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State Senate

State Assembly

Department of
Insurance

Senate Insurance Committee Votes On Four Significant Wildfire Insurance Bills

The Senate Insurance Committee convened its first hearing of the legislative session, at which four wildfire insurance related measures were voted on.

SB 824 (Lara) – Homeowners Insurance & Declared Disasters

Senator **Ricardo Lara** (Dem-Bell Gardens) presented SB 824, which prohibits an insurer from canceling, refusing to renew, or including a surcharge or an increase in the premium of a homeowners insurance policy for one year from the date of a declaration of a state of emergency, based solely on the fact the property is in a county where a state of emergency has been declared. The legislation also requires an insurer that intends to reduce, within 12 months of a declared disaster, the total number of homeowners policies in the disaster area by 20% or more, to submit to the Insurance Commissioner (IC), 60 days prior to implementing that action, a plan for the orderly reduction of policies in that area.

Thirdly, it directs the Department of Insurance (CDI) to conduct a data call on wildfire and fire loss experience from insurers writing homeowners insurance. The author has been working with CDI and insurers to detail the requirements of a data call that addresses issues such as frequency, premiums, the use of fire risk scores, and losses by zip code, and requiring CDI to issue a report summarizing their findings to help insurers with assessment of risks actually posed and guide policymakers in determining what additional steps might need to be taken.

Senator **Lara** explained that the bill is necessary to help homeowners adapt to wildfires, prevent insurance companies from dropping customers after a disaster, and ensure CDI, insurers, and the Legislature have the data to ensure that the homeowners insurance market is healthy and homeowners are adequately protected from the growing risk of wildfire. The bill is in response to the October 2017 Bay Area Firestorm and December 2017 Thomas Fire, the most destructive in California history.

There has been a great deal of discussion, and largely anecdotal evidence that insurers are withdrawing from high fire risk areas, Senate Insurance Committee staff point out. According to data from CDI, more than 10,000 homeowners in high risk counties were nonrenewed by their insurer in 2016. More than 36,000 homeowners in those counties chose to not renew

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their policies, presumably because of steep premium increases or lower coverage reasons, CDI claims. The data does not detail if these homeowners subsequently found insurance with other insurers. There has been little policy growth in the homeowners insurer of last resort – the Fair Access to Insurance Requirements (FAIR) Plan.

Support Testimony

United Policyholders supports SB 824 because it slows the pace of nonrenewals, extends existing renewal protections available to disaster survivors to their neighboring homeowners, and encourages insurers to support and reward wildfire risk reduction. The **Rural County Representatives of California** support SB 824 because it is concerned that the frequency of insurance cancellations and nonrenewals will increase and expand as the entirety of California becomes more prone to wildfire. Other supporters include the California State Association of Counties and Consumer Attorneys of California.

Opposition Testimony

The major insurance industry trade organizations – the **American Insurance Association (AIA)**, **National Association of Mutual Insurance Companies (NAMIC)**, **Pacific Association of Domestic Insurance Companies (PADIC)**, **Personal Insurance Federation of California (PIFC)**, and the **Property Casualty Insurers Association of America (PCIAA)** – oppose SB 824 unless it is amended because the bill limits an insurer’s ability to nonrenew policies and requires insurers to report nonrenewals of policies in disaster areas to the Insurance Commissioner. These groups would like the bill amended to only include data call language to gather important and needed information that could help show that the marketplace is functioning. They argue that there is no evidence of widespread insurer-initiated nonrenewals.

Amendments

Senator **Lara** accepted the following amendments.

