NORWOOD & ASSOCIATES
This Week in Sacramento

June 23, 2017 Sacramento, California

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California Links

State Senate

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Fight Against Unfriendly Business Legislation Continues In Second House

The fight against measures that made it to the second house that do not contribute to job creation and economic growth continues in earnest. While bills to make it burdensome to conduct business in California are still alive, there are industry coalitions organized to resist passage. While only three, there are measures that are worthy of support, specifically to the insurance industry.

This week, the Assembly Labor Committee approved SB 63 (Jackson, Dem-Santa Barbara) to expand parental leave with a child to 12 weeks. Not only is this bill disruptive to the workplace and there is already significant leave law 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. Of note, although Assembly Member Kevin McCarty (Dem, Sacramento) voted for it, he questioned the reason it provides 12 weeks when Governor Jerry Brown last year vetoed the same bill that provided six additional weeks.

Regarding bills to be heard next week or shortly thereafter, AB 450 (Chiu, Dem-San Francisco) prohibits employers from providing federal immigration enforcement agents' access to the workplace without verifying a warrant is in place. The California Chamber of Commerce 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.

Another labor bill, AB 569 (Gonzalez-Fletcher, Dem-San Diego), prohibits discrimination against an employee for use of reproductive health medications. Despite this already being illegal under federal law, it has been awarded a hearing next Wednesday. Also next week, the Senate Labor Committee will take up AB 1008 (McCarty, Dem-Sacramento), which 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-led coalition is not relenting because of its significant risk to the business community.

SB 33 (Dodd, Dem-Davis), which previously directly impacted all of the insurance sector, but now only imperils individuals that sell annuities, allows a person alleging financial services fraud to avoid arbitration to resolve the dispute. This bill will be heard in the Assembly Judiciary Committee next week. The author introduced the measure in the wake of the Wells Fargo fake account setup scandal. The lobbying effort to narrow the language to more directly respond to a circumstance like the Wells Fargo debacle continues.

As reported on extensively, SB 562 (Lara, Dem-Bell Gardens) mandates everyone use a government-run healthcare system. The pricetag of the program is $400 billion. The entire California government annual budget is about $178 billion. With no way to pay for a single payer health system, it will eventually stall. But for now, it is pending in the Assembly but not referred to committee.

Another measure that has been introduced before which is of concern is SB 66 (Wieckowski, Dem-Fremont). The bill prohibits tax deductions related to punitive damage award payments. It will be heard next week. At one point, it appeared stalled in the Senate, but was approved at the eleventh hour. The fight against the bill has intensified now that it is in its second house.

While not calendared but also sponsored by the Legislature’s most prolific anti-employer legislation sponsor, Assembly Member Lorena Gonzalez-Fletcher, AB 1209, 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. This is the new hot topic to oppose across all industry sectors. The only option is to stop it on the Senate Floor because it will be approved by the Senate Labor and Appropriations Committees.

On the last uncalendared bill to make mention, AB 168 (Eggman, Dem-Stockton), the Ban the Box bill that prohibits employer inquiry of job applicant criminal history, the Chamber is not offering any concession beyond a deal on last year’s bill that did not get enacted.

Regarding a positive legislative development, AB 1460 (Dababneh, Dem-Encino), sponsored by Norwood Associates client, the Independent Insurance Agents & Brokers of California, updates 50-year old law to allow agents and brokers to use interstate banking services for premium deposit. Just as is the case in 47 other states, this bill allows use of customized banking services provided by financial institutions that have particular understanding of insurance products. The bill is one step from the Governor’s desk, and should be approved by the full Senate shortly.

Another positive legislative development is AB 1641 (Daly, Dem-Anaheim). This allows for new, innovative products for the nonadmitted insurance market. It is pending consideration by the Senate Insurance Committee, where it is expected to be approved in the coming weeks. The third bill worthy of support is SB 189 (Bradford, Dem-Compton). It allows public company executives or private company partners with at least 10% equity to be exempt from workers' compensation. It is expected to meet the approval of the Assembly Insurance Committee when it is heard on July 12.

COIN And A Brief Update On Other Insurance Legislation Developments

Property and casualty insurer lobbyists had the Community Organized Investment Network (COIN) program high on its list of conversation this week, largely because the California Department of Insurance (CDI) believes the lack of related tax credit inclusion in the State Budget 2017-2018 that passed the Assembly and Senate puts the program on its last legs. The reason the tax credit reauthorization was so critical to COIN's existence is that administering it was the primary CDI function in this area. Essentially, if CDI is not overseeing the tax credit, the Department has no COIN staff justification.

CDI is inclined to blame insurers for what it claims is a lack of lobbying support for the COIN tax credit in the budget, but the reality is the Department attempted to add onerous data call authority that tanked the program. COIN 2.0 is potentially going to be a return to its original form, which is CDI sending insurer bulletins of community investment opportunities that will be of a voluntary nature. There is an opportunity for a new gubernatorial administration to lead and take credit in this area if positioned correctly. However, a new liberal-leaning insurance commissioner may embrace a more mandate-oriented approach.

Also of note, the organization, IMPACT Community Capital, which is a for-profit corporation founded by leading insurers to promote socially responsible investments in underserved communities, remains active and productive and it overlaps with COIN's function. Norwood client Pacific Life is key member of this organization.

In terms of other legislation, SB 632 (Monning, Dem-Carmel), 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 in the Assembly Judiciary Committee. Given its inevitable passage in committee, insurers will seek Assembly Floor amendments. This will slow its movement. The hope is to keep the ayes on the bill at 30-31. Surprisingly, Assembly Member David Chiu (Dem-San Francisco), who has expressed support for keeping the integrity of the litigation process, will potentially carry industry amendments.

