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State Senate

State Assembly

**Department of
Insurance**

Significant Legislative Action On Workers' Compensation

Good news first, on Wednesday, Assembly Insurance Committee Chair Tom Daly (D-Anaheim) removed two burdensome bills from consideration. The first, AB 206 (Gonzalez-Fletcher, D-San Diego), would have provided workers' compensation to day laborers, such as nannies and landscape maintenance workers. This was one of the most controversial bills of the year in the insurance area. An aggressive business coalition, of which Norwood Associates Managing Partner John Norwood actively guided, forced the author to defer it to next year. As a legislative session runs over two years, this is a regular tactic by legislators when legislation is severely damaged.

The bill proposed to substantially expand the workers' compensation coverage currently provided under homeowners and renters policies. Under current law, occasional residential workers are covered by the workers' compensation component of the homeowner's policy if they work at least 52 hours over the proceeding 90 days and are paid at least \$100. AB 206 eliminates the 52 hour threshold thereby providing coverage for any person working at a residential property that was paid \$100 or more. Since this would substantially change the type of work that is currently covered from household chores and childcare, for example, to more construction-related work, the bill was expected to dramatically increase the cost of this component of the homeowners or renters insurance policy. The bill was sponsored by the Applicants Attorneys Association.

Also removed from the Committee agenda was AB 1295 (Chu, D-Milpitas), which sought to extend temporary disability payments where an injured worker prevails in a utilization review or independent medical review. This bill was also sponsored by the Applicants Attorneys Association and was aimed at creating a loophole around the cap on workers' comp temporary disability benefits, which was one of the hallmarks of recent comp reform efforts by Governor Jerry Brown and the Legislature. AB 1295 was not overly worked by the insurance industry, but one that the Committee Chair decided did not make a whole lot of sense.

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Another success this week surrounds AB 44 (Reyes, D-San Bernardino), which allows victims of terrorist acts in the workplace to avoid the Utilization Review process for the purposes of workers' comp eligibility. The bill responds to the December 2015 terrorist shooting at the San Bernardino County Department of Public Health. Chair Daly forced amendments that restrict application of the bill to a Governor-declared terrorist act and requires the employer in those cases to bring in an ombudsman to oversee the evaluation of workplace trauma. The amendments prevent dueling doctors resolving disputes, and urgent healthcare matters being resolved by judges.

In terms of the desires of the Department of Industrial Relations (DIR), the author is willing to continue discussions to include "some" of what the Department wants. Assembly Member Reyes said that there have not been detailed discussions with the DIR Director on finding a way to incorporate an ombudsman into the process. The author said with a broken voice, and perhaps tears, she was not going to accept the amendments, but it was inevitable they will be agreed to. Chair Daly stated that this topic is so sensitive that it is necessary to incorporate the amendments in Committee, rather than wait for a subsequent jurisdictional committee.

Assembly Members Anna Caballero (D-Salinas) and Mike Gipson (D-Gardena) found the amendments to gut the bill. The Chair made a personal pledge to monitor the situation, but given the implications to the workers' comp system overall the amendments are the wisest course of action. Daly and Committee Vice Chair Melissa Melendez (R-Murrieta) reiterated it has been a challenge finding a workable solution to this bill, and did not propose the amendments lightly. The decisions around treatment of the San Bernardino County injured workers were not handled well, according to both. Assembly Member Jim Frazier (D-Fairfield) considered this bill part of the need to continue to make adjustments to the workers' comp system as issues inevitably arise. With amendments discussed above, AB 44 passed the Assembly Insurance Committee 11-0.

AB 1679 (Burke, D-Inglewood) provides a legislative alternative to Department of Insurance (CDI) automobile body labor rate survey regulation. Specifically, it requires insurers to conduct a random sample of at least 20% of repair shops in a geographic area; survey results are valid for 24 months. AB 1679 was introduced to guard against unpredictable auto insurance rate increases that are likely to result from regulations recently adopted by CDI. Assembly Member Autumn Burke agreed to continue to meet with auto body shops to further refine the legislation, while balancing the cost of insurance because of associated costs.

