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State Senate

State Assembly

**Department of
Insurance**

Countdown To End Of 2017 Legislation Session Begins; But, High Stakes Bills Remain In Play

August 21-September 15 is the homestretch before the Legislature adjourns the 2017 legislative session. The following key dates are deadlines to anticipate.

- September 1 – Last day for fiscal committees to meet and report bills to the Assembly and Senate Floors
- September 5-15 – Assembly & Senate Floor Session only. No committee may meet for any purpose except the Rules Committees, bills referred pursuant to Assembly Rule 77.2*, and Conference Committees
- September 8 – Last day to amend a bill on the Floor
- September 15 – Last day for any bill to be passed. Interim Recess begins upon adjournment
- October 15 – Last day for the Governor to sign or veto bills

*Assembly Rule 77.2. If the analysis of an amendment adopted on the floor discloses that the amendment makes a substantial substantive change to a bill as passed by the last committee of reference, the bill, as amended, may be referred by the Speaker to the appropriate committee.

Beneficial Insurance Legislation

SB 430 (Insurance Committee) California Insurance Guarantee Association Reinsurance Authorization

Status: July 12, 2017 – Assembly Insurance Committee Passed 12-0. Referred to Assembly Appropriations Committee (Consent Calendar)

Sponsored by Norwood Associates client, the California Insurance Guarantee Association (CIGA), SB 430 (Insurance Committee) authorizes CIGA, with the Insurance Commissioner's express approval, to reinsure, or transfer liabilities to, a California admitted and authorized

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Information

reinsurer or other reinsurer in order to limit or eliminate adverse development in loss reserves, to stabilize or limit the need for assessments, or to reduce its potential ultimate liability for covered claims, provided certain conditions are met. This bill has received no opposition votes or public opposition.

AB 1641 (Daly, Dem-Anaheim) Innovative Product Surplus Lines Insurance Authorization
Status: July 12, 2017 – Senate Insurance Committee Passed 10-0. Hearing: August 21, 2017
Senate Appropriations Committee

Another positive legislative development is AB 1641 (Daly, Dem-Anaheim). This allows for new, innovative products for the non-admitted insurance market. This bill was suggested to the author and supported by another Norwood client, the Surplus Lines Association of California. This bill has also not been opposed by any entity or legislator throughout the legislative process.

SB 788 (Lara, Dem-Bell Gardens) Insurance Agent Tax Identification Number Requirement
Status: July 12, 2017 – Assembly Insurance Committee Passed 9-0. Referred to Assembly
Appropriations Committee

A third positive measure, SB 788, mandates the Insurance Commissioner require either a social security number or an individual taxpayer identification number if an insurance agent applicant or licensee is an individual applying for or renewing a production agency license. Under current law the Department of Insurance does not accept an individual taxpayer identification number which can be used by those persons not eligible to obtain a social security number to pay taxes. A Little Hoover Commission report indicated this practice amounted to a barrier for entrance in the agency business by some individuals. This bill has received no opposition votes or stakeholder opposition.

SB 189 (Bradford, Dem-Gardena) Executive Workers Compensation Exemption
Status: July 12, 2017 – Assembly Insurance Committee Passed 12-0. Referred to Assembly
Appropriations Committee

The final insurance-related bill of value is SB 189. This is intended as a clean-up bill to AB 2883 from last session. The bill is still a work in progress, but in its current form SB 189: 1) decreases the threshold for ownership for an officer or member of a board of directors to opt out of workers' compensation coverage from 15% to 10% so long as they file an affidavit signed under penalty of perjury representing that they are eligible; 2) allows members of professional corporations to request to be excluded from workers' compensation coverage so long as they are licensed and practicing in the professional corporation and the professional corporation maintains health insurance for its employees; 3) authorizes a trustee of a revocable trust that holds a business entity in trust, to the extent the trustee meets the ownership threshold, to opt out of workers' compensation coverage; 4) provides that a waiver of workers' compensation coverage can be made effective up to 15 days prior to the filing of the affidavit; 5) states that once the employee waives coverage there is a

conclusive presumption that the person is not covered by workers' compensation coverage; 6) declares that the insurer, agent or broker has no duty to verify the underlying facts contained in the waiver; and, 7) provides for an effective date of these changes to be July 1, 2018.

