



August 25, 2017

Sacramento, California

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State Senate

State Assembly

**Department of
Insurance**

Measure That Exempts Corporate Officers & Professional Corporation Principles From Workers Compensation Moving Forward

A measure that exempts corporate officers and professional corporation principles from being required to carry workers' compensation policies is moving through the Legislature, but remains very much a work in progress. SB 189, sponsored by Senator Steven Bradford (Dem-Gardena), is intended to fix AB 2883, which was signed into law last year. It has resulted in major unforeseen, burdensome implementation implications to workers' compensation insurance companies, agents and brokers.

AB 2883 establishes that a person who owns at least 15% of issued outstanding stock may execute a waiver of his or her rights to workers' compensation coverage. AB 2883 attempted to curtail specific types of workers' compensation fraud. It addressed situations whereby employers would attempt to wrongly classify employees as owners or board members in order to skirt workers' compensation requirements, as well as situations where employees opted out of coverage without a formal written waiver and later claimed coverage. Stakeholders have identified specific challenges to the way AB 2883 impacts certain small businesses, such as partnerships and professional corporations. For instance, it required a minimum 15% ownership stake in order to qualify for a waiver. Professional corporations, such as medical practices, and owners of small, privately held companies have noted challenges with this structure, which in some cases requires them to purchase workers' compensation insurance they are unlikely to claim against.

As approved by the Assembly Appropriations Committee this week, SB 189 changes this ownership threshold from 15% to 10%, or 1% of the issued and outstanding stock of the corporation if that officer's or member's parent, grandparent, sibling, spouse, or child owns at least 10% of the issued and outstanding stock of the corporation and that officer or member is covered by a healthcare service plan or a health insurance policy, and executes a written waiver.

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The bill also 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 on its employees. This week's amendments also provides a grace period so that written waivers that are executed on or after January 1, 2018, and are accepted by the insurance carrier on or before December 31, 2018, are deemed to be accepted by the insurance carrier as of January 1, 2018.

Additional provisions authorize 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; provides that a waiver of workers' compensation coverage can be made effective up to 15 days prior to the filing of the affidavit; and, states that once the employee waives coverage there is a conclusive presumption that the person is not covered by workers' compensation coverage.

As mentioned previously, this legislation is an insurer administrative nightmare and the issue area may be around for attempted fixes in future years. It is anticipated additional professional groups will come forward for an exemption because the current language is not legally applicable. In the near term, Norwood Associates is pursuing all avenues that will lead to a workable resolution. In this regard, Norwood has successfully incorporated a provision that declares that an insurer, agent or broker has no duty to verify the underlying facts contained in the workers' compensation waivers.

SB 189 passed the Assembly Appropriations Committee unanimously and is pending action on the Assembly Floor. While it is expected to ultimately reach Governor Jerry Brown's desk, legislative staff coordinating negotiations between stakeholders has agreed to hold it for some time to see if the workers' compensation waiver administration burdens can be reduced. This bill is the only one of its kind in the nation. The California Medical Association is the sponsor, as is the Association of California Insurance Companies. The California Family Business Association also supports the measure.

Burdensome Labor Legislation Hangs In The Balance During Last Stretch Of Session

While there are multiple labor bills pending in the Legislature during the final weeks of session, three stand out as particularly concerning.

AB 168 (Eggman, Dem-Stockton) 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 California Chamber of Commerce is not offering any concession beyond a deal on last year's bill that did not get enacted. The very skilled lead CalChamber labor and employment lobbyist believes this bill will reach

Governor Jerry Brown's desk. The Chamber is taking the lead with outreach to Governor's office staff, as the bill author is rejecting amendments. AB 168 is before the full Senate.

On AB 1209 (Gonzalez-Fletcher, Dem-San Diego), this bill requires employers with more than 500 employees to report gender pay differentials for publication on the Secretary of State's website. The Chamber has talked with the Governor's staff on the major problems with the bill, namely that the data to be reported does not accurately reflect a person's work and educational experience, among other deficiencies. Unfortunately, to date, Governor's office staff has not been as responsive to employer concerns as industry would like. But, Governor's office staff may come around more with additional educational outreach, as the staff that was met with was not particularly current on the measure.

AB 1209 is so flawed the Chamber cannot offer amendments to make it palatable. It is a priority kill target. This bill has more cross-industry opposition than any other bill pending, which lends some hope to the effort to stall it on the Senate Floor. It is currently pending potential further consideration in the Senate Appropriations Committee on September 1.

The Department of Finance (DOF) has scored the bill at \$428,000 General Fund and one new employee to implement the pay differential database. For this reason, DOF raised concerns about the measure, arguing it could compel the Legislature to appropriate dollars the Department does not believe the state should spend.

Additional promise around stalling the measure on the Senate Floor is it could get entangled in Assembly-Senate squabbles (eg. One body did not approve the other body's priority bill; horse trading hopefully could derail the measure for higher priorities at the 11th hour; among other political circumstances that occur at the end of session, which is September 15.) It is too early to tell whether AB 1209 could get held up at this time, though.

Regarding SB 63 (Jackson, Dem-Santa Barbara), which extends family medical leave to 12 weeks, this bill is on the Assembly Appropriations Committee suspense calendar for potential September 1 consideration. At which time DOF will advise that the Governor vetoed the same bill by the same author last year, except last year's bill provided six additional weeks. The intelligence is that Senator Jackson Hannah-Beth Jackson is continuing to pursue the bill at the request of the only real base of support the author has – the trial lawyers. The author is a former plaintiffs' attorney.

