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State Senate

State Assembly

**Department of
Insurance**

Governor Jerry Brown Acts On Many New Insurance Related Measures

AB 63 (Frazier, Dem-Fairfield) Provisional Drivers Licenses: Vetoed By Governor

During the first 12 months after issuance of a provisional license, existing law prohibits the licensee from driving between the hours of 11pm and 5am and transporting passengers who are under 20 years of age. Current law provides limited exceptions to these restrictions under which a licensee is authorized to drive. This bill, commencing January 1, 2020, expands the scope of the provisional licensing program by extending the applicable age range for the program to 16 to under 21 years of age. The bill exempts active duty members of the California National Guard, the State Military Reserve, or the United States Armed Forces who are at least 18 years of age from the program.

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. Governor Jerry Brown vetoed this bill because its provisions create a burden on a segment of adult Californians that are no longer seen as a minor in the eyes of the law.

AB 407 (Bigelow R) Mennonite Group Liability Insurance: Signed By Governor

AB 407 adds insuring against liability to the insurable losses by nontraditional insurers, including religious organizations. Current law authorizes these organizations to insure against a list of losses, including vandalism or malicious mischief, vehicles owned or operated by the insured or by any tenant of premises, falling trees, burglary and theft, and mysterious disappearance.

Since the law was put on the books in 1949, Mennonite Aid Plan (MAP) has not been allowed to include liability coverage in its policies. However, in recent years, the need for liability coverage for homeowners purchasing fire insurance policies from MAP has increased. Separate standalone liability coverage is available, but it is becoming increasingly difficult to

Secretary of State

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obtain. Standalone coverage must be purchased as a separate policy from a different company and is becoming more difficult and more expensive to obtain.

AB 938 (Cooley, Dem-Rancho Cordova) Life Insurance & Annuity Reinsurance Authorization: Signed By Governor

AB 938 authorizes the Insurance Commissioner to adopt regulations applicable to reinsurance arrangements for certain life insurance policies, longterm care insurance policies, and annuities. The bill authorizes the Commissioner, with regard to credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting certain requirements, to adopt by regulation additional requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements for life insurance policies, longterm care insurance policies, and annuities, and the circumstances for which a credit would be reduced or eliminated.

The Department of Insurance sponsored this bill because it ensures that California law and practice is in line with the National Association of Insurance Commissioners model law regarding credit for reinsurance. According to the Reinsurance Association of America, AB 938 will make many transactions more transparent by changing rules that address the regulation of credit for reinsurance with respect to captive insurance transactions.

AB 1027 (Acosta, Rep-Santa Clarita) Motorcycle Drivers License Training: Signed By Governor

Current law authorizes the Department of Motor Vehicles to accept a certificate of satisfactory completion of an approved novice motorcyclist training program in lieu of a driving test on motorcycle license applications. AB 1027 (Acosta, Rep-Santa Clarita) authorizes the Department to accept any certificate of satisfactory completion of an approved motorcyclist training program in lieu of a driving test on motorcycle license applications. With regard to a person under 21 years of age, the bill instead requires completion of a novice motorcycle safety training program for issuance of a class M1 or M2 license or endorsement.

Norwood Associates submitted a letter in support of AB 1027, on behalf of its client Liberty Mutual Insurance Company. According to the author, currently, experienced and knowledgeable motorcycle riders are disincentivized from taking the three-day novice course that is well below their skill level and instead elect to pass the DMV driving test rather than improve their skillset. These individuals could better improve their riding abilities by taking an intermediate class to receive a DMV waiver. These riders would still be required to pass a written DMV motorcycle test.

AB 1398 (Kalra, Dem-San Jose) Annuity Cash Surrender: Signed By Governor

Current law governs annuities and, for those insurance contracts that provide cash surrender benefits, prescribes the cash surrender benefit available prior to maturity. Current law also

requires that no contract of annuity be issued for delivery unless it contains provisions that in the opinion of the Insurance Commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract. This bill requires the insurer, for an individual annuity contract issued on or after January 1, 2019, to return to the owner all moneys due for annuity contracts that are surrendered by the contract owner as expeditiously as possible after the request for surrender is received but no later than 45 days from the date of surrender.

