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State Senate

State Assembly

Department of
Insurance

Assembly Insurance Committee Votes On Two Wildfire Insurance Bills

On Wednesday, the Assembly Insurance Committee voted to approve two wildfire insurance bills.

AB 1797 (Levine) – Insurance Replacement Cost Estimate

Assembly Member **Marc Levine** (Dem-Marin) presented AB 1797 – Insurance Replacement Cost Estimate, which 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;
- 4) Provides that an insurer that complied with the requirement to provide a replacement cost estimate, or satisfied one of the exceptions to that requirement, not be liable to the policyholder in the event the selected policy limit was not sufficient to replace the insured property; and,
- 5) 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.

Secretary of State
Official Legislative
Information

According to the Assembly Member Levine, underinsurance is one of the most significant problems identified by consumers in the aftermath of 2017 firestorm disasters. Underinsurance often occurs as a result of inaccurate or outdated replacement cost estimates that were used to establish the coverage limit on the insured dwelling. The bill is aimed to improve the information available to policyholders so that they can make sound, informed decisions with respect to how much coverage to buy. Current regulations establish an approach that is intended to result in a sound estimate of the cost to replace a home, but that regulation does not mandate insurers to produce or update a replacement cost calculation.

Support Testimony

Paul Yoder, Representative, **Sonoma County Board of Supervisors**, commented in support. Other counties in support include Mendocino County and Napa County, both of which were devastated by the October 2017 Bay Area Firestorm.

Opposition Testimony

There is no registered opposition.

Amendments

The **Department of Insurance** (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 Cost Value regulation as an additional element for insurers that are relying on the construction cost inflation factor exception. Robert Herrell, Deputy, **CDI**, commented that the bill 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. Kara Cross, General Counsel, **Personal Insurance Federation of California**, commented that the Federation is committed to continuing to work with stakeholders on this issue. 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. Nevertheless, the author accepted the amendment.

Vote (13-0)

Aye: Daly (D), Mayes (R), Bigelow (R), Caballero (D), Calderon (D), Chen (R), Chu (D), Cooley (D), Cooper (D), Frazier (D), Gipson (D), Grayson (D), Harper (R)

Nay: None

Abstain: None

Absent: None

AB 1875 (Wood) – **Extended Replacement Insurance Coverage**

Assembly Member **Jim Wood** (Dem-Santa Rosa) explained that AB 1875 – Extended Replacement Insurance Coverage, requires, until July 1, 2020, an insurance agent to refer a homeowner to an independent insurance agent if an insurer declined to offer extended replacement cost coverage. The legislation also requires, after July 1, 2020, an insurance

agent to refer a homeowner to the Department of Insurance home insurance finder if an insurer does not offer or declined to offer extended replacement cost coverage. Additionally, the bill requires CDI to establish a home insurance finder feature on its website that matches homeowners with insurers that are offering homeowner's policies in their area. In addition, it requires CDI to develop a pamphlet to educate homeowners on how to accurately estimate the cost to rebuild their home.

According to Assembly Member Levine, and Assembly Insurance Committee AB 1875 analysis, the North Bay Area Fires destroyed more than 8,000 homes including over 5% of all the houses in Santa Rosa. In the wake of this tragedy, thousands of families are finding themselves underinsured and struggling to rebuild their homes. This underinsurance epidemic is due in substantial part to the massive surge in demand for building materials and skilled labor. Property owners and contractors alike are reporting the cost per square foot to build a home in Santa Rosa has more than doubled since the fires in October. Most insurance companies do offer the extended replacement cost policies that are designed to provide the extra coverage needed by victims of large-scale disasters. However, property owners have increasingly reported that their insurance company does not, or will not, write an extended replacement cost policy for their particular property. AB 1875 helps property owners when this happens by making them better aware of how to find this coverage.