Assembly & Senate Appropriations Committee Consider Several Insurance Bills; New Workers Compensation Bill Introduced

Norwood Associates client California Insurance Guarantee Association (CIGA) sponsored bill, SB 430 (Committee on Insurance), passed the Assembly Appropriations Committee unanimously and was ordered to the Assembly Floor on Thursday. The legislation authorizes

CIGA, with the Insurance Commissioner's express approval, to reinsure, or transfer liabilities to, a California admitted and authorized 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.

Related to AB 570 (Gonzalez-Fletcher, Dem-San Diego), this measure 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.

The Senate Appropriations Committee referred AB 570 to the suspense file this week, at which time the Department of Finance (DOF) advised that the Governor vetoed a similar bill in the past. DOF scores the bill as increasing employer costs from the \$10 million status quo to \$100 million with respect to implementing workers' compensation apportionment.

A 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 not been opposed by any entity or legislator throughout the legislative process, however it was put on the Senate Appropriations Committee suspense file for September 1 consideration. It is on suspense because the Department of Insurance (CDI) estimates costs of \$104,000 in 2017-2018, \$196,000 in 2018-2019, and \$189,000 ongoing from the Insurance Fund. The ongoing resources are necessary for research conducted by staff to review potential insurance products that are not in the admitted market, which may be added to the export list, CDI claims. Ongoing resources also include costs associated with increased export list hearings, the Department argues. In response to CDI's effort to bring in revenue from the bill, DOF notes that the Department may offset such costs through surplus line broker license fees. DOF's guidance on license fee authority should free the bill for passage.

While not addressed by a committee in its new form, it is newsworthy that SB 617 (Bradford, Dem-Gardena) has been significantly amended at this late state of the legislative session. This bill has been changed dramatically, as previously it required the Commission on Health and Safety and Workers Compensation to issue outreach reports to physicians who treated 30 or more injured workers during the 12 months prior to July 1 of the previous year.

Now, SB 617 requires that heredity and genetics be excluded as bases of causation for purposes of determining the apportionment of permanent disability. Current law makes an

employer liable only for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment. Current law also requires that apportionment of permanent disability be based on causation and requires a physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address in that report the issue of causation of the permanent disability. It is pending potential September 1 Assembly Appropriations Committee consideration, but will most likely be addressed next year.

Financial Services Fraud Arbitration Waiver Bill No Longer Applies To Annuity Products

Yesterday, Assembly Banking and Financial Services Committee Chair Matthew Dababneh (Dem-Encino) sponsored an amendment to SB 33 (Dodd, Dem-Vacaville) that is tailored specifically to federally chartered depository institutions, removing exposure to annuity products from provisions which could have limited their use of force arbitration in consumer complaint cases. The amendment was adopted by unanimous voice vote of the full Assembly and the entire measure will be voted on before September 15 adjournment.

Earlier in the session, the insurance carrier lobbying corps expended a great deal of effort to successfully remove insurers from bill provisions which threatened their use of forced arbitration. SB 33 now only allows bank consumers 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.

Assembly Speaker Calls For Assembly Interim Session Committee To Address Universal Healthcare

Assembly Speaker Anthony Rendon (Dem-Lakewood) yesterday announced that Assembly Member Joaquin Arambula (Dem-Fresno) and Assembly Member Jim Wood (Dem-Healdsburg), the chairs of the Assembly Select Committee on Health Care Delivery Systems and Universal Coverage, will hold ongoing hearings beginning in the legislative interim so the committee can develop plans for achieving universal healthcare in California.

There are several different approaches being proposed, including Medicare for all, single payer, hybrid systems, and Affordable Care Act expansion. The Speaker said, "I have called for these hearings to determine what approach best gets us there – what gets us to 'yes' when it comes to healthcare for all." The hearings are intended to overcome potential federal and constitutional obstacles, ensuring delivery of care, and examining funding mechanisms. The Speaker added, "The committee's work will help fill the void of due diligence that should have been done on SB 562 (Lara, Dem-Bell Gardens) or any universal healthcare bill."

The California Nurses Association (CNA) came out strongly opposed to the Speaker's interim study approach, stating that he should "do his job" and get mandated, single-payer healthcare coverage passed. California does not need a select committee to hold hearings to develop a plan for achieving universal healthcare in California, according to CNA. This announcement today is a reflection of the pressure on the Assembly to act in response to organizing by thousands of Californians across the state who have made the case for real action on transformative single payer healthcare reform, the nurses group said.

CNA maintains the Assembly has had the ability since June 1 to hold hearings and make amendments to SB 562 that passed the Senate. The Association further claims the Speaker unilaterally subverted and sabotaged the democratic process with respect to SB 562 legislative consideration, jeopardizing the health of 15 million Californians who remain uninsured or struggling to meet unpayable medical bills.

CNA is critical of the use of a select committee because it does not have the legislative force of a standing policy committee. Nurses and healthcare activists have been conducting district visits with Assembly Members and knocking on doors in Assembly districts to urge them to support SB 562 and call on the Speaker to resume the legislative process by holding hearings and considering amendments. That campaign will continue, the Association asserts.