NORWOOD & ASSOCIATES
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California Links

State Senate

State Assembly

Department of Insurance

Important Senate Committee Approves Bill To Allow Insurance Agents To Utilize Banking Services Across State Lines

On Wednesday, AB 1460 – Insurance Premium Trust Accounts was approved on a unanimous, bipartisan vote by the Senate Insurance, Banking and Financial Institutions. The bill is sponsored by the Independent Insurance Agents & Brokers of California, along with InsurBanc. While it was referred to the Senate Rules Committee to determine the measure's next jurisdictional step, following the precedent of the Assembly it would be directed to the full Senate. Previously, it was approved by the Assembly Banking and Finance Committee and the full Assembly by unanimous consent.

The bill is authored by Assembly Banking and Finance Committee Chair Matthew Dababneh (Dem-Encino). Assembly Member Dababneh and John Norwood presented the legislation to the Committee. The two described that the legislation authorizes insurance agents and brokers to use interstate banking services for deposit of premiums. Independent agents are seeking additional, safe options to maintain premium funds from financial institutions that provide specialty services to the insurance sector.

State law, which is over 50 years old, currently requires use of California-domiciled trust accounts by agents and brokers. Today, 47 states in the nation allow use of trust accounts that are administered out of state. Assembly Member Dababneh explained that this financial service is past due in our state, particularly since the technology utilized is proven and developed right here in California, specifically Silicon Valley. Furthermore, under this bill, the banks in question are required to be federally chartered, insured by the Federal Deposit Insurance Corporation, and must be willing to use the California court system to resolve any disputes.

There was no public comment in opposition, and the California Department of Insurance thanked the sponsors for their cooperative approach to technical changes requested.

Workers Compensation Bill Update; Halfway Mark Of Legislative Session

Secretary of State

Official Legislative Information

The following resets the agenda for the remaining months of the 2017 legislative session, acknowledging that much work needs to be done on many workers' compensation bills before being sent to Governor Jerry Brown.

AB 44 (Reyes, Dem-San Bernardino), addressing employer and insurer responses to acts of domestic terrorism, is now set for hearing in the Senate Labor and Industrial Relations Committee on June 14. This bill was significantly amended in the Assembly Insurance Committee and passed the Assembly on consent. The amended version was not what the author or its supporters were looking for in this bill, and there is a likelihood that there may be further efforts to amend it to be more reflective of the bill as introduced. As introduced, the bill restricted the use of utilization review and independent medical review for injuries arising from acts of terrorism or workplace violence.

AB 315 (Wood, Dem-Healdsburg) develops a regulatory structure for pharmacy benefit managers (PBM) within the Department of Managed Healthcare. The bill also sets forth certain duties and disclosures for PBMs. While the bill passed the Assembly Appropriations Committee without opposition, the PBM industry and healthcare plan industry are opposed. This is a complex issue, made even more complicated by the continued consolidation within the PBM industry. PBMs play a significant role in the workers' compensation system, as evidenced by the draft prescription drug formulary being developed by the Department of Industrial Relations, Division of Workers Compensation.

How this legislation would impact the PBM relationships within the workers' compensation system is uncertain, but should this bill in its current or substantially similar form get signed, it will affect drug costs in the system. AB 315 is pending referral in the Senate.

AB 553 (Daly, Dem-Anaheim) requires the state Return to Work Fund to expend the full $120 million allocated to it annually. The Fund provides injured workers compensation in cases where there is a disproportional difference between permanent disability ratings and loss of future earning capacity. The bill passed the Assembly Appropriations Committee on a 12-3 vote and the Assembly Floor 56-18.

AB 570 (Gonzales-Fletcher, Dem-San Diego) prohibits the use of pregnancy, childbirth, or other medical conditions related to pregnancy or childbirth, in the calculation of permanent disability benefits for injuries occurring after January 1, 2018. This is the third iteration of legislation limiting the ability to apportion against certain disabilities that do not arise out of the workplace. The bill will likely will go to Governor Brown again, where its fate will be determined.

AB 978 (Limón, Dem-Santa Barbara) expands the people who may request a copy of an employer's injury and illness prevention plan on behalf of an employee and must provide that copy in no later than 10 business days. The bill also deems a recognized or certified collective bargaining agent to be an authorized representative of current employees. The bill passed in the Assembly and is awaiting assignment to the appropriate committee in the Senate.

AB 996 (Cunningham, Rep-San Luis Obispo) requires the Contractors State Licensing Board (CSLB) to make improvements to its website to allow the monitoring of a licensee's renewal of a certificate of worker's compensation insurance or certification of self-insurance that is pending before the CSLB. The bill passed the Assembly Appropriations Committee unanimously and should be sent to the Senate soon.