In response to increasing reports of homeowners being declined coverage or not having their existing coverage renewed, more attention has been focused on how to connect homeowners with insurers offering coverage in their area. There are hundreds of insurers offering homeowners insurance in California, but most homeowners are generally only familiar with the handful of insurers that advertise heavily. The insurance finder tool described in this bill is inspired by a group in Placer County that built an online database of insurers offering coverage to homes in their area to help local homeowners find coverage without conducting their own search. The insurance finder mandated by the bill is intended to help homeowners navigate a changing insurance market.

Support Testimony

The following commented in support of the legislation: Robert Herrell, Deputy, **Department of Insurance**; John Norwood, Representative, **Independent Insurance Agents & Brokers of California**; Shari McHugh, Representative, **Pacific Association of Domestic Insurance Companies**; Mark Sektnan, Vice President, **Property Casualty Insurers Association of America**; Katherine Pettibone, Vice President, **American Insurance Association**; Kara Cross, General Counsel, **Personal Insurance Federation of California**; and, Michael Bolen, Director, **Medtronic**.

Opposition Testimony

There is no registered opposition.

Member Comments

Assembly Insurance Committee Chair **Tom Daly** (Dem-Anaheim) inquired about Department of Insurance readiness to deploy the home insurance finder, to which **CDI** advised that the

Department is building capacity to generally look up what is available with which carriers. A listing in this regard is available. CDI interjected that it is not particularly supportive of being required to provide a pamphlet to educate homeowners on how to estimate the cost to rebuild their home, but is willing to work with stakeholders on the matter.

Vote (13-0)

Aye: Daly (D), Mayes (R), Bigelow (R), Caballero (D), Calderon (D), Chen (R), Chu (D), Cooley (D), Cooper (D), Frazier (D), Gipson (D), Grayson (D), Harper (R)

Nay: None

Abstain: None

Absent: None

Assembly Insurance Committee Chair Daily advised that next month the Committee will consider Senate-authored insurance legislation. The Assembly Insurance Committee adjourned.

Assembly Insurance Committee Approves Two Insurance Measures Of Interest To Agents & Life Insurers

This week, the Assembly Insurance Committee unanimously approved a bill of interest to insurance brokers and agents. The Committee also voted on legislation pertinent to life insurers.

AB 2844 (Cooley, Dem-Rancho Cordova) provides that a commission payable to a broker-agent be at the rate and in accordance with the terms specified in a written contract between the broker-agent. The legislation also provides that the commission is conclusively presumed to be 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.

According to proponents, 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 have argued that the bill is, essentially, a preventative measure designed to guarantee that contractual arrangements voluntarily entered into are not frivolously challenged in court. However, 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, according to Assembly Insurance Committee staff analysis. Generally, the use of a conclusive presumption is reserved to address specific problem where it is concretely established that a wrong requires a strong procedural remedy. Mercury Insurance is the bill's sponsor and there is no registered opposition.

As this bill does not have state or local fiscal implications, while not formally noticed, AB 2844 appears likely referred to the Assembly Floor.

AB 2634 (Chau, Dem-Alhambra) requires the owner of a variable premium life insurance policy to be notified 120 days before an increase in the cost of insurance or administrative charge. The legislation permits an insurer to include other information related to the policy in the notice. It is effective July 1, 2019. According to the author, life insurance companies have been increasing certain components of the premiums charged for flexible premium life policies, and these increases have caused the premiums charged to policy owners to increase dramatically. Some premiums have increased to as much as five times their original amount. These increases have generated litigation and a significant number of complaints at the Department of Insurance, apparently. While some policy owners who face premium increases can afford them, others cannot. Unless the policy owner can make larger premium payments, these increases can, over time, consume the cash value of the life insurance policy, eventually rendering it worthless, Assembly Insurance Committee staff finds. The notice required by this bill is intended to inform policy owners about the impact of these charges so that they can choose the best among a range of difficult options in response to the increase.

The Department of Insurance (sponsor) and California Advocates for Nursing Home Reform are the supporters. There is no registered opposition. The author, sponsor, and industry stakeholders have been in active discussions regarding how to best inform policyholders of changes in the cost of their policies. This measure is not keyed fiscal, but has not yet been referred to the Assembly Floor.