The Association of California Insurance Companies, the con-sponsor of the bill, testified that CDI regulations on customer auto body steering regulations are increasing insurance costs. The bill maintains consumer protections through provisions such as random repair shop surveys, rather than cherry picking, while seeking to take steps to lower insurance costs.

CDI opposed the bill because the regulations in question are new and need to be allowed to work. The bill effectively wipes out CDI anti-steering authority, claimed the Department. Under the bill, consumers could be forced to wait up to a week to even get a repair estimate, it was speculated. Additionally problematic to CDI is the provision that rate data is treated as a trade secret. The Committee passed AB 1679 unanimously.

Relative to other workers' comp bills acted on by the Committee, AB 553 (Daly, D-Anaheim) deals with the Return to Work Fund (RWF), a \$120M fund that is supposed to aid workers with permanent disability awards that are disproportionately low in comparison to their lost wages. The bill zeros out the Fund at the end of each year, essentially paying out any remaining funds pro rata to workers who had already received a disbursement from the Fund. The RWF was a last-minute addition to SB 863 (De León), the 2012 workers comp reform bill. Currently, eligibility is tied to the receipt of the Supplemental Job Displacement Benefit. This is an assessment and administered through DIR.

It provides that, commencing with the end of calendar year 2017, DIR must distribute any funds not yet paid out, on a pro rata basis, to claimants who have already qualified for the \$5,000 payment. It also caps at \$25,000 the maximum amount any one claimant may receive. The California Labor Federation commented in support of the bill.

Assembly Member Frank Bigelow (R-Jackson) advocated lowering the \$25,000 figure, and the author was willing to reconsider. Assembly Member Melissa Melendez (R-Murrieta) also found this number arbitrary, which the Chair did not dispute as there is no exact science around apportioning funds. The concern by Republican Committee Members is that the system is flawed in that it compels the spending of taxpayer dollars in order to avoid having government agency budgets cut. The Committee approved AB 553 on a 7-1 vote.

On AB 938 (Cooley, D-Rancho Cordova), this authorizes the CDI to adopt regulations applicable to reinsurance arrangements for life insurance policies, longterm care insurance policies, and annuities. The bill further authorizes CDI, with regard to credit for reinsurance ceded by a domestic insurer to an assuming insurer, to adopt by regulation, additional requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements for life insurance policies, longterm care insurance policies and annuities, and the circumstances to which a credit described above is reduced or eliminated.

CDI has begun drafting the regulations authorized by this bill. AB 938 is an urgency statute and the regulations are being prepared in parallel to allow faster implementation. CDI's early draft of the regulations contains language that appears to apply to insurers domiciled in other states. As a general matter, financial regulation is the responsibility of the state in which the insurer is domiciled. Some insurers have expressed concern regarding the application of these regulations to insurers domiciled in other states and expressed the position that both the bill and the regulations should closely track the National Association of

Insurance Commissioners (NAIC) standards. The author agreed to amend the bill to require that the regulations adopted by CDI based on this new legislative authority be fully consistent with the NAIC model regulations. The Committee passed the bill 8-0.

AB 1697 (Daly) requires the Division of Workers Compensation to establish an antifraud support unit. The bill sets forth the duties of the unit, including coordinating and advancing antifraud activities and serving as the point of contact between the Division and other agencies and entities engaged in antifraud activities. Apparently, DIR wants this bill, but is not currently pleased with the draft language. AB 1697 was approved by consent of the Committee.

AB 1641 (Daly), sponsored by Norwood client Surplus Lines Association, authorizes CDI to declare exempt from the requirements for placement of insurance with a nonadmitted insurer the type of coverage that is for new, innovative products for which a reasonable or adequate market among admitted insurers has not had time to develop. The bill authorizes additions to the export list to be made after a hearing as well. AB 1641 was approved by consent of the Committee.

