NORWOOD & ASSOCIATES
This Week in Sacramento

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California Links

State Senate

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Bill Passage Deadline Generates A Lot Of Assembly & Senate Activity

Today was the deadline for legislation to be passed out of their house of origin and referred to the opposite chamber, causing a flurry of activity Tuesday through Thursday this week. In this article, we capture the primary pieces of legislation that impact our business community clients, ranging from detrimental labor legislation to insurance measures that were approved.

Starting with significant labor impacts, SB 63 (Jackson, Dem-Santa Barbara) expands parental leave with a new child to 12 weeks. This policy change was proposed last year and vetoed by Governor Jerry Brown. The fact that it got through the Senate is not all that surprising. Whether the Assembly approves remains an open question, but if so the Governor has shown no inclination he would sign.

AB 1008 (McCarty, Dem-Sacramento) prohibits obtaining job candidate prior criminal history until a conditional offer of employment is made. This is an idea that resurfaces in the Legislature seemingly on an annual basis. While barely passing the full Assembly yesterday with the minimum of 41 votes and after being on call for a while, its future is questionable given the strong opposition by a firmly opposed Chamber of Commerce coalition. Nevertheless, continued diligence against is necessary to remind legislators of its unsafe implications.

The third labor bill that is a problem is AB 1209 (Gonzales-Fletcher, Dem-San Diego). It requires employers to make public the pay provided to employees by gender. This legislation goes so far as publication on the Secretary of State's website. Its flaws are many, not the least of which is the lack of differentiation by job type.

Moving to bills with implications to the healthcare market, specifically pharmaceuticals, SB 17 (Hernandez, Dem-Azusa) requires drugmakers to publish the costs that go into producing pharmaceuticals and notify purchasers of price increases to virtually all medications 90 days prior to increase. Also a resurrected proposal from legislative sessions in the past, the proponents of this bill claim it will lead to lower medication costs and reduce overall healthcare expenses. There is no evidence to this affect other than arguing by analogy, and supporters fail to give credit to the great cost in research and development required to just study the potential of a drug let alone prepare it for use.

Regarding AB 265 (Wood, Dem-Healdsburg), this prohibits the use of pharmaceutical coupons to consumers. Proponents claim it deters use of similar generic drugs, despite evidence to the contrary. There are many that require specific nongenerics to maintain consistent treatment regimens.

Also of note is AB 315 (Wood), which requires licensure of pharmacy benefits managers (PBMs). PBMs have long been the target of oversight because of the monopoly a handful have over the national drug negotiation marketplace. Pharmaceuticals provide significant rebates and other cost reductions to PBMs that are supposed to be passed on to consumers, but many times are concealed and taken as profit by these intermediaries.

As always, workers’ compensation is an area that is important to mention. Of significance is AB 570 (Gonzalez-Fletcher). This bill prohibits permanent disability apportionment because of pregnancy. The Assembly approved the bill this week, but its fate is in question in the next house. There is significant insurer opposition in place to help defeat.

On a positive note, there is a measure that was approved that is helpful to the insurance industry, specifically insurance agents and brokers. SB 788 (Lara, Dem-Bell Gardens) requires insurance agents to provide a Social Security number or tax identification number to the Department of Insurance when applying for a provider license. This helps maintain the integrity of the profession, among other benefits.

One other newsworthy insurance measure concerns drone liability insurance. SB 347 (Jackson) requires this coverage for entertainment and commercial purposes. Drones are subject to a multitude of piecemeal bills largely because federal courts have determined the Federal Aviation Administration has limited regulatory jurisdiction and Congress has not made it an oversight priority.

Lastly, on a bill with implications across nearly every sector of the economy, SB 66 (Wieckowski, Dem-Fremont) disallows tax deductions on punitive damage losses. The lobbying effort to hold the bill on the Senate Floor for weeks proved successful, but it eventually passed before this week’s deadline. There will be an accelerated battle in the Assembly as this is a two-thirds tax bill. It appears the Senate moved the bill along knowing that it could very well stall in the Assembly. This legislation comes up periodically, along with others previously mentioned.

