NORWOOD & ASSOCIATES
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California Links

**State Senate**

**State Assembly**

**Department of Insurance**

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

On Thursday, the Assembly concurred in Senate amendments to permit California insurance agents and brokers to utilize out of state banking services for deposit of premium dollars. AB 1460 (Dababneh-Dem, Encino), now on Governor Jerry Brown's desk, was passed in every phase of the legislative process without any opposition from legislators or the public.

AB 1460 is sponsored by Norwood Associates client, the Independent Insurance Agents & Brokers of California (IIABCal). It allows agents or brokers to maintain his or her fiduciary account, required by law, in any state or federally chartered bank or financial institution. Current law enacted in 1959 requires such licensee to maintain his or her fiduciary account in a California bank or savings and loan association. All but three states allow interstate insurance agency banking.

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 seek 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 proposes 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.

With the Governor's anticipated approval of this measure, 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. While not necessarily intuitive, 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.

## Senate Labor Committee Approves Several Anti-Employer Bills

On Wednesday, SB 63 (Jackson, Dem-Santa Barbara) was approved by the Senate Labor Committee. It allows an employee with more than 12 months of service with the employer to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. The author testified that there are nine states ahead of California on parental leave allowance, claiming babies are being neglected, given the need for two parent incomes. Senator Hannah Beth Jackson reported that the National Federation of Independent Business does not consider parental leave litigation a primary concern, as it is 68th on its list of priorities for reform.

The opposition, the California Chamber of Commerce, pointed out that half of parental leave legal complaints seek use of the court system, which are so costly these could put a small business out of business. In addition, most employers already provide more leave than is required under the law to be competitive in the employment marketplace. Although the author has rejected, Governor Jerry Brown supports the Chamber amendment to require parental leave complaints be handled in mediation.

Of additional note, the National Conference of State Legislatures counts California as one of the most family friendly states; and, in the last several years, there have been 175 changes to state Labor Code.

The Senate Labor Committee also passed AB 1008 (McCarty, Dem-Sacramento), which provides that it is an unlawful employment practice under the Fair Employment and Housing Act for an employer to include on any application for employment any question that seeks the disclosure of an applicant's criminal history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate

specified information related to prior criminal convictions. This perennial legislation is a labor organization initiative. The Chamber of Commerce with the help of its large employer community coalition members continue to educate legislators about the safety issues that this creates to company employees and customers.

Another burdensome bill was passed by the Senate Labor Committee. 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. Extensive testimony was taken, and a long line of support and opposition provided comment. On behalf of several clients, John Norwood registered opposition.

The bill 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. Fortunately, AB 450 needs to be referred to the Senate Appropriations Committee because it has been determined to have some implementation costs to state and / or local government. However, it is unclear what the bill has been scored at.

Lastly, regarding AB 569, by Assembly Member Lorena Gonzalez-Fletcher (Dem-San Diego), this bill prohibits an employer from taking any adverse employment action against an employee based on his or her reproductive healthcare decisions or the use of any drug related to reproductive health. This bill does nothing; any employer behavior along these lines is already illegal. When this happens, it is keyed political driven to gain attention from a voting base. The bill also passed the Senate Labor Committee. It has been referred to the Senate Appropriations Committee, too.

## Assembly Committee Advances Senate Legislation To Allow Some To Avoid Arbitration

California has taken another step toward allowing people to sue financial institutions for fraud, rather than letting banks force customers to settle disputes in arbitration, as a bill inspired by last year's Wells Fargo scandal passed a key Assembly committee. Of concern is the bill allows avoiding forced arbitration in cases of alleged annuity sales fraud. Annuities are caught in the bill's definition of financial services provider. SB 33 (Dodd, Dem-Vacaville) has already passed the Senate. The full Assembly will vote on the measure at the end of August, after the summer recess.

Under the bill, judges could override contract clauses that require customers to settle disputes through arbitration in cases where a bank commits fraud using customers' personal information. Arbitration clauses, which have become standard practice since a 2011 US

Supreme Court decision, make consumers agree not to sue in the future as a condition of purchasing products or services.

Clauses inserted into Wells Fargo account-opening agreements have blocked customers from taking the third-largest US bank to court over last year's revelations that it opened millions of accounts without customer knowledge. Regulators fined the bank $190 million for the alleged deceit, of which $5 million was to be paid to customers. The Consumer Attorneys of California backs the state's legislation, and said customers have been trying to sue over the issue since 2013, three years before regulators acted. "By forcing customers into secretive arbitration, Wells Fargo kept the scandal out of public view, allowing the fraud to mushroom while the bank evaded full accountability," it said in a statement.

As is the case each session plaintiffs lawyers sponsor, and many times get through the liberal Legislature, bills that provide more opportunity to create class action lawsuits. Class actions rarely lead to a better consumer outcome than arbitration – evidenced by the following example: there is a recent case in which it was alleged LinkedIn wrongfully used members' contact information. The case settled for $13 million; the funds were divided as follows: $1,500 for the named plaintiffs; no less than $10 per class member; and $3.25 million for attorney's fees and costs. Republicans and others point out class actions only benefit lawyers who reap high fees and suck up time and money.

