



October 6, 2017

Sacramento, California

John A. Norwood
Counselor at Law

Erin Norwood
Publisher

Contributors

Brittany Trudeau
Ted Wait

[Contact Us](#)

info@nalobby.net

Capitol Place
915 L Street, Suite 1110
Sacramento, CA 95814

(916) 447-5053
(916) 447-7516 fax

[California Links](#)

State Senate

State Assembly

**Department of
Insurance**

Overview Of The 2017 Legislative Session; Most Progressive Year In Recent Memory

The discussion below is content you may find in your forthcoming Year End Report, but we wanted to provide this overview in advance. The Year End Report is awaiting signatures and vetoes by Governor Jerry Brown.

New taxes, bad employment bills, and new liabilities led in the most Progressive legislative year ever, and it could have been worse.

The California Legislature adjourned for the remainder of the year at approximately 2:30am on Saturday, September 16th. Barring a Special Legislative Session that could be called by Governor Jerry Brown, the Legislature will not return to Sacramento until Tuesday, January 6th.

With Democrats clearly in charge, having two-thirds voting majority in both houses, legislators completed what their own leader extolled as the most “progressive” agenda ever by the Legislature. Other interests might well read “progressive” as anti-business or anti-employer. By the time the Legislature shut down for the year, numerous bills had been sent to the Governor imposing new labor laws on employers, imposing new taxes that will increase costs of doing business, and creating additional liabilities on businesses.

With a two-thirds voting majority comes the ability to impose new or additional taxes and the Legislature took up the mantel. Gasoline tax, cap-and-trade tax, affordable housing tax, water tax, and tax on services were all on the agenda in 2017. All but the water and service tax survived and have either been signed into law or will be as the Governor has committed to the affordable housing bills. Going forward consumers and business will pay substantially more for taxes on gas, and other industries subject to cap-and-trade, like energy and agriculture, will experience increases in the cost of almost all goods that require transportation. Individuals or businesses that must file a lien or record a document will pay a \$75 per document housing tax up to \$235 per transaction. The irony, of course, is that these

**Secretary of State
Official Legislative
Information**

are regressive taxes, even if paid by business, will fall hardest on the lower and middle class that the majority party is claim to save and protect?

New labor laws were considered, including prohibitions on employers asking for previous salary history or whether the applicant has a criminal history; bills to extend up to 12 weeks family leave for both private employers and public and charter schools; bills to provide contact information for employees to labor unions for certain industries for organizational purposes; and, a bill to require large employers to publish wage information by gender all passed the Legislature.

New employer liabilities addressed include a bill making general contractors liable for the wages and benefit contributions, plus interest, of any subcontractor employees; legislation prohibiting employers from providing federal immigration official access to the workplace without a warrant; a bill to address the Wells Fargo situation prohibiting forced consumer arbitration agreements in relation to financial service; and, legislation to require large employers to publish salaries by gender, which will open the door to class action lawsuits.

It could have been worse! As mentioned above, bills that would have imposed a consumer tax on water to fund clean water initiatives became a two-year bill, as did a bill to expand the state sales tax to cover services. Labor bills to require employers to offer employment to existing employees before hiring new employees, to increase the salary threshold for employees to be exempt from overtime, and a bill to prohibit employers from discrimination based on reproductive health drug use were all made two-year bills.

Legislation that would have enacted single payer healthcare; a bill to prohibit the deduction of punitive damages; a bill limiting depositions in asbestos claims to 7 hours for victims over 70 years old; a bill to prohibit confidential settlements; a bill to require liability insurance on drones; and, legislation that would have altered internet privacy all became two-year bills.

Workers' compensation is always a fertile field for legislation each session as various participants in the system jockey for some change or advantage. This year saw legislation to make day labors eligible for workers' compensation benefits under a homeowners or renters policy; a bill to exempt certain injuries caused as a result of a terrorist attack exempt from utilization review; legislation limiting the liability of both the employee and employer for medical treatment relative to an occupational disease or cumulative trauma claim; a bill to prohibit apportionment based on pregnancy, child birth or other conditions related to child birth; legislation to provide for an exemption to the limits on temporary disability payments where a medical decision denying care was overturned by independent medical review; a bill to extend the time for hospitals and emergency rooms to bill for medical care; and, legislation to address needed changes to AB 2883 from 2016 were all introduced this year. Fortunately, at least half of these bills became two year bills to be addressed again in 2018 along with the inevitable new crop of annual workers' compensation measures.

