace Sexual Harassment**

Summary: Current law prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off work to obtain relief or because of the employee's status as a victim of domestic violence, sexual assault, or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of the status. This bill also prohibits an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's status as a victim of sexual harassment. The bill makes the filing deadline for these prohibitions and the reasonable accommodations requirement 3 years from the date of occurrence of the violation. It contains employer-employee joint liability.

Support & Opposition: The bill is supported by the California Teamsters and several women's organizations, among 12 other entities. It is opposed by the Chamber, 13 business trade groups, and 12 local chambers.

Status: The bill previously passed the Assembly Judiciary Committee 8-2 with Republican Assembly Member Brian Maienschein (San Diego) voting in favor. The bill was referred to the Assembly Appropriations Committee Suspense File on May 16.

### **SB 1343 (Mitchell, Dem-Los Angeles) Workplace Sexual Harassment Training Requirements**

Summary: Requires an employer who employs 5 or more employees to provide at least 2 hours of sexual harassment training to all employees by January 1, 2020, and once every 2 years after that. The bill requires the Department of Fair Employment and Housing to develop a 2-hour video training course on the prevention of sexual harassment in the workplace.

- The Chamber has secured an amendment that requires a certification that the course was completed.

Support & Opposition: The bill is supported by 16 organizations, including 10 labor unions, such as California Teamsters, and the Consumer Attorneys of California. The California Manufacturers & Technology Association is the only registered opposition.

Status: The bill previously passed the Senate Judiciary Committee (party line vote) and referred to the Senate Appropriations Committee Suspense File.

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