According to the author, fixed indexed annuities have grown in popularity with seniors and others looking for higher gains without the risk of a variable annuity. In 2015, non-variable annuity sales reached a record-breaking \$54.5 billion, an increase of 13% from 2014. Under current law, insurers are not required to use the date a surrender request is received for these annuities to determine the surrender value. Many of these annuities are linked to financial markets and indices where a market value adjustment (MVA) factor is applied upon surrender. This factor fluctuates and can negatively affect the cash surrender value of an indexed annuity depending upon the date used to determine the MVA factor applied in the calculation by the insurer. Under these circumstances, insurers may have a financial incentive to use a market rate that benefits them, not the contract owner. As annuities become more common, the author maintains consumers are being harmed by inconsistent valuation standards and time limits when calculating surrender values.

AB 1422 (Daly, Dem-Anaheim) Workers Compensation Fraud: Signed By Governor

Current law governing workers' compensation requires a lien filed by or on behalf of a physician or provider of medical treatment services or medical-legal services, and any accrual of interest related to the lien, to be automatically stayed upon the filing of criminal charges against that physician or provider for an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs. Current law also makes the stay effective from the time of the filing of the charges until the disposition of the criminal proceedings.

This bill revises these provisions to require the liens of a physician, practitioner, or provider and the liens of an entity controlled by a physician, practitioner, or provider who has been charged with specified crimes involving the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system to be automatically stayed, along with any interest accruing, until disposition of the criminal proceedings.

AB 1641 (Daly, Dem-Anaheim) Surplus Line Insurance New Product Authorization: Signed By Governor

AB 1641 deems any member of the National Association of Registered Insurance Agents & Brokers (NARAB) licensed as a surplus line broker in his or her home state and paying the applicable California license fee to be a member of the Surplus Lines Association of California

(SLAC) after the SLAC recognizes in writing that NARAB is incorporated and operating under its board-adopted bylaws.

This is largely a conforming bill given federal legislation in 2015. Its key element is that it allows the export list to be expanded for new, innovative products for which a reasonable or adequate market among admitted insurers has not had time to develop. This bill was suggested to the author and supported by the Surplus Lines Association, a Norwood Associates client.

AB 1696 (Insurance Committee) Insurance Omnibus: Signed By Governor

This legislation, among other things, clarifies that an insurer and an insured may agree to use an alternate plan of care even if there is no provision in the longterm care insurance policy that specifically authorizes one, that neither an insurer nor an insured is obligated to negotiate an alternate plan of care, and that if an insurer does not accept an extra-contractual request for an alternate plan of care, the rejection is not a denial of a claim.

The Assembly Insurance Committee traditionally introduces an annual omnibus bill that allows the Department of Insurance to identify necessary updates to the Insurance Code, and negotiate consensus with all relevant stakeholders. This bill reflects the result of that process.

AB 1699 (Insurance Committee) Insurance Fees Update: Signed By Governor

Current law authorizes the Department of Insurance (DOI) to make a single annual increase or decrease in fees, on a fiscal year basis, at any time during the year, provided it is announced by a bulletin issued at least 90 days prior to the effective date of that increase or decrease. Current law authorizes that fee increase or decrease to be rescinded by a majority vote of both houses of the Legislature, not later than 60 days after the issuance of the bulletin announcing the increase or decrease. This bill updates the fee amounts in the Insurance Code to reflect the actual fees charged by DOI.

Many of the fee amounts have not been updated in decades and bear no resemblance to the current DOI schedule. The Assembly Insurance Committee has considered a number of bills in recent years that touched on fee amounts and discussions of those bills have been complicated by the confusion caused by the disparity between stated and actual fee amounts. Updating the fee amounts will increase transparency and reduce confusion in the Committee's future work.

SB 145 (Hill, Dem-San Mateo) Autonomous Vehicle Public Road Testing: Signed By Governor

Current law requires the Department of Motor Vehicles (DMV) to notify the Legislature if it receives an application from a manufacturer seeking approval to operate an autonomous vehicle (AV) capable of operating without the presence of a driver inside the vehicle. Current law additionally prohibits such an application from becoming effective any sooner than 180

days after that application is submitted. This bill repeals the requirement that the DMV notify the Legislature of receipt of an application seeking approval to operate an AV capable of operating without the presence of a driver inside the vehicle. The bill also repeals the requirement that the approval of such an application not be effective any sooner than 180 days after the date the application is submitted.

The DMV posts on its website extensive information on manufacturers holding permits to test AVs under its current regulatory framework and will likely continue that practice for driverless vehicles.

SB 272 (Mendoza, Dem-Artesia) State Compensation Insurance Fund Executive & Management

Appointments: Signed By Governor

Current law requires the State Compensation Insurance Fund Board of Directors to appoint a president, chief financial officer, chief operating officer, chief information technology officer, chief investment officer, chief risk officer, chief medical officer, chief actuarial officer, chief claims operations officer, chief of internal affairs, and general counsel. This bill authorizes the Board to appoint additional executive and management positions, including a chief underwriting officer and a pricing actuary.