The insurance arena was relatively quiet again this legislative session. Of note were bills to allow insurance agents and brokers to use any Federal Deposit Insurance Corporation bank for purposes of establishing a premium trust account; legislation requiring homeowners in a condominium development to provide insurance coverage for the installation of solar panels; a bill to allow the Insurance Commissioner to add new products to the export list for placement in the non-admitted market; legislation that allows the California Insurance Guarantee Association the ability to utilize reinsurance with the Commissioner's approval; legislation allowing an insurance agent or broker to be licensed with a social security number as opposed to a federal employer identification number; a bill to raise the age from 18 to 21 that a new driver is required to obtain a provisional driver's license; legislation to require large insurers to file reports on diversity efforts and limit the Commissioner's ability to make data calls; and, a bill to adopt statutory rules relative to auto body steering by insurance companies as opposed to the regulations on this topic adopted by the Commissioner.

Healthcare was an issue at both the state and federal level. With the threat of repealing Obamacare looming, California went to the extreme opposite and introduced a bill that would create a universal healthcare system for all residents. Under the bill, instead of private insurers, state government would be the "single payer" for everyone's healthcare through a new taxing structure. SB 562, co-authored by Senators Ricardo Lara (Dem-Bell Gardens) and Toni Atkins (Dem-San Diego) and sponsored by the California Nurses Association, did not propose a funding mechanism however to cover the projected \$400 billion price tag. The proponents were counting on \$200 billion from the federal government, but the remaining \$200 billion would have been covered by a new employer tax of 15%. Funding was never added into the bill because a new tax component would require a two-thirds vote of the Legislature, something that was never going to happen.

Despite not having a funding mechanism the bill passed the Senate with flying colors. When it reached the Assembly, Speaker Anthony Rendon (Dem-Long Beach) had a tough decision to make – allow the bill to be heard and subject his members (some of which are in close call election districts) to a controversial vote or hold the measure as a two year bill. Speaker Rendon, who unlike Governor Jerry Brown or Senate President pro Tempore Kevin de Leon (Dem-Los Angeles), can be in office and leader until 2024, went with the latter and directed the Assembly Rules Committee to hold the bill for the year. This decision immediately spurred harsh criticisms from the liberals, who claimed the Speaker had health plans and other interests in his back pocket. The California Nurses Association, usually a supporter of the Speaker, went on a full frontal attack posting an image of the California Bear with a butcher knife in its back with the name "Rendon" on the handle blade.

Two months later, a new ballot measure was filed with the goal of removing "roadblocks" to establishing single payer. The initiative, filed by Dale Fountain, would create a special account expressly for healthcare that would be exempt from rules that govern how the state's General Fund dollars must be spent. The initiative also states its purpose is to spur the Legislature to act, since its passage would theoretically underscore public support for single

payer. Just days after the initiative was filed, Rendon announced that informational hearings would be held during the fall legislative recess during which legislators would examine a number of healthcare models, such as Medicare for all or an expansion of the Affordable Care Act, to achieve universal healthcare coverage. By providing a forum to hash out the healthcare debate through the fall, the hearings almost certainly will propel the issue into 2018 and undoubtedly into the next governor's race.

Prescription drug pricing was another hot button issue on both the state and federal healthcare agendas. Fueled by news stories about 400% price increases of EpiPens and "Pharma Bro" Martin Shkreli lawmakers introduced a variety of bills seeking to control rising drug costs. Drug pricing is of particular interest to Senator Ed Hernandez (Dem-Arcadia), who introduced SB 17, a bill sponsored by labor unions that would require drug manufacturers to provide all purchasers 60 days advance notice of price increases over a certain threshold. In addition, the bill would require manufacturers to report specific information about pricing to a state agency. SB 17 was also supported by the health plans, who also blame drug pricing increases for their premium hikes. The measure was strongly opposed by pharmaceutical manufacturers who argued that providing advanced notification of price increases was akin to insider trading.

Other healthcare bills included the usual proposed mandates, this year spanning from requiring health plans to cover fertility treatment to requiring coverage of hearing aids. All six measures were held in the fiscal committees.

All told, 1,733 bills were introduced in the Assembly and 817 bills in the Senate. Of these, 514 were passed by the Senate, leaving 303 bills as two-year measures. In the Assembly, 970 bills were passed leaving 763 bills as two-year measures to be addressed next session. 997 bills were sent to the Governor's desk for signature. If history means anything, the Governor will sign approximately 85% of these bills. As a result, Californians can look forward to about 850 new laws in 2018.