Consumer Privacy Measure Qualifies for Ballot

This week, supporters of a ballot initiative that would require companies to disclose what data they collect from customers submitted enough gathered signatures to qualify it for the November ballot. Proponents submitted 625,000 plus signatures, double the number needed, so this is likely to qualify. The initiative, titled the California Consumer Privacy Act, would require that businesses notify their customers what personal information they gather and give those customers the choice to opt-out of having that information sold to third parties. Additionally, it would increase the fines for companies that do not adequately protect consumer data from information breaches.

Supporters of the measure state that support for such increase privacy requirements have been growing as a result of the scandal surrounding the use of information from Facebook profiles by the firm Cambridge Analytica. In the wake of continuing revelations on how many user profiles were accessed and a federal investigation into the effects of that information on the 2016 presidential election, Facebook halted its previously significant financial

contributions to the campaign against the measure. However several other large technology companies are still opposed to the initiative, including Google, Verizon, and AT&T. Opponents say that the initiative is far too broad to be implemented properly.

Having gathered the required number of signatures, the initiative is now slated to appear on the ballot in November. The campaigns for and against this measure are certain to be heated, so stay tuned for more.

Key Lobbying Developments & Committee Activity On Labor Legislation

Over the last week, Chamber of Commerce Employment Coalition members were actively attempting to amend legislation of concern to employers. Identified below is the status of labor legislation, including committee action this week, where applicable.

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.

- This is a bipartisan bill. Legislators on both sides of the aisle are hesitant to vote against measures that address workplace sexual harassment. Knowing this, the author is not taking any amendments, including reducing the complaint period to 2 years. The Chamber is encouraging lobbyists to stop by moderate Democrat offices explaining the Chambers opposition.

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.

Status: The bill previously passed the Assembly Labor Committee with a unanimous vote. It has been referred to the Assembly Appropriations Committee.

AB 2069 (Bonta, Dem-Alameda) Medicinal Cannabis Employment Discrimination

Summary: Provides that, when used to treat a known physical or mental disability or known medical condition, the medical use of cannabis by a qualified patient or person with an identification card is subject to reasonable accommodation. The bill provides that it does not prohibit an employer from refusing to hire an individual or discharging an employee who is a qualified or person with an identification card, if hiring or failing to discharge an employee would cause the employer to lose a monetary or licensing-related benefit under federal law. The bill also provides that it does not prohibit an employer from terminating the employment

of or taking corrective action against, an employee who is impaired on the property or premises of the place of employment or during the hours of employment because of the use of cannabis.

- The Chamber has established a coalition, for which the California Manufacturers & Technology Association is the practical lead. The Coalition is strictly opposed. There are no amendments circulating because it is so poorly drafted. Legislators are receptive to concerns.

Support & Opposition: The bill is sponsored by the Service Employees International Union, the United Food & Commercial Workers, as well as the Conference of California Bar Association. The 60 member opposition is, includes the Chamber and 30 industry trade groups, including the National Association of Mutual Insurance Companies, Personal Insurance Federation of California, Property Casualty Insurers Association of California, and the Civil Justice Association of California.

Status: The bill previously passed the Assembly Labor Committee on a party line, with Republican Assembly Member Melissa Melendez (Murrieta) not voting. The bill was referred to the Assembly Appropriations Committee.

AB 2613 (Reyes, Dem-San Bernardino) Failure to Pay Wage Penalties

Summary: Current law provides for a civil penalty, in addition to, and entirely independent and apart from other penalties, on every person who fails to pay the wages of each employee and requires the Labor Commissioner to recover that penalty. Current law requires that a specified percentage of the penalty recovered under that provision be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws and that the remainder be paid into the State Treasury to the credit of the General Fund. This bill repeals those provisions and makes an employer or other person acting individually or as an officer, agent, or employee of another person who fails to pay to pay wages of each employee subject to a penalty of \$200, payable to each affected employee, per pay period where the wages due are not paid on time. Penalties escalate financially for additional wage payment failure.