On SB 488 (Bradford, Dem-Compton), the author's staff is supportive of moving forward sooner rather than later with hopefully Equality California on board. The current bill form allows insurer board of directors diversity reporting to be voluntary and keeping the diversity supplier investment requirement. The idea is to head off CDI making board diversity reporting mandatory. The insurance industry is also working to improve SB 569 (Monning, Dem-Carmel) regarding insurer homeowner policyholder notification to out of household family contacts for those in disaster areas. Key staff on the bill has agreed to amendments that soften the bill, but not fix all concerns. Finally, on how SB 179's (Atkins, Dem-San Diego) impact on nonbinary policyholder rates, the insurance industry will simply provide the lowest rate that may apply, male or female.

Conservative Assembly Member Announces Candidacy for Governor

This week, Republican Assembly Member Travis Allen from Orange County announced that he plans to run for California governor in 2018. Allen is entering an already crowded field of contenders, with several Democrats already out as front-runners and other Republicans already part of the race. The conservative Assembly Member has made something of a name for himself in recent years with outspoken criticism of the Democratic Party and the way the state is currently run. That penchant for pointed statements has carried through to his statement announcing his candidacy, which said "The California Democratic Party has offered solutions that don't work and has increasingly become socialist in its nature, leaving Reagan Democrats and other blue collar Californians far behind."

Last December, Allen gained national attention when he wrote a controversial opinion piece titled "California Democrats legalize child prostitution" in which he stated that by decriminalizing child prostitution for the victims of sex trafficking, the state had thereby legalized it for the perpetrators. Many fact checkers refuted this claim however, pointing out that while minors could no longer be arrested for soliciting sex, solicitors and the traffickers could still be charged. Allen stood by his incorrect statement however, saying that "When I saw that, I thought it was evil."

Allen seeks to gain support for his fierce opposition to the recently-passed gas tax, the repeal effort for which he is "100 percent confident" will make the ballot. He also seeks to differentiate himself from the other major Republican in the race John Cox with the depth of his policy issues, which he states that Cox does not have. However some worry that if the Republicans do not choose a single candidate early in the race, the splitting of their vote will lead to them having no chance whatsoever against the powerful Democratic front runners that have already emerged. Some are already likening the Republican race to the primaries between Neel Kashkari and Tim Donnelly three years ago, a closely fought race that ended with establishment favorite Kashkari losing badly to Governor Brown. While it remains to be seen who will emerge as the favorite for the upcoming election, it already promises to be a busy and fascinating race. Stay tuned.

US Senate Releases Replacement Of Affordable Care Act; Implications To California Significant

Senate Republicans' healthcare bill to replace the Affordable Care Act, released Thursday, would lead to millions of Californians losing health coverage, paying more for insurance, or seeing their benefits scaled back, according to health policy experts. The measure imposes steep cuts in the Medi-Cal insurance program that provides benefits to 14 million Californians – nearly a third of the state's population. And, it would reduce federal subsidies that help 1.5 million residents buy health insurance on the state's exchange, Covered California.

The bill's proponents say the changes would give states more flexibility, in part because a state could choose to require Medicaid beneficiaries to show they are working or trying to find a job. The measure could benefit young, healthy consumers in the short run because their insurance premiums would largely stay the same.

The biggest hit, experts said, would be to those who receive healthcare through Medi-Cal, California's joint federal-state Medicaid insurance program for the poor. The Affordable Care Act funnels billions in extra federal dollars to Medi-Cal, allowing California to cover four million people who did not have insurance before the law took effect in 2014. Under the Senate plan, those extra federal dollars would start getting phased out in 2021.

The bill would also cap federal funding for the entire Medicaid program in the long run – a drastic change from its current open-ended funding mechanism that takes into account rising medication costs and other factors. California would receive a set amount of federal money per Medi-Cal enrollee that, after 2025, would grow each year in accordance with the overall Consumer Price Index (CPI). That growth rate is slower than that of the medical care component of CPI, which is what was proposed in the US House version for Medicaid spending. The proposed changes would probably force the state either to cover fewer people or reduce benefits for all Medi-Cal beneficiaries. Half of all children in California are covered by Medi-Cal.

Even if the Senate bill passes, it would have to be reconciled with the healthcare measure the House passed last month. There are differences between the two. Unlike the House plan, the Senate measure mostly keeps intact the general structure of Affordable Care Act subsidies. In California, this means that subsidies that help residents buy plans through Covered California would continue. However, under the Senate plan, fewer people would be eligible to receive the aid. That is because the Senate bill changes income eligibility for the subsidies from 400% of the federal poverty level to 350% — leaving tens of thousands of individuals who earn between $42,000 and $48,000 a year without financial assistance.

And those who would continue receiving assistance would get smaller subsidies because of a proposed change in the way the value of the plans are calculated. This means many Covered California consumers would be enrolled in health plans with higher deductibles — leaving them with potentially thousands of dollars more per year in out-of-pocket costs.

The Senate measure also aims to end a critical source of federal funding created under the Affordable Care Act, called cost-sharing subsidies, which are separate from the subsidies people receive to pay for their insurance premiums. This second stream of money helps the poorest people who receive premium subsidies pay for out-of-pocket costs like copays, prescription drugs, and deductibles. The federal government spends $7 billion a year on these payments nationwide, and about $750 million of it goes to help 680,000 low-income residents of California. Under the Senate plan, these payments would end after 2019.