## Universal Health Bill Pulled, Drawing Praise and Backlash

Late last week, Assembly Speaker Anthony Rendon announced that SB 562, the bill authored by Senator Ricardo Lara to create a universal healthcare system in California, was going to be held for the rest of the year. Calling the bill "woefully incomplete," he stated that the bill was going to be left in the Assembly Rules Committee "until further notice" so that legislators could have time to fill in the many gaps that still exist in the legislation. In his announcement, Speaker Rendon said that "Even senators who voted for Senate Bill 562 noted there are potentially fatal flaws in the bill, including the fact that it does not address many serious issues, such as financing, delivery of care, cost controls, or the realities of need action by the Trump administration and voters to make SB 562 a genuine piece of legislation."

Up until last week SB 562 had moved quickly through the Senate despite the many criticisms of a bill that would fundamentally change the way California healthcare functions without answering a litany of essential questions. A legislative analysis of the bill found that it would cost the state $400 billion to implement, an amount that is greater than the annual California budget and even more alarmingly was not provided for in any way by the legislation. Even as it was working its way through the Senate, Senator Ricardo Lara acknowledged that the bill was a work in progress, although little progress appeared to have been made as it drew closer to approval.

However Speaker Rendon's decision to pull the bill has drawn sharp criticism from many progressive sources who had pinned hopes for universal healthcare throughout the United States on the success of SB 562. The California Nurses Association, which had been one of the strongest and most vocals supporters of the bill, called his decision a "cowardly act," organized protests outside of his district office, and even threatened to recall the Speaker if he does not decide to take up the bill after all. It has even reported that the Speaker has received death threats over social media, with some referencing the recent shooting of members of Congress at a baseball practice. In response Rendon and others have called on the supporters of SB 562 to tone down their rhetoric, with the Speaker stating that "What's really bothersome for me is to read some of the threads and some of the comments from people who really believe that this bill would have actually provided services. What's disappointing is that those folks seem to have been sold a bill of goods."

## Campaign to Recall Senator Josh Newman Qualifies for Ballot

This week, an effort to recall freshman Senator Josh Newman from Fullerton received enough signatures to qualify for the November ballot. The California Republican Party announced that it had turned in 85,000 signatures from voters to recall Newman, which is 20,000 more signatures than is necessary to force a recall vote. The movement to recall the legislator came about following his votes on the transportation package earlier in the year that included an increase on gas taxes in California. Republican radio personality Carl DeMaio is leading the recall effort and claims that Newman placed the decisive vote for the gas tax, stating that "Josh Newman refuses to accept accountability for his disastrous vote to raise the car and gas tax."

However this week supporters of Senator Newman announced that they were filing a lawsuit in response to the recall, claiming that those who were leading the effort were violating election law and misleading voters. The lawsuit states that the recall supporters are falsely claiming to voters that recalling Newman will reverse the decision on the gas tax and keep it from going into effect. Lawyers who are working for Newman's supporters claim that the violations they allege are enough to halt the recall process altogether, as the signatures that were gathered were gained under false pretenses. "This suit is about nothing less than the integrity of our election process; a recall election simply should not be certified when signatures were gathered based on laws to voters."

The attempt to recall Senator Newman is already promising to be a contentious and expensive battle, with the California Republican Party supporting the effort as an attempt to take away the Democratic supermajority that currently exists in the Senate. This week Governor Jerry Brown also signed a bill that changed the rules governing recall elections that was written as a response to the allegations of improper signature gathering, a bill that garnered sharp criticism from Republicans who claim that the Democrats are using legislation

to manipulate the election process in their favor. It is yet unknown how the recall election will play out, or whether it will come to the ballot in the first place, but it already promises to have lasting consequences for both the makeup of the California Senate and the electoral process.

## Chamber Of Commerce & Workers Compensation Groups Weigh In On Utilization Review Lawsuit

This week, the California Chamber of Commerce, California Workers Compensation Institute (CWCI), and California Coalition on Workers Compensation (CWCC) filed a joint amicus brief in *Stevens v. Workers Compensation Appeals Board*, the long-running court case that challenged the constitutionality of the utilization review (UR) / independent medical review (IMR) process used to resolve workers' compensation medical disputes. In the Stevens case, the applicant argued that the UR/IMR process used to deny her request for a home health aide violated her due process protections under the US Constitution, so the denial should be overturned.

In 2015, the First District Court of Appeal ruled that the UR/IMR process was a valid exercise of the state Legislature's plenary power over the workers' compensation system, and thus did not violate constitutional due process protections. Subsequent appeals filed by the applicant were denied by the California Supreme Court and the US Supreme Court in 2016. In its ruling, however, the appeals court had remanded the case to the Workers Compensation Appeals Board (WCAB) to consider whether the applicant's request for a home health aide had been denied without authority, and the WCAB finally issued a decision after remittitur last month. In that decision, rather than remanding the case for a new IMR, the WCAB invalidated the 2009 Medical Treatment Utilization Schedule (MTUS) guidelines applicable to the case. Being newly aggrieved, the State Compensation Insurance Fund, the defendant in the case, filed a petition for reconsideration on June 13.

In their joint amicus brief filed on Thursday, the Chamber, CWCI, and the CCWC, contend that there was no legal basis for the WCAB to have invalidated the MTUS; WCAB exceeded its authority when it invalidated the MTUS as the binding 2015 court of appeal decision did not include an option for the board to engage in a wholesale nullification of the MTUS guidelines that are presumptively correct on the issue of extent and scope of medical treatment; and, the WCAB should have simply followed the explicit instructions from the court of appeal to conclude that the IMR determination had been adopted without authority, and then remanded the case for the proper remedy of a new independent medical review.