For AB 1422 (Daly), under existing law governing workers' comp requires a lien filed by a provider of medical treatment services, and any accrual of interest related to the lien, to be automatically stayed upon the filing of criminal charges against that physician or provider for an offense involving fraud against the comp system, medical billing fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs. Existing law also makes the stay effective from the time of the filing of the charges until the disposition of the criminal proceedings. This bill instead makes the automatic stay effective until the adjudication procedures have been completed. AB 1422 was approved by consent of the Committee.

Finally, AB 40 (Santiago-D, Los Angeles) requires the Department of Justice (DOJ) to make the electronic history of controlled substances dispensed to an individual under a healthcare practitioner's care, based on data contained in the Controlled Substance Utilization Review and Evaluation System (CURES) database, available to a practitioner through either an online portal or an authorized health information technology system. AB 40 was amended to make CURES more interoperable. Audit of the system was stripped out. If this were a regular bill it might have stayed in, but given that DOJ wants this now (hence the urgency) the amendments make sure that happens.

Assembly Labor Committee Takes On Long List Of Unfriendly Business Legislation

Before outlining the bills the Assembly Labor Committee voted on this week, one notable takeaway from Wednesday's Labor Committee hearing was Vice Chair Heath Flora's (R-Ripon) comments that he looked forward to working with the Chair and several authors,

namely Assembly Member Lorena Gonzalez-Fletcher (D-San Diego), on bills his district clearly would not support. Then, privately with lobbyists he shared concerns on the same bills.

Regarding AB 5 (Gonzalez-Fletcher), this measure requires employers to offer existing employees the opportunity to be a candidate for an open position within the company before offering the job to an outside applicant. There is more than one account of the author's chief of staff stating that the near-term goal is to get AB 5 out of Committee, then to hold it until next year. The lobbying effort against is proving effective. AB 5 was passed by a vote of 5 to 2.

AB 168 (Eggman, D-Stockton), despite being defeated last year, prohibits an employer from seeking salary history information from an applicant for employment. This exposes employers to litigation for inquiring into an applicant's prior salary or failing to provide a payscale upon demand, even though the employee has not suffered any harm or wage loss as a result of the violation. AB 168 has not been set for Assembly Labor Committee hearing; in fact, the author would not have likely got a referral but for trading her vote for Governor Jerry Brown's \$5.2 billion transportation infrastructure tax.

Relative to AB 281 (Salas, D-Bakersfield), this allows aggrieved employees to only collect civil penalties for an employer violation that the employee actually suffered harm from, this tort reform bill may end up being considered next year as the author has not thought through a path forward. This is a top priority to kill for the trial lawyers, and does not have a great deal of promise of passage. It has been referred to the Assembly Labor Committee.

AB 387 (Thurmond, D-Oakland) mandates paid internships in the healthcare sector. This increases costs on health professionals by requiring paid internships for people who are working toward licensure. This sets a bad precedent for all parts of the economy, and could lead to the end of this type of workplace training. There is a big business coalition against, which is encouraging Democrats to talk to the Assembly Speaker so it does not move forward. The bill has been referred to the Assembly Appropriations Committee, seemingly because it imposes costs on state government agencies that offer internships.

AB 569 (Gonzalez-Fletcher) prohibits an employer from taking any adverse employment action against an employee based on the use of any drug or medical service related to reproductive health. The California Chamber of Commerce is trying to move it out of the Labor Code and into the Fair Employment and Housing Act. There is no hearing set in the Assembly Judiciary Committee.

AB 1099 (Gonzalez-Fletcher), which requires the consumer election of leaving a tip at transaction payment, meant largely to require Uber to do so, was pulled from hearing while the author contemplates how to avoid being prompted to tip a gas pump when buying gas, for example. This bill is still a problem, particularly since there is no definition of "tipped employee." There is no Assembly Labor Committee hearing set.

