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State Senate

State Assembly

**Department of
Insurance**

Today is the last day of the 2017 California Assembly and Senate legislative session. Governor Jerry Brown has until October 15 to veto bills. If a measure is not signed, it becomes law. Other key dates: January 1 – All statutes signed into law take effect (excluding urgency bills); January 3 – Legislature reconvenes for the 2018 Session.

Bill To Exempt Executives & Professional Corporation Principles From Workers Compensation Sent To Governor

This week, SB 189 (Bradford, Dem-Inglewood) was passed by the Assembly without an opposition vote and was previously approved by the Senate with no opposition. Now before the Governor, this is the bill to clean up AB 2883 (Insurance Committee) from last year which changed the rules for those owners of businesses that want to exempt themselves from workers' compensation insurance.

While producers would prefer AB 2883 just be repealed retroactively, that was not in the cards. The principal change from last year, requirement of a signed affidavit, is a legitimate fraud fighter and there is no support to change that part of the statute. SB 189 makes a number of changes in the ownership thresholds that will allow a larger segment of owners to be eligible to file an affidavit to be exempt. This is especially true of professional corporations (PC), where no ownership threshold applies but there is a requirement that the PC maintain health insurance on the owners.

The major question down the wire was the effective date of the bill. There was a split amongst insurers regarding the time insurers need to implement the SB 189 changes. Some preferred a January 1, 2018 effective date, while others supported a July 1, 2018 effective date. The bill on Governor Brown's desk has a July 1, 2018.

Then there is the issue of whether the bill should apply to in-force policies. The big problem with the bill last year, AB 2883, was that it applied to in-force policies when that was not the intent of the sponsors or expected by anyone. However, in that circumstance, the change in law cost customers money due to added coverage for those previously exempt. SB 189, on

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the other hand, will save most clients' money from its expanded exemptions. Unfortunately, there was little support to apply SB 189 to in-force policies.

Regardless, SB 189 is going to add additional work for insurers and producers. For those businesses that have a renewal date before the effective date of the bill, it is possible that they may be best served by canceling their policy on July 1 and paying the short rate penalty to take advantage of the ability to increase the number of exemptions and save premium.

We added provisions to SB 189 that provide that if an owner signs an exemption affidavit there will be a conclusive presumption that he or she is not covered by workers' compensation insurance. Additionally we added language that states that an agent or broker is not required to investigate, verify or confirm the accuracy of the facts contained in the waiver to alleviate producers from having to track expiration dates of health insurance policies or confirm percentage of ownership. As such, business owners should be advised to carefully consider their actions with considering filing a waiver affidavit as they will be subject to a conclusive presumption that they are not insured.

Bottom line is that there will be no soft landing in terms of cleaning up AB 2883.

Governor Has Surplus Line New, Innovative Products Authorization Bill Now

AB 1641 (Daly, Dem-Anaheim) deems any member of the National Association of Registered Insurance Agents and 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. However, what is interesting is that the bill 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," said retained, key workers' compensation Norwood Associates advisor Mark Webb of proposition23workerscomp.com.

This bill was suggested to the author and supported by the Surplus Lines Association, a Norwood Associates client.

Insurance Agent Tax Identification Number Requirement Expected To Be Approved For Governor's Consideration

SB 788 (Lara, Dem-Bell Gardens) is expected to be approved by the Legislature today. It 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 (CDI) 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 CDI to accept an ITIN will remove barriers to access for insurance agent / broker licenses in California.

An ITIN is a tax processing identification number issued by the Internal Revenue Service that is only available for taxpayers who are ineligible to receive an SSN. ITINs are used by undocumented immigrants, as well as people who are lawfully present in the United States, but do not qualify for an SSN. ITINs do not provide federal work authorization but facilitate compliance with tax laws.

Supporters of the measure include the Independent Insurance Agents and Brokers of California, Department of Insurance, Association of California Insurance Companies, Association of California Life and Health Insurance Companies, American Insurance Association, California Association of Health Underwriters, National Association of Insurance and Financial Advisors, National Association of Mutual Insurance Companies, Pacific Association of Domestic Insurance Companies, and Personal Insurance Federation of California.