AB 1422 (Daly, Dem-Anaheim) addresses an ambiguity in enacted SB 1160 (Mendoza, 2016) and AB 1244 (Gray, 2016) regarding the duration of a stay on liens and clarifies that in the event criminal proceedings result in a conviction, the stay remains in effect from the date of the conviction until the special lien adjudication procedures are completed. This bill passed the Assembly and is awaiting a hearing in the Senate Labor and Industrial Relations Committee.

AB 1697 (Insurance Committee) creates an anti-fraud support unit within the Division of Workers Compensation. This bill passed the Assembly and is awaiting a hearing in the Senate Labor and Industrial Relations Committee. This is a priority for the Department of Industrial Relations and should easily get to the Governor.

SB 189 (Bradford, Dem-Compton) represents the effort to clean up last year's Assembly Bill 2883 (Daly) relating to the process whereby corporate officers, general partners, and managers of limited liability companies may waive their participation in the workers' compensation system. AB 2883 was something of a disruptive event when it became law, and the effort to make its provisions less disruptive also appears to be complicated. The bill is now before the Assembly Insurance Committee.

SB 430 (Insurance Committee) allows the California Insurance Guarantee Association (CIGA), a Norwood Associates client, express approval of the Insurance Commissioner, to reinsure with or transfer liabilities to a California admitted and authorized reinsurer or other reinsurer if approved by the Commissioner. The bill passed the Senate unanimously and is now in the Assembly. This will improve the ability of CIGA to manage its current claims liabilities and mitigate assessments in the future charged to insured employers. This legislation will be heard in the Assembly Insurance Committee on July 12.

SB 489 (Bradford) is one of two potential vehicles for additional clean-up to last year's SB 1160. SB 489 currently extends the time for hospitals to bill for services that would come within the 30-day no prospective utilization review provisions that will be effective January 1, 2018. SB 489 passed the Senate
unanimously and is now in the Assembly Insurance Committee.

SB 617 (Bradford) requires the Division of Workers Compensation to issue annual reports to physicians who treat 30 or more injured workers annually, including information regarding utilization review and independent medical review for that physician. This information will likely come both from the workers' compensation information system as identified in the bill and the utilization review database to be constructed under the mandate in SB 1160 (Mendoza, 2016). The bill also requires the Division to issue a report on potential alternatives to the current fee-for-service schedule. SB 617 passed the Senate Appropriations Committee

unanimously and is now on the Senate Floor awaiting assignment to the appropriate policy committee in the Assembly.

Berkshire Hathaway Settles for Lower Rates in "Bait and Switch" Suit

This week, California Insurance Commissioner Dave Jones announced that the insurer Berkshire Hathaway had reached a settlement in a suit over "bait and switch" marketing tactics. As part of the settlement the insurer has agreed to lower rates for certain workers' compensation policies and make other changes to their terms of coverage. The decision followed over a year of legal wrangling, which began in May of 2016 after a complaint from a small business owner and the decision of an administrative law judge led the Commissioner to determine that the California Insurance Company and Applied Underwriters units of Berkshire Hathaway were selling workers' compensation products with illegal side agreements that modified the obligations of the parties.

A CDI administrative law judge ruled that the EquityComp program, as applied to one policyholder, Shasta Linen Supply, was illegal to the extent that the carrier failed to file with, and receive advance approval of, CDI to utilize a collateral Reinsurance Participation Agreement. Unlike traditional guaranteed-cost workers' compensation policies, which establish a base premium that is generally unaffected by losses, the profit-sharing methodology of the EquityComp policy can result in significant credits, or substantial additional payments, over a three-year period. The administrative law judge's decision in that case was "adopted" as legal precedent by the Insurance Commissioner, and CDI announced it intended to seek a cease-and-desist order that, if granted, would have prohibited the insurer from selling policies like the one Shasta Linen Supply purchased.

In their press release the Department stated, "Even though the Commissioner has limited authority over the rates and product features of workers' compensation, Reinsurance Participation Agreements do require review by the Department of Insurance and approval. The Berkshire Hathaway companies did not obtain this approval, and used inappropriate tactics such as obscuring the methods for determining premiums, deposits, and other payments. The terms of the settlement state that Berkshire Hathaway will revise their rates downward as well as increasing the disclosure on how those rates are determined, and the sale of these policies will be limited to businesses that can absorb the risk."

Regarding the settlement, Commissioner Jones stated that "This is a significant victory in protecting California businesses from sophisticated bait and switch marketing tactics. We have gone to the limit of our authority over workers' compensation insurance products in winning concessions that eliminate oppressive contract terms, such as the insurer requiring arbitration in the British Virgin Islands."

