



April 7, 2017

Sacramento, California

John A. Norwood
Counselor at Law

Erin Norwood
Publisher

Contributors

Brittany Trudeau
Ted Wait

[Contact Us](#)

info@nalobby.net

Capitol Place
915 L Street, Suite 1110
Sacramento, CA 95814

(916) 447-5053
(916) 447-7516 fax

[California Links](#)

State Senate

State Assembly

**Department of
Insurance**

Governor's Transportation Infrastructure Bill Overcomes Tenuous Vote; Governor Prepared to Sign

Governor Jerry Brown's SB 1, the Road Repair and Accountability Act, passed the Senate by a 27-11 vote, barely clearing the two-thirds hurdle needed to pass tax increases. After 10:30pm yesterday, the Assembly approved the bill on a 54-26 vote. Going into the day, it was not clear whether the Governor and the Legislature's Democratic leadership had enough support, despite a sustained lobbying effort leading up to Thursday's self-imposed deadline for a vote.

Failure to pass SB 1 would have been an embarrassing setback for the Democratic majority. Thursday's deadline stemmed from the idea that opposition to the bill would harden during the legislative recess, which starts today. Key votes came from Riverside Democrats Senator Richard Roth and Assembly Member Sabrina Cervantes. According to reports, those lawmakers were seeking hundreds of millions of dollars in funding for Riverside County through a State Budget 2017-2018 Trailer Bill. The only Republican Senator to vote for the bill was Anthony Cannella of Modesto. Senator Steve Glazer, D-Orinda, voted no. But the two-thirds threshold was cleared with Canella's 'yes' vote. The only Assembly Member to vote against SB 1 was Rudy Salas (Bakersfield).

SB 1 raises \$52.4 billion over 10 years for transportation by increasing California's gas excise tax 12 cents to 30 cents a gallon, with annual adjustments for inflation. Also, the diesel excise tax will go up 20 cents to 36 cents a gallon and the diesel sales tax will rise from 1.75% to 5.75%. Money also will come from a new fee on vehicles – those worth \$5,000 or less would pay \$25 a year while owners of vehicles worth \$60,000 or more would pay \$175 annually – and a \$100 annual fee on zero-emission vehicles.

A constitutional amendment will require money raised through SB 1 to be spent solely on transportation. Supporters said SB 1 was desperately needed to address a backlog of road repairs in excess of \$130 billion. They argued the tax hikes and new fees were cheaper than repair bills drivers faced driving on deteriorating roads and that if lawmakers did not act now, the price tag for road work would only go up.

The bill marked the first real test of Democratic power this legislative session. Democrats regained their supermajority last November, but just barely in the Senate. Assuming every Republican voted no, a single 'no' vote from a Democratic senator would have defeated SB 1. The bill also would have failed if two of the Assembly's 55 Democrats were opposed.

**Secretary of State
Official Legislative
Information**

Going into the new year, Democratic leaders declared transportation to be a top priority. But while GOP power has waned in recent years, a bloc of moderate Democrats backed by business interests has been a barrier to liberal goals. The moderates, who tend to represent Inland areas, have been reluctant to sign on to tax hikes, fearing the potential backlash from blue-collar constituents who spend a lot on gas driving long distances to work.

Handful Of Workers Compensation Legislative Developments; And, Work Comp Rate Adjustment Recommendation

On the workers' compensation front this week, SB 189 (Bradford, D-Los Angeles) was amended marginally to create an exemption for professional corporations (PC) but does not address the percentage ownership issues or the issues of ownership interests held in trust. The requirement that an individual signing the waiver (for a PC) has to have health insurance is just one more complicating factor for producers, underwriters, and auditors.

With regard to AB 315 (Wood, D-Mendocino), as introduced it regulated pharmacy benefit managers (PBM). As amended, it significantly pares down that concept and instead states that a PBM has a fiduciary duty to a purchaser and sets forth drug cost disclosures to that affect.

In terms of AB 708 (Quirk-Silva, D-Fullerton), this bill allows first responders to notify the California Office of Occupational Safety and Health of an accident resulting in a fatality or loss of limb (immediately) or other serious accident (within 24 hours) by electronic means other than telephone.