Forced Arbitration Waiver In Financial Services Fraud Cases Passes Senate

On Tuesday, SB 33 (Dodd, Dem-Vacaville) passed on the Senate Floor. It allows individuals that allege fraud by financial service providers to avoid mandated arbitration to resolve disputes. Senator Bill Dodd presented the bill, stating that it was introduced to address the Wells Fargo fake account setup scandal. The author claimed the bank targeted minorities, poor people, and the elderly for this fraudulent activity, and their path to the courthouse was blocked.

Because the aggrieved were forced into arbitration to resolve their dispute, this scheme was hidden in private negotiations causing it to continue. Senator Dodd maintained the defrauded customers never consented to an arbitration agreement, and argued that it is incorrect that the opponents claim the bill is preempted by federal law. This legislation is supported by numerous consumer groups.

Senator Steven Glazer (Dem-Orinda) condemned the action of Wells Fargo, but found the bill is too broadly written and should be clarified. Senator Ted Gaines (R-El Dorado Hills) opposed the bill because of the uncertainty it creates with respect to arbitration agreements.

The author closed by stating that he is willing to continue to work with stakeholders, but banks and financial institutions will continue to be the bill’s target given the ease with which the three million Wells Fargo fake accounts were created. The bill passed 26-13.

Provisional Drivers License Legislation Advances To Senate

AB 63 (Frazier, Dem-Fairfield) was approved by the Assembly on Thursday. It expands the Brady-Jared Teen Driver Safety Act of 1997, which establishes a provisional drivers’ license (PDL) program for licenses issued to drivers at least 16 years of age but under 18 years. After holding a learner's permit for six months and completing driver education, behind-the-wheel training, and 50 hours of supervised driving, a person who is at least 16 years old may apply to the Department of Motor Vehicles for a PDL.

During the first 12 months after a PDL is issued, a licensee is prohibited from driving between the hours of 11pm and 5am and transporting passengers who are under 21 years of age, unless he or she is accompanied and supervised by a licensed driver or certified driving instructor, with certain exceptions. These exceptions include driving to and from school with a note from a principal or dean, driving to and from employment with a note from an employer, and transporting immediate family members when existing transportation facilities are inadequate with a note from the driver's parent or guardian. After the 12 months elapse, the restrictions are lifted, and the driver must avoid accumulating negligent operator violation points.

AB 63 extends the PDL program to apply to all first-time drivers between 16 and 21 years of age. After completing the one-year period of restrictions licensee's driving privilege that begins when the PDL is issued, the licensee would then be required to comply with the limits on the number of negligent operator violation points a driver can accumulate until the licensee turns 21, instead of when he or she turns 18 as is required under existing law. This bill would not extend or alter the restrictions placed upon first-time teen drivers during their first 12 months of licensure.

The measure does loosen the restrictions placed upon drivers who are 18, 19, and 20 years old during their first 12 months of holding a driver's license by allowing them to carry a school or work schedule instead of a signed note, and waiving the note altogether to transport immediate family members if existing transportation facilities are inadequate. With this bill, the author intends to provide more novice teen drivers with the opportunity to safely hone their driving skills while undergoing a provisional period in order to reduce older teen injuries and deaths from motor vehicle accidents.

AB 63 passed 47-21. Notable votes in favor include Republicans Jim Cunningham (San Luis Obispo), Brian Maienschein (San Diego), Randy Voepel (Santee), and Marie Waldron (Escondido). Democrats opposing of note include Sabrina Cervantes (Corona), Rocky Chavez (Oceanside), Adam Gray (Merced), Jacqui Irwin (Thousand Oaks), Marc Levine (Marin), and Mark Stone (Scotts Valley).

Single-Payer Bill Clears Senate, Moves to Assembly

This week the Senate passed SB 562, the single-payer healthcare bill titled the Healthy California Act, on a party line vote of 24-14. The bill will now head to the Assembly, where it must pass through committees and face approval on the floor.