AB 1209 (Gonzalez-Fletcher) requires employers to collect and publish data regarding the mean and median salaries / compensation paid to employees in the same job classification or title. It does not take into consideration the bona fide factors for any wage disparities, and therefore will create a false impression of pay discrimination where none exists. This is basically a roadmap for trial lawyers to sue large companies. There is no hearing in the Assembly Labor Committee set.

Lastly, SB 306 (Hertzberg, D-Van Nuys) is similar to the Labor Commissioner's State Budget 2017-2018 – Trailer Bill language on retaliation. It allows the Commissioner to petition a court for permanent or injunctive relief before completing an investigation and determining that a violation has occurred. It also requires an employer to pay attorney's fees and costs if the Commissioner prevails in an enforcement action, as well as daily penalties for not complying with an order, including a position violation. It is pending in the Senate Labor Committee.

Tax Proposals In The Legislature At All Time High; No Legislature Proposed More Costly Measures

The California Taxpayers Association has assessed the cost of the tax legislation introduced this year. And, the assessment of the pending bills is the worst in history. If each proposal becomes law, the tax burden in California would increase by more than \$155 billion per year. Fortunately, there is reason to believe that the Governor's \$5.2 billion transportation infrastructure tax may have taken most of the political will, but on the other hand there is healthy skepticism to the contrary.

Getting to specific bill developments, AB 1347 (Ridley-Thomas, D-Los Angeles), if a company is eligible for certain tax credits, and if their procurement does not meet a designated amount from "diversity suppliers," they are not eligible for the full tax credit. This ties the hands of businesses, so CalTax is pushing an alternative that creates a tax incentive to procure from diverse entities. Given the author's temperament and history of limited negotiation according to CalTax, this alternative does not have much promise but is worth trying. The bill was pulled from the Assembly Tax Committee, but there is no intelligence why at this point.

SB 66 (Wieckowski, D-Fremont) – Punitive Damages Tax Deduction Repeal was pulled from floor consideration because it was just shy of the votes to approve. Norwood Associates Partner Erin Norwood and Peter Blocker, CalTax Senior Advocate, are lead lobbyists against this bill and the effort is proving effective so far.

SB 567 (Lara, D-Los Angeles) – Waters Edge Tax Election Repeal is a major concern to just about every sector of the economy. It requires companies with international business affiliates with a presence in California to pay state taxes on the income from these entities. This is an egregious attempt that has been tried in prior years, but requires significant time

and effort of business coalition members to defeat. There is a strong coalition in place to defeat the proposal once again. The entire purpose behind this is for the author to show he has a funding mechanism for his universal healthcare coverage bill. Senator Lara is running for Insurance Commissioner, which is the political motivation behind the introduced single payer healthcare bill. There is no indication the single payer bill will be approved by the Legislature, given failed efforts over the last 10 years. Nevertheless, industry is trying to gauge what the author is willing to change or remove from the bill.

In the “no news is good news” department, SB 640 (Hertzberg, D-Van Nuys) – Sales Tax on Services continues to be a candidate for the 2018 ballot rather than try to get two-thirds of the Senate to support. The bad news is that the author’s campaign committee to fund a proposed initiative has well known endorsers and a fair amount of financing to date. This is the most expensive tax in the Legislature currently: \$122.3 billion. The next highest is \$8 billion.

Regarding AB 1520 (Burke, D-Inglewood), this bill creates an enormous low income children’s program, encompassing everything from education to healthcare services. There is concern it will be funded via changes to the split roll property tax. Another split roll candidate is SB 18 (Pan, D-Sacramento), which is also a massive children’s program with no funding. There is a rally at the Capitol next Tuesday on the child program subject. Senate Tax Committee Chair Mike McGuire (D-Santa Rosa) does not think there are the votes for changing split roll.

Digressing back to single payer healthcare, SB 567 (Lara) will be heard Wednesday April 26.