On AB 206 (Gonzalez-Fletcher, D-San Diego), which provides workers compensation for day laborers, this bill has made the priority list for the Latino Caucus. The potential good news is that the author has agreed to discuss a four factor test to define day laborer.

Finally, there is big news out of the Workers Compensation Insurance Rating Bureau (WCIRB) on rates. The WCIRB is recommending a 7.8% mid-year rate decrease. This is a result of a combination of a number of factors, including quicker claims resolution and a significant slowdown in the growth of allocated loss adjustment expenses. Medical is developing favorably from prior years and claims frequency is continuing to drop, but at a slower rate. There was an uptick in medical costs per claim and in indemnity costs, but that fell into the category of areas to monitor; the latter is primarily in the area of cumulative trauma claims that continue to grow, especially in the Los Angeles Basin.

Update On Cross Section Of Legislation; Norwood Lobbyists Working To Alter Key Bills

Among the increasing number of bills that require early attention, SB 66, by Senator Bob Wieckowski (D-Fremont), disallows tax deductions for punitive damages paid or incurred in connection with any settlement or judgment when determining corporate and personal tax liability.

A large coalition of stakeholders, of which Norwood Partner Erin Norwood is helping lead, is opposing SB 66, since removing deductibility increases the burdens associated with the unpredictability of punitive damages, placing additional pressure on businesses to settle lawsuits instead of seeing them through a long legal process. Repealing the deduction for

punitive damages would create fear among businesses, and the threat of higher taxes likely would force these companies to settle – even if they did nothing wrong.

Additionally, if the pressure to settle lawsuits increases, California companies can expect to see more frivolous suits. While punitive damages are intended to be used by the courts as a tool to deter companies from engaging in harmful practices, this tool is susceptible to abuse. When businesses are guilty of fraud, negligence, or malpractice, they should be held responsible; but, when consumers abuse the legal system for personal profit, the deduction that SB 66 seeks to eliminate ensures that businesses are treated equitably and have the ability to pay their costs.

As SB 66 is awaiting a vote on the Senate Floor, the fight against the measure is not over.

Erin Norwood also testified in favor of AB 989 (Cooper, D-Sacramento) and AB 1140 (Oberholte, R-Hesperia) at the Assembly Revenue and Taxation Committee this week. These bills, which will be merged, conform California tax law to federal tax law with respect to health savings accounts (HSA). Specifically, they impose a penalty for disqualified distributions from an HSA equal to 2.5% of the distribution amount rather than 20% provided by federal law; allow eligible individuals to claim an above-the-line deduction related to their contributions to HSAs in computing their adjusted gross income; and, exclude from an employee's gross income any contributions to an HSA made by an employer on the employee's behalf.

Healthcare expenses continue to be a primary concern for individuals and families while they are working, and into retirement. Contributions made to an HSA are not subject to use it or lose it and unused balances can be rolled over year after year creating a stable and secure savings account dedicated to individual and family healthcare. These bills will provide a flexible option for workers and retired persons to take an active role to place them in the best possible position to supplement their medical expenses now and into the future.

Furthermore, California is one of five states that currently taxes contributions to HSAs. Employees throughout most of the nation enjoy both federal and state tax-free contributions to HSAs. It is very surprising that in such a high cost state as California, the same tax advantage has not been provided to California workers before now.

In other news, Norwood Associates filed a letter in support of AB 1027 (Acosta, R-Santa Clarita). The bill authorizes the Department of Motor Vehicles to accept a certificate of satisfactory completion of any motorcyclist training program approved by the California Highway Patrol (CHP) in lieu of a driving test for applicants applying for a motorcycle license. A person under 21 years would still be required to complete the Motorcyclist Training Course to receive a license.

This bill gives experienced motorcyclists the opportunity to take a course better suited to their skill level to waive the motorcycle driving test, instead of taking the novice-level course that can take three days to complete. For riders who have experience operating vehicles similar to motorcycles or have had motorcycle riding experience in the past, and are applying for a motorcycle license, the ability to waive a driving test by taking an advanced level course

may make that class more appealing. AB 1027 was approved unanimously by the Assembly Transportation Committee and is now before the same house's Appropriations Committee.