However, the decision by the Commissioner does not mean that the Applied Underwriters polices are void, or that employers with its policies were in violation of the laws requiring workers' compensation insurance coverage. Nor does it require brokers or policyholders to effect mid-term or any other policy cancellations. What the order does mean is that the

decision in the Shasta Linen Supply case will be treated as legal authority and cited in other cases with identical or similar facts.

Six "Job Killer" Bills Move to Second House

Last Friday was the deadline for bills to move from their houses of origin on to the second house, leading to a flurry of activity passing and halting bills in both the Assembly and Senate. After the deadline had passed, six bills designated as "job killers" by the California Chamber of Commerce advanced, while three were stopped on the floors of their house of origin. Summaries of the bills stopped on the floor and the ones that advanced are as follows:

Job Killers Stopped

SB 705 (Allen; D-Santa Monica) would have prohibited food vendors from using take-out food containers made from polystyrene foam. The bill was placed on the Senate Inactive File by Senator Ben Allen where it will remain and will be eligible for consideration in 2018.

SB 567 (Lara; D-Bell Gardens) would have proposed multiple tax hikes on state employers. The bill targeted family-owned businesses that transfer the business upon death to other family members. SB 567 also sought to eliminate the current deduction allowed for compensation paid to executive officers for achieving performance-based goals. Senator Ricardo Lara moved the bill to the Senate Inactive File and it may be considered in 2018.

AB 1576 (Levine; D-San Rafael) was never brought up for a vote on the Assembly Floor. The bill proposed to significantly amend the Gender Tax Repeal Act of 1998 so that businesses could easily have been sued for a consumer's assertion that there was a price difference for substantially similar goods due to the gender of the intended user. The bill would have required businesses to settle consumer complaints with a minimum of $4,000 in damages or face further costly litigation.

Job Killers in Second House

ARBITRATION DISCRIMINATION

SB 33 (Dodd; D-Napa) unfairly discriminates against arbitration agreements contained in consumer contracts for goods or services with a financial institution, as broadly defined, which is likely preempted by the Federal Arbitration Act and will lead to confusion and unnecessary litigation. The bill has been amended to remove its application to most insurance entities, but would still apply to those companies, agents and brokers with a securities license. To Assembly.

SB 538 (Monning; D-Carmel) unfairly and unlawfully discriminates against arbitration agreements by restricting the formation of antitrust arbitration agreements in hospital

contracts, leading to costly litigation over preemption by the Federal Arbitration Act. To Assembly

INCREASED LABOR COSTS

AB 1209 (Gonzalez Fletcher; D-San Diego) imposes a mandate on California employers to collect data on the mean and median salaries paid to men and women under the same job title or description without also considering any bona fide reason for differences in compensation, to publicly shame California employers and expose them to costly litigation for alleged wage disparity where no violation of the equal pay law exists. To Senate.

SB 63 (Jackson; D-Santa Barbara) unduly burdens and increases costs of small employers with as few as 20 employees by requiring 12 weeks of protected employee leave for child bonding and exposes them to the threat of costly litigation. To Assembly.

SB 562 (Lara; D-Bell Gardens) creates a new single-payer government-run, multibillion-dollar health care system financed by an unspecified and undeveloped "revenue plan" which will penalize responsible employers and individuals and result in significant new taxes on all Californians and California businesses. To Assembly.

INCREASED UNNECESSARY LITIGATION COSTS

SB 49 (de León; D-Los Angeles) creates uncertainty for businesses with respect to the federal environmental standards proposed to be incorporated into California law if backsliding occurs at the federal level and the standards/requirements to be adopted by State agencies, and increases the potential for costly litigation by creating private rights of action under California law when certain events occur. To Assembly.

Updates to Self-Driving Car Guidelines Coming

It is expected that President Donald Trump's administration will release new guidelines for autonomous vehicles in coming months in response to calls from automakers to eliminate the barriers against autonomous vehicles on the nation's roads. The U.S. Department of Transportation announced this week that "The pressure is mounting for the federal government to do something." However, U.S. Transportation Secretary Elaine Chao also cautioned when she made the announcement that the federal government should be careful when it comes to creating binding rules on autonomous vehicles. "We don't want rules that impede future technological advances," Chao said.

It is not yet known what form these new guidelines might take, but the pressure from technology companies and automakers has tended towards more a more concrete regulations so that manufacturers can follow a single set of rules to certify safety. Automakers such as Ford have indicated that both the hardware and software for self-driving cars will be ready as soon as 2021, but other issues may stand in the way of autonomous vehicles reaching the road. A lack of defined regulations and safety protocols currently stand in the way, an issue that may be addressed in the forthcoming guidelines.