Workers Compensation Legislation

AB 44 (Reyes, Dem-San Bernardino) Workplace Violence Workers Compensation

Status: July 10, 2017 – Senate Labor Committee Passed 5-0. Hearing: August 21, 2017 Senate Appropriations Committee

In reaction to the 2015 San Bernardino terrorist event, AB 44 exempts medical treatment for employees who sustain as a result of an act of terrorism or workplace violence from the Utilization Review and Independent Medical Review process. At its first hearing, Assembly Insurance Committee Chair Tom Daly (D-Anaheim) forced amendments to restrict application of the bill to a Governor-declared terrorist act and require the employer in those cases to bring in an ombudsman to oversee the evaluation of workplace trauma. The remainder of the bill was stricken by these amendments.

AB 570 (Gonzalez-Fletcher, Dem-San Diego) Pregnancy Workers Compensation

Apportionment

Status: July 12, 2017 – Senate Labor Committee Passed 4-1. Hearing: August 21, 2017 Senate Appropriations Committee

AB 570 prohibits workers' compensation permanent disability apportionment because of pregnancy affects. The author argues current law prohibits the denial of claims based on age, gender, and other factors, but there are no protections in place that prevent women from being compensated for less because of pregnancy. Assembly Member Lorena Gonzalez-Fletcher claims there are employers who invade the privacy of women who work for them, and are punished financially for becoming pregnant. This measure is a Women's Caucus priority, and has been endorsed by Republican Assembly Member Catherine Baker (Dublin) who carries fairly significant influence. A similar bill has been vetoed by Governor Jerry Brown in the past.

SB 489 (Bradford, Dem-Los Angeles) Physician Workers Compensation Treatment Billing

Status: July 12, 2017 – Assembly Insurance Committee Passed 12-0. Referred to Full Senate (Assembly Amendment Concurrence)

SB 489 extends the timeline for hospitals and emergency clinics to bill for workers' compensation emergency medical treatment for injured workers from 30 days to 180 days. Proponents argue that hospitals and emergency room physicians, who are dependent on hospitals to collect and transmit billing information, may not know that an injury is occupational, creating a billing process which will almost always exceed 30 days and can often time take many months.

Homeowners Insurance

[AB 634](#) (Eggman, Dem-Stockton) Solar Panel Liability Insurance

Status: July 18, 2017 – Senate Judiciary Committee Passed 7-0

AB 634 authorizes homeowners associations (HOA) to require solar panel liability insurance. Furthermore, it requires HOAs to be named as additional named insureds on homeowners' policies, as well as give HOAs a right of notice of cancellation. This is one provision of the broader bill, which specifies that an association may not establish a general policy prohibiting the installation or use of a rooftop solar energy system. Insurer lobbyists are working on amendments to eliminate the HOA naming and noticing on homeowners policies. Current law requires a two-thirds vote of the owners of a condominium to allow the installation of solar energy equipment.

Labor Legislation

[SB 63](#) (Jackson, Dem-Santa Barbara) Family Medical Leave Expansion

Status: June 24, 2017 – Assembly Judiciary Committee Passed 9-1. Referred to Assembly Appropriations Committee

SB 63 expands parental leave with a child to 12 weeks. Not only is this bill disruptive to the workplace and there are already significant leave laws in place, it opens employers up to family medical leave lawsuits that even if found without merit cost employers in the \$125,000 range to resolve. It was once thought Senator Hannah Beth Jackson would not aggressively pursue, but appears to have changed course under pressure from the author's only real base of support – the trial lawyers. Fortunately, though, Governor Brown vetoed similar legislation by the same author last year that provided six weeks of additional leave.