Of interest, and led by a Civil Justice Association of California (CJAC) opposition effort, AB 814 (Bloom, D-Santa Monica) extends the power of pre-litigation subpoena (currently only held by the State Attorney General and county district attorneys) to city attorneys in cities with a population of 750,000 or more (San Diego, San Jose, Los Angeles, and San Francisco City & County).

While portrayed as a minimal expansion of this power to only four additional government officials, CJAC is leading a large coalition opposed to further granting the ability to issue subpoenas of unlimited scope prior to an actual filing of an action to city attorneys. This power currently rests with the chief law enforcement officers in the state and there has been no justification provided for its expansion to city attorneys. Doing so would expose California's businesses to demands of unlimited scope for information before any allegation of actual wrongdoing has been made.

AB 814 was heard Monday on the Assembly Floor and passed to the Senate by a vote of 43-37. CJAC and a coalition of stakeholders are working to inform legislators of the dangers of extending this power beyond where it already rests.

Labor Bills The Subject Of Behind The Scenes Lobbying; Many To Be Heard Third Week of April

As has been reported, the list of labor measures that impose employer regulatory burdens is significant this legislative session. While most bills will be heard for the first time on April 19, there is a significant amount of lobbying activity taking place through large industry coalitions organized by the Chamber of Commerce. The following outlines the measures receiving attention this week.

Assembly Member Lorena Gonzalez-Fletcher, D-San Diego, is by far the most active labor legislation legislator this session, and her introduced bills are varying degrees of harmful to the employer community. AB 5 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. The Chamber has set a meeting with the Assembly Labor Committee chair to express concerns. There is more than one account of the author's chief of staff stating that the near-term goal is to get the bill out of Committee, then to hold it until next year. The lobbying effort against is proving effective.

AB 569, also by 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 Chamber is trying to move it out of the Labor Code and into the Fair Employment and Housing Act. AB 1009, Gonzalez-Fletcher, has been narrowed to apply only to hotels, motels, barbering, cosmetology, and Uber / Lyft type companies. It requires the consumer to be given the choice to leave a tip upon paying for service with a credit card.

The last Gonzalez-Fletcher bill, AB 1209, 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. A Chamber coalition opposition letter will be available.

Regarding AB 450 (Chiu, D-San Francisco), this Service Employees International Union and Labor Federation of California sponsored bill prohibits an employer from providing a federal immigration enforcement agent access to a place of labor without an executed warrant. There are a multitude of problems it causes employers, not the least of which is taking on the role of intermediary between employees and federal immigration enforcement officials.

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 pay scale upon demand, even though the employee has not suffered any harm or wage loss as a result of the violation.

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.

AB 1008 (McCarty, D-Sacramento) makes it unlawful for employers to include on an application any question that seeks disclosure of an applicant's criminal history. A Chamber letter to be cosigned by opponents and sent to legislators is forthcoming.

Moving on to Senate measures, on SB 63 (Jackson, D-Santa Barbara), this provides up to 12 weeks of parental leave to be with a new child. It passed the Senate Judiciary Committee. SB 33 (Dodd, D-Vacaville) allows individuals who allege financial institution fraud to avoid binding arbitration to resolve their dispute. This unfairly discriminates against arbitration agreements contained in consumer contracts for services with a financial institution. It is likely preempted by the Federal Arbitration Act and will lead to confusion and unnecessary litigation. The Chamber has drafted an opposition letter for Members. Lastly, AB 306 (Gonzalez-Fletcher) requires unemployment insurance for workers that go on strike. A Chamber letter in opposition has been drafted as well.

Women's Caucus Reveals Legislative Priorities

This week, the Women's Caucus released their priority legislation list that covers a range of issues. Most of the issues covered by the priority list cover workplace and childcare issues, as well as some law enforcement issues as well. The list is as follows:

Fair Pay and Job Opportunity

[AB 168 \(Eggman\)](#): Prohibits an employer from seeking salary history information about an applicant for employment.

Access to Childcare

[AB 273 \(Aguiar-Curry\)](#): Clarifies that English as a Second Language (ESL) and High School Equivalency (HSE) educational programs meet criteria for establishing eligibility for subsidized child care programs.

Family-Friendly Workplaces

[SB 63 \(Jackson\)](#): The New Parent Leave Act provides up to 12 weeks of job-protected maternity and paternity leave for more California employees.