CalChamber Releases Job Killer List

This week, the California Chamber of Commerce released its list of bills labelled as “Job Killers” for the year. The list of bills covers a wide range of employment-related issues and is as follows:

AFFORDABLE HOUSING BARRIERS

[SB 224](#) (Jackson; D-Santa Barbara) Barrier to Housing and Economic Development — Creates a significant hurdle to brownfield and urban redevelopment, infill housing, and economic development by requiring all projects to mitigate not only the impacts of the project itself, but also the impacts of other historical activities for which the applicant has no legal liability and over which it had no control.

ARBITRATION DISCRIMINATION

[SB 33](#) (Dodd; D-Napa) Discrimination Against Arbitration Agreements — Unfairly discriminates against arbitration agreements contained in consumer contracts for goods or services with a financial institution, as broadly defined, which is likely preempted by the Federal Arbitration Act and will lead to confusion and unnecessary litigation.

[SB 538](#) (Monning; D-Carmel) Arbitration Discrimination — Unfairly discriminates against arbitration agreements by prohibiting arbitration between a hospital and a health care plan or contracting agent, leading to confusion and litigation over preemption by the Federal Arbitration Act.

ECONOMIC DEVELOPMENT BARRIERS

[AB 421](#) (Santiago; D-Los Angeles) Extends Superfund Liability to Emissions into the Air — Imposes statutory liability on businesses and individuals for clean-up recovery costs associated with deposits or redeposits of certain substances that were emitted into the air under a statutory scheme that places the burden of proof on the defendant.

[AB 1645](#) (Muratsuchi; D-Torrance) Gas Price Increase — Jeopardizes the production of California-based fuel by banning the use of hydrogen fluoride and hydrofluoric acid at refineries that use more than 250 gallons and are located within two miles of a residence, notwithstanding the fact that there are significant safety regulations in place at the local, state and federal levels.

INCREASED LABOR COSTS

[AB 5](#) (Gonzalez Fletcher; D-San Diego and Kalra; D-San Jose) Unfair Scheduling Mandate — Burdens small and large employers with a scheduling mandate that requires employers to offer additional hours of work to employees before hiring a new employee or contractor and exposes employers to multiple threats of costly litigation for technical violations that do not cause an employee any harm.

[SB 562](#) (Lara; D-Bell Gardens) Government-Run Health Care — Creates a new single-payer government-run, multibillion-dollar health care system financed by an unspecified and undeveloped “revenue plan” which will penalize responsible employers and individuals and result in significant new taxes on all Californians and California businesses.

[AB 1209](#) (Gonzalez Fletcher; D-San Diego) Public Shaming of California Employers — Imposes a mandate on California employers to collect data on the mean and median salaries paid to men and women under the same job title or description without also considering any bona fide reason for differences in compensation, to publicly shame California employers and expose them to costly litigation for alleged wage disparity where no violation of the equal pay law exists.

[SB 63](#) (Jackson; D-Santa Barbara) Imposes New Maternity and Paternity Leave Mandate — Unduly burdens and increases costs of small employers with as few as 20 employees by requiring 12 weeks of protected employee leave for child bonding and exposes them to the threat of costly litigation.

INCREASED UNNECESSARY LITIGATION COSTS

[SB 49](#) (de León; D-Los Angeles) Creates Uncertainty and Increases Potential Litigation Regarding Environmental Standards — Creates uncertainty for businesses with respect to the federal environmental standards proposed to be incorporated into California law if

backsliding occurs at the federal level in the future, and increases the potential for costly litigation by creating private rights of action under California law when certain events occur.

[SB 300](#) (Monning; D-Carmel) Lawsuit Exposure — Increases frivolous liability claims and exposes beverage manufacturers and food retailers to fines and penalties by mandating state-only labeling requirements for sugar-sweetened drinks.