According to the State Fund, the addition of these positions will reduce the organization's dependence on independent contractors, lower expenses, and further expand its ability to attract staff with industry experience and specific expertise to continue its business transformation and respond effectively to market demands and changes.

SB 374 (Newman, D-Fullerton) Federal Mental Health Insurance Coverage Requirement Conformity: Signed By Governor

This legislation requires large group, individual, and small group health insurance policies to provide all covered mental health and substance use disorder benefits in compliance with those provisions of federal law governing mental health parity.

Current federal law requires health insurers to comply with the Mental Health Parity and Addiction Equity Act (MHPAEA), but state law does not yet incorporate this requirement into the Insurance Code for some health insurance policies. The Insurance Code already requires health insurers to comply with MHPAEA, which applies only to non-grandfathered individual and small group health insurance policies. The purpose of this bill is to establish express state enforcement authority for MHPAEA with respect to all applicable health insurance coverage independent of the essential health benefit mandate.

SB 489 (Bradford, Dem-Inglewood) Workers Compensation Change of Physician: Signed By Governor

Current workers' compensation law requires every employer to establish a utilization review (UR) process and further requires that requests for payment for treatment be submitted to the employer, or its insurer or claims administrator, within 30 days of the date the service was provided. Current law also establishes an independent medical review process to resolve disputes over a UR review decision. This bill requires that in the case of emergency treatment services requests for payment for treatment be submitted to the employer, or its insurer or claims administrator, within 180 days of the date the service was provided.

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. The 180 day requirement in SB 489 is a standard that is already in place for both public and private payers, ensuring that injured workers receive emergency care and providers are appropriately paid for their services.

SB 569 (Monning, Dem-Monterey) Homeowner Insurance Policy Notification: Signed By Governor

SB 569 requires the Insurance Commissioner, in the case of a declaration of a disaster and at the request of a property owner, or the owner's legal representative, that is unable to identify the insurer for property located in the disaster area, to electronically provide the owner's name, any contact information provided to the Commissioner, and property location information to insurers who issue homeowners' fire insurance policies. The bill deems that information to be provided with the voluntary written consent of the owner or his or her legal representative.

According to the author, it is unacceptable for victims of a major disaster such as a wildfire, particularly if the homeowner has died in that fire, to then also be told they have no recourse when they cannot identify the insurer of the property. Insurers successfully limited much of the reporting burden in this measure, putting most coordinating and noticing responsibility on the Department of Insurance.

SB 764 (Moorlach, Rep-Costa Mesa) Real Estate Trust Fund Fidelity Insurance Requirement: Signed By Governor

Current law authorizes a real estate salesperson licensed to a real estate broker to withdraw funds from a trust fund account of the broker if specifically authorized in writing. Current law authorizes an unlicensed employee of the broker to withdraw funds from the broker's trust fund account if the broker has fidelity bond coverage equal to the maximum amount of the trust funds to which the unlicensed employee has access to at any time. This bill authorizes an unlicensed employee of the broker to withdraw funds if the broker has insurance coverage equal to the maximum amount of the trust funds to which the unlicensed employee has access to at any time.

SB 764 expands options available to real estate brokers to protect their client's money, the author states. It allows brokers to utilize an insurance policy to protect money being held in a client trust fund account. This is an expansion of current law which restricts protective options to only fidelity bonds. By allowing more options, brokers are given greater flexibility in organizing their businesses, the author contends.

SB 788 (Lara, Dem-Bell Gardens) Insurance Agent Individual Taxation Identification Number Requirement: Signed By Governor

SB 788 mandates the Insurance Commissioner require either a social security number or an individual taxpayer identification number (ITIN) 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 (DOI) does not accept an individual taxpayer identification number, which can be used by those persons not eligible to obtain an SSN to pay taxes.

A Little Hoover Commission report indicated this practice amounted to a barrier for entrance in the agency business by some individuals. State laws governing professional licenses have historically required the applicant to provide an SSN to verify an applicant's or licensee's tax and / or child support compliance. A license will not be issued to an otherwise eligible applicant if unpaid taxes and / or child support are found. Unfortunately, requiring applicants to provide an SSN excludes some individuals who would otherwise be eligible to become an insurance agent or broker. Allowing DOI to accept an ITIN will remove barriers to access for insurance agent / broker licenses in California.