[AB 1209](#) (Gonzalez-Fletcher, Dem-San Diego) Gender Pay Employer Reporting

Status: July 12, 2017 – Senate Labor Committee Passed 4-1. Hearing: August 21, 2017 Senate Appropriations Committee

AB 1209 is sponsored by the Legislature's most prolific anti-employer bill sponsor. It requires employers publish wages by gender. This business community shaming measure is flawed on multiple levels. There is no real way to amend the bill, including providing a manageable way to differentiate between positions by gender ranging from administrative assistants to executive officers. The one piece of good news is that it is not labor-sponsored.

[AB 1008](#) (McCarty, Dem-Sacramento) Job Applicant Criminal History

Status: July 11, 2017 – Senate Judiciary Committee Passed 5-1. Hearing: August 21, 2017 Senate Appropriations Committee

AB 1008 prohibits obtaining job candidate prior criminal history until a conditional offer of employment is made. This is a bill which has been introduced in previous sessions, but a

Chamber of Commerce-led coalition is not relenting because of its significant risk to employees and customers.

AB 168 (Eggman, Dem-Stockton) Job Applicant Salary History Information Prohibition
Status: July 10, 2017 – Senate Public Employees Committee Passed 3-2. Referred to Full Senate

AB 168 prohibits an employer from seeking salary history information about an applicant for employment and requires an employer to provide the payscale for a position to an applicant for employment. The CalChamber is not offering any concession beyond a deal on last year's bill that did not get enacted.

AB 450 (Chiu, Dem-San Francisco) Workplace Immigration Enforcement Raid Intervention
Status: July 11, 2017 – Senate Judiciary Committee Passed 5-2. Hearing: August 21, 2017
Senate Appropriations Committee

AB 450 prohibits employers from providing federal immigration enforcement agents' access to the workplace without verifying a warrant is in place. The Chamber and a long list of organizations oppose the measure because it places employers in a no-win situation between federal immigration enforcement and state enforcement by punishing employers – rather than providing tools and resources for employees when federal immigration enforcement appears at their workplace regardless of whether a violation of law has been committed by the employer.

Arbitration & Legal Legislation

SB 33 (Dodd, Dem-Vacaville) Financial Services Fraud Forced Arbitration Waiver
Status: June 27, 2017 – Assembly Judiciary Committee Passed 8-3. Referred to Assembly Floor

SB 33 allows consumers of financial services to avoid arbitration if they allege fraud occurred. The author is carrying the legislation in response to the Wells Fargo fake account set-up scandal. However, it is problematic because it opens up disputes to costly, class action lawsuits that result only in excessive plaintiff lawyer fees with their clients receiving nominal sums. Under state and federal law, "financial services" captures annuity sales. Fortunately, it is likely preempted by the Federal Arbitration Act. The Chamber has made defeating it a priority, but significantly more work is ahead.

SB 632 (Monning, Dem-Carmel) Asbestos Litigation Deposition Limitation
Status: June 20, 2017 – Assembly Judiciary Committee Passed 8-1. Referred to Assembly Floor

Also problematic is SB 632, which requires, in any civil action for injury or illness based upon exposure to asbestos, a deposition examination of the witness by counsel be limited to seven hours of testimony if the deponent is over 70 years of age and his or her health is such that a

deposition of more than seven hours will prejudice the deponent's interest in the litigation well-being. SB 632 is pending on the Assembly Floor, but insurer lobbyists have amendments for which inroads are being made.

Governor Signs Bill Procedures A Trial Court Must Follow When Sanctioning Parties

On August 7, Governor Jerry Brown signed AB 984 (Calderon, Dem-Whittier), which clarifies the standards, conditions, and procedures that a trial court must follow when it orders sanctions against a party, party's attorney, or both, as the result of an action or tactic made in bad faith. In determining what sanctions, should be ordered, the court must consider whether a party seeking sanctions has exercised due diligence.