TAX INCREASES

[AB 43](#) (Thurmond; D-Richmond) Targeted Tax on Contractors — Unfairly targets one category of taxpayers to fund a benefit for all of the state by imposing a tax on contractors for the privilege of doing business with the Department of Corrections and Rehabilitation, and requires the contractor to absorb the cost while maintaining a price of lowest responsible bidder.

[AB 479](#) (Gonzalez Fletcher; D-San Diego and C. Garcia; D-Bell Gardens) Targeted Tax on Alcohol — Unfairly imposes an additional targeted excise tax on manufacturers, importers, and wholesalers of distilled spirits and a floor tax, that will increase their costs and force them to reduce in other areas, including labor.

[AB 1003](#) (Bloom; D-Santa Monica) Targeted Tax on Sweetened Beverages — Unfairly imposes a targeted excise tax on distributors of sweetened beverages to fund health-related programs for all, which will force distributors to reduce costs through higher prices to consumers or limiting their workforce.

[AB 1356](#) (Eggman; D-Stockton) Targeted Tax on High Earners — Unfairly increases the personal income tax rate to 14.3%, the highest in the country, on one category of taxpayers (including sole proprietors), who already pay over half of the income tax revenue to the general fund, forcing them to mitigate costs through means including reducing workforce, in order to fund higher education that will benefit all of California.

[AB 1512](#) (McCarty; D-Sacramento) Targeted Tax on Opioids — Unfairly imposes an excise tax on opioid distributors in California, which will increase their costs and force them to adopt measures that include reducing workforce and increasing drug prices for ill patients who need these medications the most, in order to fund drug prevention and rehabilitation programs that will benefit all of California.

[ACA 4](#) (Aguiar-Curry; D-Winters) Lowers Vote Requirement for New Tax Increases — Adds complexity and uncertainty to the current tax structure and pressure to increase taxes on real property by giving local governments new authority to enact special taxes, including parcel taxes, to fund construction, reconstruction, rehabilitation, or replacement of public infrastructure or affordable housing, or the acquisition or lease of real property for public infrastructure or affordable housing, and lowering the vote threshold to impose such new taxes from two-thirds to 55%.

[ACA 11](#) (Caballero; D-Salinas) Targeted Retail Industry Tax Increase — Exposes the retail industry to increased taxes by imposing a quarter-cent sales tax increase to fund affordable housing and homeless shelters, without creating greatly needed market rate housing.

SB 567 (Lara; D-Bell Gardens) **Multiple Tax Increases on California Employers** — Proposes multiple tax increases on California employers, including eliminating the water's edge election and requiring payment of capital gains on the inheritance of a family business, when California already has the highest personal income tax and sales tax rates in the country, as well as one of the highest corporate tax rates, which will discourage job growth in California.

SCA 6 (Wiener; D-San Francisco) **Lowers Vote Requirement for Tax Increases** — Adds complexity and uncertainty to the current tax structure and pressure to increase taxes on commercial, industrial and residential property owners by giving local governments new authority to enact special taxes, including parcel taxes, by lowering the vote threshold from two-thirds to 55%.

California Workers' Compensation Written Premium Increased in 2016

A report issued by the California Workers' Compensation Insurance Rating Bureau this week has shown that the written premium for California in 2016 had increased over 2015. Written premium was shown to be roughly \$18.1 billion, which was a 3 percent increase over the written premium for 2015. Additionally, the average charged rate per \$100 of payroll from July to December of 2016 had decreased by 6 percent to \$2.67 from the first six months of the year, and was a full 12 percent below the average rate for the first half of 2015.

The WCIRB's projections for the preliminary accident year combined loss and expense ratio for 2016 was 94 percent, which are not only consistent with the ratios for two previous years but also represent the lowest combined ratios since the 2004-2006 period. They also project that the indemnity claim frequency for 2016 to be 1.3 percent below the frequency for 2015, but 9 percent higher than the frequency for 2009. The average severity of an indemnity claim for 2016 is projected to be \$82,000, which is 4 percent higher than the severity for 2015, and 10 percent higher than 2013.