Governor Also Takes Action On Labor & Employment Legislation

AB 168 (Eggman, Dem-Stockton) Job Applicant Salary History Inquiry Prohibition: Signed By Governor

This legislation prohibits an employer from relying on the salary history information of an applicant for employment as a factor in determining whether to offer an applicant employment or what salary to offer an applicant. The bill also prohibits an employer from seeking salary history information about an applicant for employment and requires an employer, upon reasonable request, to provide the payscale for a position to an applicant for employment. The bill does not prevent an applicant from voluntarily and without prompting disclosing salary history information and does not prohibit an employer from considering or relying on that voluntarily disclosed salary history information in determining salary.

This is a Women's Caucus priority. It exposes employers to litigation for inquiring into an applicant's prior salary or failing to provide a payscale upon demand, even though the employee has not suffered any harm or wage loss as a result of the violation. The California

Chamber of Commerce did not offer any concession beyond a deal on last year's bill that did not get enacted. A similar measure was vetoed by Governor Jerry Brown last year. The Chamber of Commerce has not issued an explanation why the Governor approved the bill this year.

AB 450 (Chiu, Dem-San Francisco) Employer Immigration Worksite Enforcement

Responsibility: Signed By Governor

Except as otherwise required by federal law, AB 450 (Chiu, Dem-San Francisco) prohibits an employer or other person acting on the employer's behalf from providing voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor unless the agent provides a judicial warrant. The bill also prohibits an employer or other person acting on the employer's behalf from providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or court order.

The California Chamber of Commerce removed its opposition to AB 450 because it successfully changed the bill so it does not expose employers to tort action and there is no reporting to the Labor Commissioner. Norwood Associates client the California Pool & Spa Association signed the original CalChamber opposition letter.

AB 1615 (Garcia, Dem-Imperial) Services Pricing Gender Discrimination: Signed By Governor

This measure defines a gender discrimination in pricing services claim as a civil claim in a civil action with respect to a business establishment, including a claim brought under the Unruh Civil Rights Act or the Gender Tax Repeal Act based on an alleged price difference charged for services of similar or like kind against a person because of the person's gender.

According to the author, a handful of unscrupulous attorneys have targeted small, often immigrant-owned businesses by alleging that they violated the law by charging different prices to men and women for a service of a similar or like kind. The author contends that in many instances the different prices charged reflected real differences in time, difficulty, and cost of providing the services. However, because the attorney targets small, often immigrant-owned businesses that are not always aware of their rights and obligations under the law, the businesses settle, often for thousands of dollars.

SB 63 (Jackson, Dem-Santa Barbara) Family Medical Leave Expansion: Signed By Governor

SB 63 prohibits an employer from refusing to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, 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.

Governor Jerry Brown vetoed a similar 6 week leave extension bill by the same author last year. At this time, the California Chamber of Commerce is unclear why the Governor approved this measure. The author pursued this bill at the request of the trial lawyers association.

Legislation Of A Legal Nature Approved By Governor

AB 1693 (Judiciary Committee) Civil Judicial Action Intervention: Signed By Governor

Current law provides that a third person may become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, uniting with the defendant in resisting the claims of the plaintiff, or demanding anything adversely to both the plaintiff and the defendant, by filing a complaint setting forth the grounds upon which the intervention rests. This bill requires that a nonparty seeking to intervene in an action or proceeding, deemed the intervenor, petition the court for leave to intervene by noticed motion or ex parte application setting forth the grounds upon which the intervention rests.

The author explains that this bill eliminates confusion by allowing an intervenor to either file a complaint in intervention, an answer in intervention, or in some instances, both. This bill also adopts a good litigation practice to ensure that parties in an existing lawsuit are properly noticed after the court grants the intervention.

SB 33 (Dodd, Dem-Napa) Depository Institution Arbitration Waiver: Signed By Governor

SB 33 allows a person to waive forced arbitration in cases of alleged fraud committed by a state or federally chartered depository institution. The bill is in response to the Wells Fargo fraud scandal. Starting in 2011, the bank's employees opened more than two million phony bank and credit card accounts without the knowledge or consent of customers across the nation. Customers learned of the scheme when they started getting fees for those fake accounts or they noticed their credit was inexplicably being affected. But when they sought to hold Wells Fargo accountable, their path to the courthouse was blocked.

Initially, the measure applied to "financial institutions," which by definition would have applied to insurers and annuities brokers, but the insurance lobbying corps was successful in removing exposure. The California Chamber of Commerce opposes the bill because it will negatively impact employers with unnecessary and costly class action litigation that benefits trial attorneys, not consumers. It is, however, likely preempted by the Federal Arbitration Act.