- This opens up human resource department employees to personal liability. This is a Chamber-designated Job Killer, and meetings with as many Members as possible are occurring. Legislators are generally uneducated about the impact of the bill but are listening to industry concerns.

Support & Opposition: This bill is supported by 17 organizations, largely labor unions, such as the California Labor Federation, the Service Employees International Union – California, and the California Employment Lawyers Association. The 30 member opposition consists of the 15 large industry trade organizations, such as the Chamber.

Status: The bill previously passed the Assembly Labor Committee on a party line vote, and has been referred to the Assembly Appropriations Committee.

AB 2770 (Irwin, Dem-Thousand Oaks) Former Employer Sexual Harassment Communications

Summary: Current law makes employer communications protected from civil action, including certain communications concerning the job performance or qualifications of an applicant for employment that are made without malice by a current or former employer to a prospective employer. This bill includes among those privileged communications complaints of sexual harassment by an employee, without malice, to an employer based on credible evidence and communications between the employer and interested persons regarding a complaint of sexual harassment and authorizes an employer to answer, without malice, whether the employer would rehire an employee and whether or not a decision to not rehire is based on the employer's determination that the former employee engaged in sexual harassment.

Support & Opposition: This is a Chamber-sponsored bill. It is supported by 42 business entities, including the American Insurance Association, 14 large business trade groups, and many local chambers. There is no registered opposition.

Status: The Assembly Judiciary Committee passed the bill 10-0 for referral to the Assembly Floor Consent Calendar.

AB 2841 (Gonzalez-Fletcher, Dem-San Diego) Sick Leave Accrual

Summary: This legislation changes the requirements of the employer's alternate sick leave accrual method to require no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment. The bill also provides an employer is under no obligation to allow an employee's total accrual of paid sick leave to exceed 80 hours or 10 days. The bill raises the limitation on sick leave carried over to the following year of employment to 40 hours or 5 days.

- The Chamber was unsuccessful in increasing sick leave by only 2 days.

Support & Opposition: The bill is supported by the California Employment Lawyers Association. Opposition includes 15 of the largest industry trade groups, including the Chamber.

The bill previously passed the Assembly Labor Committee on a party line vote and has been referred to the Assembly Appropriations Committee.

SB 820 (Leyva Dem-Chino) Settlement Agreement Confidentiality

Summary: Current law prohibits a provision in a settlement agreement that prevents the disclosure of factual information related to the action in a civil action with a factual foundation establishing a cause of action for civil damages for certain enumerated sexual offenses. This bill similarly provides that, a provision in a settlement agreement that prevents the disclosure of factual information relating to the action is prohibited, unless a claimant requests the inclusion of such a provision, if the pleadings state a cause of action relating to claims of sexual assault, sexual harassment, or harassment or discrimination based on sex. The bill makes a provision in a settlement agreement that prevents the disclosure of factual information related to the action void as a matter of law and against public policy.

- The Chamber did not have a report on the bill with respect to any amendment negotiation, only that the hearing below shined light on its many problems.

Support & Opposition: The bill is supported by the American Federation of Labor-Congress of Industrial Organizations and Screen Actors Guild-American Federation of Television & Radio Artists, the latter of which because of the sexual harassment situation in Hollywood. Opponents include the Chamber, American Insurance Association, and Civil Justice Association of California.

Status: The bill passed the Senate Judiciary Committee on a party line vote (Republican Senator Joel Anderson, El Cajon, not voting.)

SB 826 (Jackson, Dem-Santa Barbara) Women Corporate Board of Directors Requirement

Summary: No later than December 31, 2019, this bill requires a corporation or foreign corporation that is a publicly held corporation whose principal executive offices are located in California to have a minimum of one female on its board of directors. On or before December 31, 2021, the bill increases that required minimum number to 2 female directors if the corporation has 5 authorized directors or to 3 female directors if the corporation has 6 or more authorized directors. The bill requires the Secretary of State to publish various reports on its website documenting the number of corporations in compliance with these provisions.