A motion for sanctions must be made separately from other motions or requests and describe the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. An order for sanctions is to be limited to what is sufficient to deter repetition of the action or tactic or comparable action or tactic by others similarly situated. The sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence.

Unlike federal courts, California state courts do not have inherent authority to sanction parties and attorneys for bad faith conduct with attorney's fees; rather, California courts must rely on statutory authority. The California Supreme Court has held that a court has no inherent power to award attorney's fees as sanctions, and must rely upon express statutory authority. (*Bauguess v. Paine* (1978) 22 Cal.3d 626, 637.) In response to *Bauguess*, the Legislature enacted SB 947 (Davis), Chapter 762, Statutes of 1981, which authorizes courts – under Code of Civil Procedure Section 128.5 – to sanction parties by awarding attorney's fees for tactics or actions not based on good faith.

The intent of this bill is to broaden the powers of trial courts to manage their calendars and provide for expeditious processing of civil actions by authorizing monetary sanctions.

Workers Compensation Insurance Rating Bureau Approves Rate Increase

The Workers Compensation Insurance Rating Bureau (WCIRB) Governing Committee last week approved filing for a rate increase of 0.1% for policies incepting or renewing on or after January 1, 2018. Any rate action taken by the Bureau was expected to be modest.

The WCIRB is a private, nongovernmental organization financially supported exclusively by insurance carriers in whose interests it operates. While it is filing for an increase, many employers can still expect a rate decrease in the coming year. Carriers will likely be factoring in the 7.8% mid-year rate cut that was adopted after their policies inceptioned last year.

The rate filing is based on modest loss trends. Overall, losses were up slightly in the first quarter of 2017, but a reduction in cost of adjusting claims largely offset the increase. The industry could have had another rate cut, but the Bureau's actuarial committee approved changes to its methodology to account for the development of the industry's tail that added a point to the rate indication.

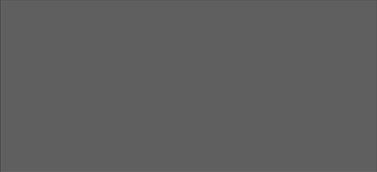
The WCIRB will make the filing official later this month, but the Actuarial Committee will meet again in early September to consider the industry's experience in the second quarter. An amended filing could be made if the experience changes significantly.

Melissa Melendez Seeks to Replace Chad Mayes in Assembly Leadership

Assembly Member Melissa Melendez announced this week that she would seek to replace Assembly Member Chad Mayes as the Assembly Republican Leader next week when the Legislature reconvenes after the summer recess. This announcement comes after several weeks of turmoil in the Republican party, sparked by the vote to pass Governor Jerry Brown's cap and trade environmental plan. Mayes voted for the plan, which some Republicans believe was the deciding vote that allowed it go forward, earning criticism from his own party.

Melendez announced her intention to seek the leadership position at a gathering of the Riverside County Republican Party, stating that "I am ready and willing to be the type of leader you have been asking for, one who has principles. When the Assembly returns Monday, I will be throwing my name in the hat to run for Republican leader." She also stated that the path forward for Republicans in California was not to "vote like Democrats," suggesting that Mayes no longer represented the interests of the party.

The announcement also comes after Melendez was both removed from her position as the Vice Chair of the Assembly Insurance Committee and also moved into the smallest office in the Capitol building, commonly referred to as the "dog house." It appears that those actions were at the request of Mayes after Melendez publicly voiced her opinion on his vote on the cap and trade deal and resigned as his deputy in the Assembly Republican Caucus. It is not yet known whether Mayes will step down from his position as the Assembly Republican Leader following the swell of criticism from Republicans throughout the state for his role in



the agreement, or whether he will be able to maintain his position and avoid being forced out. Some have speculated that his days as Leader may be numbered, as the longer he remains in his position the more opposition will grow until he has no choice but to step down.