Protecting Vulnerable Communities

[SB 500 \(Leyva\)](#): Allows law enforcement and prosecutors to pursue perpetrators that use the threat of distribution of private and sexually explicit images to demand sex, additional sexually explicit images, or money.

[AB 480 \(Gonzalez-Fletcher\)](#): Amends the Welfare and Institutions Code to clarify that diapers for infants and toddlers are a reimbursable ancillary expense under existing law for CalWORKs participants with young children in the Welfare to Work program.

[AB 1312 \(Gonzalez-Fletcher\)](#): Ensures that rape kits are not destroyed prematurely, that survivors of sexual assault are aware of their rights and the resources available to them, and codifies important additional rights for survivors such as free post-assault contraception.

[AB 1386 \(Waldron\)](#): Launches a breast and ovarian cancer screening and awareness pilot program to promote and encourage genetic testing screening when indicated by the United States Preventative Services Task Force and the Centers for Disease Control and Prevention.

Criminal Background Check of Prospective Employees: New Regulations Coming July 1

The California Office of Administrative Law (OAL) approved new regulations this week relating to the use of criminal background information in employment decisions. These regulations will be filed with the Secretary of State's office and take effect on July 1 of this year. The California Fair Employment and Housing Council proposed these criminal history regulations last year. On the advice of the California Chamber of Commerce, employers are warned of additional burdens under the new regulations.

In addition to reiterating existing prohibitions on the use of criminal history information in California, the regulations require employers to demonstrate that any criminal history information sought is job-related and consistent with a business necessity. Employers can demonstrate that the consideration of criminal history information is appropriately tailored to the job in one of two ways:

- (1) Employers may conduct an individualized assessment of the circumstances and qualifications of applicants / employees excluded by the conviction screen. Before taking an adverse employment action, such as refusal to hire, the employer must give the individual notice of the disqualifying conviction and a reasonable opportunity for the individual to respond and demonstrate that the criminal history exclusion should not apply to his / her particular circumstances. The employer must consider this information and determine whether an exception is warranted.

- (2) An employer may demonstrate that its “bright-line” conviction disqualification policy (one that does not contain an individualized assessment of the facts) properly distinguishes between applicants and employees that do and do not pose an unacceptable level of risk and that the conviction being used has a direct and specific negative bearing on the applicant / employee’s ability to perform the duties or responsibilities necessarily related to the position.

Any bright-line rule that includes conviction-related information that is seven or more years old will be presumed to not be sufficiently tailored to meet a job-related / consistent with business necessity defense. The burden will be on the employer to rebut this presumption.

Regardless of whether an employer uses a bright-line policy or conducts an individual assessment, if the employer gets the criminal information from a source other than the applicant or employee (such as through a third-party background check), the employer must provide the individual with notice and the ability to challenge the factual accuracy of the information. This notice must be provided before any adverse action can be taken.

Even if the employer can show that a criminal history inquiry is job-related / consistent with business necessity, an individual can still bring a discrimination claim if he / she can show that there is a less discriminatory and more effective alternative means of achieving the business necessity.

The Chamber of Commerce asked the OAL to reject the regulations on numerous grounds. In addition to these new regulations, the Legislature has introduced legislation (AB 1008; McCarty; D-Sacramento) that limits the use of prior criminal history information in employment decisions.

Department Of Insurance Launches New Online Tool To Bridge The Language Gap For Consumers

On Tuesday, the California Department of Insurance launched a new online agent language locator service created to make it easier for consumers to find insurance agents and brokers in their area who speak their chosen language. Consumers enter their preferred language and city or zip code into the tool and the agents and brokers listed following a consumer's search will be located near the consumer's selected city or zip code. Currently there are producers available for 36 languages. Announcing the introduction of the online tool, Insurance Commissioner Dave Jones said, "Insurance agents are a trusted source in helping consumers determine how best to protect themselves and their assets."

Spring Legislative Recess Begins Today

As a reminder the Assembly and Senate will be in Spring legislative recess to spend time visiting with constituents in their districts from April 7 through April 14. Both houses resume full legislative committee and floor schedules April 17. As such, *This Week in Sacramento* will also be taking a recess and resume publishing April 21.