- This is a Consumer Attorneys of California supported measure. Along with the Chamber, there are 24 large industry trade associations and local chambers of commerce, as well as the Personal Insurance Federation of California in opposition.

Status: The bill previously passed the Senate Judiciary Committee on a party line vote, and is scheduled to be heard by the Senate Appropriations Committee May 7. It will be moved to the suspense file for potential vote next month.

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 workspace. The bill requires an employer to develop and implement a policy regarding lactation accommodation and make it available to employees.

- This bill has had 3 policy hearings, and the Chamber called the author or met personally with the Member or staff on 10 occasions, during which it appeared the Member would accommodate some Chamber requests. The bill as recently amended took no Chamber provisions, including private right of action and an employer hardship exemption.

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.

The bill previously passed the Assembly Labor Committee on a party line vote and has been referred to the Assembly Appropriations Committee.

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. If the author agrees to the language to seal this data, the Chamber will move it off its Job Killer list but still oppose on the principle of government overreach.

Support & Opposition: The bill is supported by the Consumer Attorneys of California and the Service Employees International Union. There are 20 local chambers of commerce 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 is scheduled to be heard May 7 in the Senate Appropriations Committee.

SB 1412 (Bradford, Dem-Gardena) Job Candidate Criminal History

Summary: This bill prohibits an employer from asking an applicant about, or seeking from any source information regarding, a particular conviction of the applicant if it does not directly apply to job duties.

- The California Bankers Association (CBA) is leading the effort against this bill, as CBA is very concerned if a full background check cannot be obtained on a prospective employee, this will open the employer up to hiring negligence litigation. A CBA coalition letter will be distributed to Chamber Coalition members.

Support & Opposition: This bill is sponsored by New Way of Life Reentry Program, a former Senator Rod Wright (Dem-Gardena) led organization. The Chamber and CBA oppose the measure, but the Committee Analysis does not have any others registered.

The bill passed the Senate Public Safety Committee by a vote of 5-2 and is on the Senate Appropriations Committee May 7 calendar.

Sexual Harassment Legislation

AB 1867 (Reyes, Dem-Fontana) Employee Sexual Harassment Recordkeeping

Summary: This legislation 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 Chamber is lobbying against the bill. The Chamber wants sexual harassment recordkeeping to be in conformity with other employee document management timelines.

- Originally, the intelligence was that the author would accept lowering the recordkeeping requirement post-employment, but the author came back with 5 years.

Support & Opposition: The bill is sponsored by the California Teamsters and the California Employment Lawyers Association. Opponents include the Chamber, Associated Builders & Contractors Association, and 23 other trade groups.

Status: Yesterday, the bill passed the Assembly Appropriations Committee 12-3 (party line), with Republican Assembly Members Vince Fong (Rep-Bakersfield) and James Gallagher (Rep-Riverside) not voting. It may be considered on the Assembly Floor next week.

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 is seeking an amendment to require legal documentation of the harassment. The author advises that the legislation is designed to allow parents to take leave when their children are sexually harassed, but is unwilling to make amendments to this effect.

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, the Civil Justice Association of California, 10 local chambers, and 30 other business entities

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.

AB 3080 (Gonzalez-Fletcher, Dem-San Diego) Employment Discrimination Enforcement

Summary: This legislation prohibits an employer from, as a condition of employment or as a condition of entering into a contractual agreement, prohibiting an employee or independent contractor from disclosing to any person an instance of sexual harassment that the employee or independent contractor suffers, witnesses, or discovers in the workplace or in the performance of the contract.

- There is no movement by the author to date. It remains a Chamber-designated Job Killer. Meetings with legislators are ongoing.