Community Organized Investment Network Tax Credit Reauthorization Revived

AB 778 (Caballero, Dem-Salinas), which reinstates the Community Organized Investment Network (COIN) tax credit, is on its way to the Governor. The measure was approved in the Senate with no opposition. Current law imposes an annual tax on the gross premiums of an insurer doing business in this state. Existing law, until January 1, 2017, allows a credit under the Personal Income Tax Law, the Corporation Tax Law, and a credit against the tax imposed on an insurer in an amount equal to 20% of a qualified investment made in a community development financial institution, but not to exceed, in the aggregate amount under all those laws, \$50 million per year and authorizes COIN to certify investments for the credit until January 1, 2017.

This bill establishes these credits and the tax imposed on an insurer for taxable years beginning on or after January 1, 2017, and before January 1, 2022.

The Department of Insurance attempted to tie the tax credits to onerous insurance carrier data call language as part of State Budget 2017-2018. Insurers were able to defeat the data call provisions, and in doing so tanked the COIN tax credit. AB 778 was revived as part of affordable housing legislative negotiations.

Labor Legislation Unfriendly To Business Community On The Governor's Desk

AB 1209 (Gonzalez-Fletcher, Dem-San Diego) imposes a new data collection mandate on California employers to collect and report data to the Secretary of State regarding the mean and median salaries of men and women in the same job title and job description, determine which employees perform “substantially similar” work, and then have that report posted on a publicly accessible website, where such employers will receive undue scrutiny and criticism for wage disparity that is not unlawful and justified by a bona fide factor. This applies to employers with more than 500 employees. The measure passed the Assembly this week and Senate previously, and is on the Governor's desk.

SB 63 (Jackson, Dem-Santa Barbara), a measure vetoed last year, is back before the Governor. It 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. The Governor vetoed a similar six week leave extension bill by the same author last year. There is no indication the Governor will change his position on this bill. The author is pursuing the measure at the request of the trial lawyers association.

AB 1008 (McCarty, Dem-Sacramento) prohibits asking a job candidate about prior conviction history until a conditional offer of employment is made. This is a bill, which has been introduced in previous sessions, is no longer opposed by the Chamber of Commerce because the author accepted amendments that allow for candidate background checks. At the time of publication, this measure had not been officially approved by the Assembly but has 32 favorable votes. Given the removed Chamber removed its opposition, it is expected to pass.

AB 168 (Eggman, Dem-Stockton), also approved by the Legislature, 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 Chamber did not offer any concession beyond a deal on last year's bill that

did not get enacted. The Chamber is taking the lead with outreach to Governor's office staff. A similar measure was vetoed by the Governor last year.

[AB 569](#) (Gonzalez Fletcher, Dem-San Diego) creates a new mandate in the Labor Code, prohibiting employers from taking any adverse employment action against an employee due to the employee's use of various medical options for reproductive health, even though the Fair Employment and Housing Act currently provides these protections to employees, thereby creating inconsistencies and confusion amongst employers with regard to interpretation and enforcement of these competing provisions. Legislation along these lines by the same author has been vetoed in the past.

The Chamber removed its opposition to [AB 450](#) (Chiu, Dem-San Francisco) because it successfully changed the bill so it does not expose employers to tort action and there is no reporting to the Labor Commissioner. The legislation, which was sent to the Governor this week, imposes various requirements on public and private employers with regard to federal immigration agency immigration worksite enforcement actions. It 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 measure also prohibits an employer from providing voluntary consent to an immigration enforcement agent to access, review, or obtain an employer's employee records without a subpoena or court order.

In reaction to the 2015 San Bernardino terrorist event, [AB 44](#) (Reyes, Dem-San Bernardino), now before the Governor, requires employers to provide immediate support from a nurse case manager to employees injured in the course of employment by an act of domestic terrorism, requires employer-appointed nurse case managers to assist claimants to obtain medically necessary medical treatments, and requires an employer to provide a prescribed notice to claimants. The bill makes its provisions applicable only if the Governor declares a state of emergency, in connection with the act of domestic terrorism.

Victory For Civil Litigation Defendants On Assembly Floor

SB 632 (Monning, Dem-Carmel) would have limited the deposition in a civil action for injury or illness that results in mesothelioma to seven hours for a deponent who suffers from mesothelioma. In California, if a plaintiff passes away before the resolution of their case, their general damages (pain and suffering) are nullified. Bill proponents argue defendants subject the dying asbestos victims to lengthy depositions, at times so long that the plaintiff dies before the depositions are complete. Currently, courts overseeing asbestos cases rely on language in Code of Civil Procedure permitting "judicial discretion" in determining the length of a deposition. This week the measure was placed on the inactive file, making it only eligible for consideration January 1-31 of next year.

