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Anticipating This Year's Legislative Session's Conclusion & Overview Of Fiscal Bill Actions

Next Friday is the last day the Assembly and Senate can pass legislation for this year. The September 1 deadline required all Fiscal Bills to be out of their second-house fiscal committees, at which point they went to the floor for a final vote. As of August 31, there were 478 Fiscal Bills set for hearing in the Assembly and Senate Appropriations Committees. Of those, 124 Fiscal Bills failed the deadline, as compared to 116 Fiscal Bills on the same deadline in 2015. This means 354 of those bills were sent to the floor for a final vote, narrowly escaping the deadline.

There are 300 bills on the Senate Floor heading into the final week of session.

California Insurance Guarantee Association Reinsurance Authorization On Governor's Desk

SB 430 (Committee on Insurance), sponsored by Norwood Associates client the California Insurance Guarantee Association (CIGA), authorizes CIGA to reinsure with, or transfer liabilities to, a California admitted and authorized reinsurer or other reinsurer in order to limit adverse development. The bill was approved in every phase of the legislative process without an opposition vote, or contested by a third party.

CIGA takes over the covered claim responsibilities of insolvent member insurers in the following areas: liability, automobile, property, and workers' compensation. CIGA, as do other payors of workers' compensation claims, faces the risk of adverse development as medical costs increase or other factors impact the cost of claims. Insurers protect themselves from adverse development by purchasing reinsurance in the form of adverse development coverage, which is often coupled with a sharing of the cost of the known reserves in terms of a transaction known as a loss portfolio transfer. A loss portfolio transfer moves the responsibility for payment of claims or some portion of those claims to another entity which then shares the risk proportionally.

This legislation allows CIGA to utilize the same reinsurance tools used by operating insurers to more effectively and efficiently manage its claims. The bill requires that any reinsurance placement be expressly approved by the Insurance Commissioner and that the coverage be

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placed with a California admitted and authorized reinsurer or other reinsurer approved by the Commissioner.

Existing law creates CIGA and requires all insurers admitted to transact specified insurance lines in this state to become members. CIGA is required to pay and discharge covered claims, and in connection therewith, pay for or furnish loss adjustment services and defenses of claimants when required by policy provisions. CIGA is authorized to fulfill its duties either directly by itself or through a servicing facility or through a contract for reinsurance and assumption of liabilities by one or more member insurers or through a contract with the liquidator, upon terms satisfactory to CIGA and to the liquidator, under which payments on covered claims would be made by the liquidator using funds provided by CIGA.

SB 430 authorizes CIGA to reinsure with, or transfer liabilities to, a California admitted and authorized reinsurer or other reinsurer approved by the Insurance Commissioner in order to limit or eliminate adverse development, to stabilize or limit the need for assessments, or to reduce its potential ultimate liability for covered claims.

Workers Compensation Disability Apportionment Bill Passed Assembly & Senate

AB 570 (Gonzalez Fletcher D), which prohibits workers' compensation apportionment from being based on pregnancy, childbirth, or other medical conditions related to pregnancy or childbirth, passed the Senate 25-11 yesterday, and Full Assembly in May. The author argues current law prohibits the denial of claims based on age, gender, and other factors, but there are no protections in place that prevent women from being compensated for less because of pregnancy.

Assembly Member Lorena Gonzalez-Fletcher claims there are employers who invade the privacy of women who work for them, and are punished financially for becoming pregnant. This measure is a Women's Caucus priority, and has been endorsed by Republican Assembly Member Catherine Baker (Dublin) who carries fairly significant influence.

At the bill's Senate Appropriations Committee hearing, the Department of Finance (DOF) advised that Governor Jerry Brown vetoed a similar bill in the past. DOF scores the bill as increasing employer costs from the \$10 million status quo to \$100 million with respect to implementing workers' compensation apportionment. Most believe the Governor will take the same action as last year.

Two Labor Bills Amended: Job Candidate Prior Criminal History Inquiry Prohibition & Reproductive Healthcare Decision Discrimination; A Third Regarding Gender Pay Differentials Passes

AB 1008 (McCarty, Dem-Sacramento) was amended this week to prohibit obtaining job candidate prior "conviction" history until a conditional offer of employment is made.

Formerly, the prohibition more broadly applied to “criminal” history. This is a bill which has been introduced in previous sessions, but a California Chamber of Commerce-led coalition is not relenting because of its significant risk to employees and customers. The bill has been approved by the Assembly and is now on the Senate Floor.

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.

It prohibits an employer from taking any adverse employment action against an employee based on his or her use of any drug, device, or medical service related to reproductive health. It now also applies to these decisions of an employee’s family member as well. The bill has been approved by the Assembly and is on the Senate Floor.

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 Senate 22-13 and is back to the Assembly for concurrence on noncontroversial changes.

Bank Fraud Arbitration Agreement Waiver Bill Sent To Governor

By a vote of 25-13, the Assembly sent Governor Jerry Brown SB 33 (Dodd, Dem-Napa), which allows a person to waive forced arbitration in cases of alleged fraud committed by a state or federally chartered depository institution. 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.

Senator Bill Dodd introduced the bill in response to the Wells Fargo fraud scandal. Starting in 2011, the bank’s employees opened more than 2 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 phony 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. The author argues arbitration clauses were hidden in the fine print of the original, legitimate contracts they had signed, sometimes years before, to open a bank account.

So instead of fighting Wells Fargo in the public forum of a courthouse, the bank's customers were forced into secret, binding arbitrations overseen by an arbitrator hired by the bank, Dodd argues.

Solar Panel Insurance Coverage Requirement Will Be Before The Governor In The Coming Days

AB 634 (Eggman, Dem-Stockton) is pending on the Assembly Floor for concurrence in technical Senate amendments. The bill will be before the Governor in the next several days. It specifies that a homeowners association (HOA) may not establish a general policy prohibiting the use of a rooftop solar energy system, and provides that HOAs can require homeowner liability insurance for solar panels.

An association is to require the owner and each successive owner to maintain a homeowner liability coverage policy at all times and provide the association with the corresponding certificate of insurance annually. Insurers did secure an amendment that a homeowner liability coverage policy not need to have the HOA as a named additional insured under the policy with a right of notice of cancellation, in the event of a legal dispute involving installation, maintenance, or use of a solar energy system.

The author elected to make homeowner liability insurance coverage mandatory, rather than permissive. In other words, in order to approve the installation of a rooftop solar unit, a homeowners association will be obligated by law to require that the applicant, and each successive owner, carry homeowner liability insurance coverage. Since homeowner liability insurance policies generally only cover liability arising from sudden and accidental events, this requirement does not fully satisfy some opponents' criticism regarding the shift in risk. Liability arising from the installation and maintenance of the solar panels is not typically covered by homeowners' liability policies, so even if having a homeowner's liability insurance policy is mandatory, the HOA and other homeowners under the shared roof would still be exposed to some risk.