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State Senate

State Assembly

**Department of
Insurance**

As a reminder, next week starts the Legislature's summer recess period, which occurs until August 20.

Governor Signs Insurance Agent & Broker Interstate Banking Authorization For Premium Trust Accounts

On Monday, Governor Jerry Brown signed legislation to permit California insurance agents and brokers to utilize out of state banking services for deposit of premium dollars. AB 1460, authored by Assembly Insurance, Banking and Financial Institutions Committee Chair Matthew Dababneh (Dem, Encino), passed in every phase of the legislative process without any opposition from legislators or the public.

AB 1460 is sponsored by the Independent Insurance Agents & Brokers of California (IIABCal). California's agents and brokers will now be able to take advantage of banking services tailored to the insurance sector and the premiums related to their products. This will make the management of premium trust accounts more seamless and efficient because agents and brokers will be required to expend less time educating bankers about the nature of their business.

Assembly Member Dababneh said, "As Chair of the Assembly Banking and Finance Committee, it is important that this financial service be allowed in California, particularly since the technology utilized is proven and developed right here in our state. By providing more flexibility with their banking needs, my legislation will help agents and brokers, most of them small business owners with limited resources, choose the best location for depositing their premiums."

The new law allows agents or brokers to maintain his or her fiduciary account, required by law, in any state or federally chartered bank or financial institution. Because of Chair Dababneh's leadership, expertise, and trust on financial services matters in the Legislature, AB 1460 successfully updated 1959 statute that required licensees to maintain his or her fiduciary account in a California bank or savings and loan association.

Secretary of State

Official Legislative Information

As a part of their licensing requirements, insurance agents and brokers must maintain a fiduciary account, separate from any other business accounts, in an amount at least equal to the premiums and return premium, net of commission, received by him or her and unpaid to the persons entitled thereto, at their direction or pursuant to a written contract, for the account of such persons. These funds can be comingled with such additional funds as the agent or broker may deem to be prudent for the purposes of advancing premiums, establishing reserves for the paying of return commissions or for such contingencies as may arise in his or her business of receiving and transmitting premiums or return premium funds.

IIABCal agents and brokers in California sought to amend this statute in order to access financial institutions that specialize in the needs of these firms. InsurBanc is one of these firms. It was established by the Independent Insurance Agents & Brokers of America (the national association) and it provides a broad range of services and access to capital specifically designed to cater to the needs of independent insurance agents and brokers. InsurBanc is a federally chartered bank and, as such, provides all the consumer protections associated therewith federally chartered financial institutions.

AB 1460 requires trust accounts be maintained by California or federally chartered banks or financial institutions. In addition, the bill requires that such financial institutions agree to litigate or arbitrate any dispute relative to such accounts in California. Federally chartered banks and financial institutions have consumer protections equal to or greater than state chartered banks and savings and loan associations. These financial institutions are insured by the Federal Deposit Insurance Corporation.

Assembly Republican Quits Leadership Role Over Climate Vote

This week, Assembly Member Melissa Melendez resigned as assistant Republican leader in the Assembly in protest over Assembly Republican Leader Chad Mayes' vote in support of the cap and trade bill that was passed earlier in the week. Mayes and seven other Republicans joined with Democrats to approve the ten year extension of California's cap and trade program, prompting protests from their fellow party members who view it as a betrayal of party values. Melendez's resignation followed a meeting of the Assembly Republican members called by Mayes, after which she said that she could no longer serve as the assistant leader. "Californians are struggling to make ends meet and unfortunately, what I have witnessed by the Assembly Republican Leader is a dereliction of duty to preserve and promote the American Dream for every single Californian," Melendez stated. In his own response, Mayes stated that "I thank her for her service as assistant leader and we are now focused on moving the caucus forward."

Key Legislative Processing Deadline Today: A Myriad Of Bills Significantly Impact The Business Community

As today is the last day for policy committees to hear and report bills, we thought this would be an opportunity to address the state of legislation that affects a cross section of the economy. Monday begins the legislative recess that runs through August 20.

Beneficial Insurance Legislation

AB 1460 (Dababneh, Dem-Los Angeles) Insurance Agent & Broker Premium Trust Accounts

Status: July 17, 2017 – Signed by the Governor

AB 1460 was signed by Governor Jerry Brown on Monday. Sponsored by Norwood Associates client, the Independent Insurance Agents & Brokers of California and supported by InsurBanc, AB 1460 updates 50-year old law to allow agents and brokers to maintain their fiduciary or trust accounts in an interstate bank. Previously, California law required producers to maintain their trust accounts in a bank located in California. Just as is the case in 47 other states, this bill allows use of customized banking services provided by financial institutions like InsurBanc that have particular understanding of insurance products but utilize an internet platform to do business. This legislation received no public opposition or a single no vote in either the Assembly or Senate.

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

Also sponsored by a Norwood 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 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. Referred to 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. Referred to 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. Referred to 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 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 Assembly

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 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. Referred to 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. Referred to 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 CalChamber-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 Chamber 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. Referred to 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. The bill is expected to come up after summer recess.

Division of Workers Compensation Moving Forward With Workers Compensation Drug Formulary Regulations

The Department of Industrial Relations – Division of Workers Compensation (DWC) has issued modified proposed regulations to adopt the Medical Treatment Utilization Schedule

(MTUS) drug formulary. The proposed rulemaking implements Assembly Bill 1124 (2015), which mandates adoption of an evidence-based drug formulary. DWC has reviewed comments received during the initial comment period and has modified the proposed regulations to provide additional detail and clarity.

Some of the changes proposed in the revised regulations include: moving the effective date to January 1, 2018; changing the Preferred / Non-Preferred drug designations to Exempt / Non-Exempt to better align with how the designations affect the prospective utilization review status of the drug; revised provisions relating to phased implementation of the formulary; deletion of provisions regarding issues that will be addressed in the utilization review regulations, rather than in the formulary regulations; clarification of applicable dispute resolution procedures; and, updated drug listings on the MTUS Drug List and formatting changes.

DWC will consider all public comments, and may modify the proposed regulations for consideration during an additional 15 day public comment period. The current 15 day comment period will close on August 2. Consistent with the representations made by the DWC, the amended formulary is probably going to the Office of Administrative Law (OAL) in its current form. It is not anticipated that the changes will save a lot of money, but hopefully it will reduce Independent Medical Review (IMR) disputes on drug issues. Prescription drug disputes represent about 40% of IMRs in the system. Shortly after this goes to OAL, expect the DWC to issue further changes to the MTUS.