Support & Opposition: This bill is sponsored by the California Labor Federation and supported by the American Civil Liberties Union of California and California Employment Lawyers Association. The opposition consists of the Chamber, the 15 largest industry trade groups, and the Civil Justice Association of California.

Status: The bill passed the Assembly Judiciary Committee on a party line vote, and was referred to the Assembly Appropriations Committee.

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.

- This is a Women's Caucus priority. The Chamber requests lobbyists meet with as many legislators as possible to try to defeat.

Support & Opposition: The bill is supported by the California Teamsters and several women's organization, 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 8-0, 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.

SB 1300 (Jackson, Dem-San Diego) Sexual Harassment Legal Standard

Summary: This measure provides that a plaintiff in an action alleging that a defendant failed to take all reasonable steps necessary to prevent discrimination and harassment from occurring is not required to prove that the plaintiff endured harassment or discrimination and provides that it suffices for the plaintiff to show that the employer knew that the conduct was unwelcome to the plaintiff, that the conduct would meet the legal standard for harassment or discrimination if it increased in severity or becomes pervasive, and that the defendant failed to take all reasonable steps to prevent the same or similar conduct from recurring.

- The Chamber is encouraging industry representatives to meet with as many Members as possible to explain the litigation exposure this creates. This is the

Chamber labor lobbyist's number one kill target (Job Killer). Not removing the private right of action is a negotiation non-starter.

Support & Opposition: This bill is sponsored by the California Employment Lawyers Association and Equal Rights Advocates. It is Chamber-opposed, along with over 15 industry trade groups and 12 local chambers of commerce.

Status: The bill was previously approved by the Senate Labor and Judiciary Committees, and was placed on the Senate Appropriations Committee Suspense File.

SB 1343 (Mitchell, Dem-Los Angeles) Sexual Harassment Training

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 and to post it so that it is available for streaming or downloading on the Department's website.

- The Chamber has had fruitful meetings with the author. There is potential for lowering the training video to one hour for supervisors and establishing a certificate of completion requirement in law. It is the sense of Chamber labor lobbyists that amendments could reflect employer ability to contract with third party or use the state's training video.

Support & Opposition: The bill is supported the California Teamsters and Consumer Attorneys of California. It is opposed by the California Manufacturing & Technology Association.

Status: This bill was placed on the Senate Appropriations Committee Suspense File for potential consideration by May 25.

Bill Banning Secret Settlements In Sexual Assault & Harassment Cases Clears Committee

On Tuesday, the Senate Judiciary Committee passed **SB 820** (Leyva, Dem-San Bernardino), which bans the inclusion of secret settlements related to sexual misconduct, including sexual assault and sexual harassment. The measure passed on a party line vote, with one Republican Member voting against and the other, Senator John Moorlach (Anaheim), abstaining.

SB 820 bans secret settlements (nondisclosure agreements) in cases of sexual assault, sexual harassment, and sex discrimination. The measure applies to both private and public employers in California, including the California State Legislature. Senator Connie Leyva states, "SB 820 will help to protect women and others from being victimized since it will ban the use of a legal tool that rich and powerful perpetrators have used countless times to silence victims: secret settlements. It is long overdue for California to lift the curtain of

secrecy so that we can finally unmask the sexual predators who endanger the safety and well-being of primarily women across our state.” Senator Leyva is the Vice Chair of the Legislative Women’s Caucus.

Bill proponents cite claims about film producer Harvey Weinstein’s sexual harassment and assaults and his use of secret settlements. Additionally, 21st Century Fox reportedly settled confidentially with a Fox News anchor after she filed a sexual harassment lawsuit against the former Fox News Chairman. SB 820 is co-sponsored by the Consumer Attorneys of California and the California Women’s Law Center and supported by the American Association of University Women, Congress of California Seniors, Crime Victims United of California, and Screen Actors Guild-American Federation of Television & Radio Artists.

Following approval by the Senate Judiciary Committee, SB 820 will next be voted on by the Full Senate in the coming weeks.

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