SB 562 would create a universal healthcare system for all Californians at a cost of $400 to $500 billion for the state. As of yet no source of funding has been identified for the price tag that is larger than the entire California budget, a fact that has been decried by the opponents of the bill and that the supporters claim will be addressed in the Assembly. If the bill is amended to create a funding mechanism in the Assembly, it will need to return to the Senate floor for a two-thirds vote, instead of the simple majority vote it received this time.

The bill received nearly unanimous Democratic support, although there were a handful of abstentions and one no vote. Senators Roth, Pan, and Hueso all abstained from voting on the bill, with Senator Richard Pan stating that even though he had worked to create a universal healthcare system for Massachusetts the lack of funding for this bill meant that he could not vote on it in good conscience. Senator Ben Hueso echoed his concerns, stating on the floor that “We are not debating where the health savings will come from. None of that is in the bill. This is the Senate kicking the can down the road to the Assembly and asking the Assembly to fill in the rest of the blanks.” Senator Steve Glazer was the lone Democratic no vote.

Conversely, Republican Senators were unanimous in the rejection of the bill. While many stated that they agreed in principle that healthcare reform was necessary for California, they objected strenuously to the form it would take under SB 562. Senator Ted Gaines stated that "I could not think of a more effective way to cripple the state financially than to charge ahead with what appears to be a reckless plan." Business groups and insurance companies are also strongly opposed to the bill, arguing that it will drastically increase taxes and costs for business, as well as effectively dismantling the entire insurance industry in California.

There are many questions that remain to be answered about single-payer healthcare in California, but nevertheless it appears to be moving forward at great speed through the Legislature. It is up to the Assembly to decide how the proposal that would radically change how healthcare functions in the state will be funded, and it remains to be seen how that funding will affect its support. Stay tuned.

Court of Appeals Rules Against FAIR Plan Association

This week, the Court of Appeal of the State of California ruled in favor of homeowner Marlene Garnes in the legal battle against California FAIR Plan Association over FAIR paying Garnes' claim of $320,549 for the cost to repair her home that was damaged by fire. California FAIR Plan Association is an insurance industry placement facility and joint reinsurance association created by the Legislature in 1968 to ensure that homeowners who live in high risk or otherwise uninsurable areas have access to basic property insurance.

Initially, FAIR denied Garnes' claim and instead only paid $75,000 determined by the fair market value of her property in 2011, a decision which contradicted Insurance Code Section 2051. The code states that under an open fire insurance policy that pays "actual cash value," as the Garnes' policy did, the actual cash value recovery is determined in one of two ways. For a "partial loss to the structure," the measure is "the amount it would cost the insured to repair, rebuild, or replace the thing lost or injured less a fair and reasonable deduction for physical depreciation" or "the policy limit, whichever is less."

And while the FAIR plan changed the terms of its insurance contracts to limit payments for repairs to the fair market value of the home, they failed to obtain approval of the Insurance Commissioner for this change. And since recent amendments to the California Insurance Code trumped policy provisions, the First District Court of Appeals ruled that the California FAIR Plan must pay a policyholder far in excess of its actual-cash-value policy requirements

In a press release praising the decision, the California Department of Insurance said, "Limiting payments for repairs to the fair market value of the home reduces payments for homeowners in lower income neighborhoods where home values are low – in effect discriminating against homeowners in lower income neighborhoods." The press release also quoted Dylan Shaffer, the attorney who represented the Garnes family in the litigation: "Since the passage of the Homeowners Bill of Rights in 2004, California insurers have used a variety of methods to cut back on paying claims. With the court's decision, the rule is now unmistakable: when a fire partially damages a home, insurers must pay the actual cost of repair."

Last year, the Department of Insurance asked the FAIR Plan to change the definition of "total loss" in its insurance policy form, and working closely and cooperatively with the Department of Insurance, the FAIR Plan made that and other significant changes to its policy form. The new form will be used on all new and renewal policies starting July 1, 2017.