- 1) Delete insurer prohibition to include a surcharge or an increase in policy premium based on an insured structure located in a county where a catastrophic event occurred;
- 2) Protects insurers from applicability when the renewal of a policy threatens the solvency of the insurer; if the insurer suffers the withdrawal of reinsurance covering all or part of the risk and this withdrawal will likely threaten the financial solvency of the insurers; or, if the insurer has withdrawn from the state;
- 3) Delete language that states an insurer that intends to reduce, within the first 12 months after a declared disaster, the total number of its homeowners insurance policies in force, for properties within the same ZIP Code and located in this state, by 20% or more, must submit such information to the IC;
- 4) Adds in order to ensure a robust insurer marketplace relating to fire risk, it is necessary for the IC to collect data on fire loss experience from insurers writing

residential personal property insurance, including the FAIR Plan, and to issue a report summarizing findings from that data collection; and,

- 5) Adds, biennially, each admitted insurer with California premiums of \$10 million or more must submit a report to the IC on its residential personal property experience data for policies written in California. This report must include on a per-policy basis fire or wildfire incurred losses, fire reported claim counts, and fire risk score and source of score.

The Committee moved and seconded approval of SB 824, with amendments, for referral to the Senate Appropriations Committee.

(Approved 9-0)

(Aye) Glazer (D), Galgiani (D), Hernandez (D), Hueso (D), Lara (D), Mitchell (D), Newman (D), Portantino (D), Roth (D)

(Nay) None

(Abstain) Gaines (R), Moorlach (R)

(Absent) Berryhill (R), Morrell (R)

SB 894 (Dodd) – Fire & Property Insurance Renewal

Senator **Bill Dodd** (Dem-Napa) testified that SB 894 requires an insurer to renew a residential insurance policy for at least two annual renewal periods or 24 months, whichever is greater, after a total loss of the home was caused by a disaster. The bill requires an insurer who declines to renew a policy after the two year period to report that decision to the Insurance Commissioner. It also requires an insurer who, within 5 years after the declaration of a disaster, decides it will not offer or renew any residential policies in the declared disaster area to report that decision to the IC.

In addition, the measure increases from 24 to no less than 36 months the minimum coverage for additional living expenses (ALE) in the case of a loss due to a declared state of emergency, and allows additional 6 month extensions for good cause, subject to policy limits.

Additionally, it allows insureds, in the event a loss is related to a state of emergency, to combine policy limits for the primary dwelling, other structures, contents and ALE, and provides that the insured may use the combined limits for any of the covered expenses reasonably necessary to rebuild or replace the dwelling, structures, contents, or ALE. Lastly, it provides that the requirements for at least two policy renewals and the extension of ALE to 36 months are retroactive to any claim filed after July 1, 2017. These provisions are severable.

Senator **Dodd** said the bill is necessary to extend the time insureds have to recover under their homeowners insurance policies because the magnitude of the 2017 wildfires makes it likely that the rebuilding process for many policyholders will exceed 24 months, and many are likely to be underinsured. The magnitude of the 2017 fires and record losses in urban areas like Santa Rosa at a time when the construction industry had already been struggling to keep up with construction demand suggest that reconstruction delays due to the massive need for debris removal, permitting demand, and lack of contractors and materials are likely.

The extended timeframes proposed in this legislation do not increase the benefits payable under the policy, but allow the insured to collect the benefits they are due for losses incurred if they face significant delays.

Support Testimony

Insurance Commissioner **Dave Jones** testified in support of this bill and SB 897 (McGuire) – Fire & Property Insurance Additional Living Expenses. The Insurance Commissioner expressed the view that

SB 894 modestly amends state law so wildfire survivors have a chance to recover. The Commissioner opposed amendments to not be able to combine coverages when one portion of a policy is not expended. The wildfire losses are a fraction of insurer resources and will not result in higher rates, Jones concluded.

According to the **Department of Insurance** (Sponsor), many survivors after a catastrophic event, such as the 2017 wildfires, do not rebuild or replace the total loss property in the period of only one renewal. Most are not able to rebuild for a period of 24 months or longer. In some losses, the survivor may be underinsured for the primary structure coverage, but may have unused coverage in other structures or contents coverage. By allowing them to combine their coverages they may be able to offset the underinsured amount, which in some cases might allow them to rebuild their home.

Other supporters, of which there are 18, include the California Professional Firefighters, California State Association of Electrical Workers, Coalition of California Utility Employees, Consumer Attorneys of California, and Consumer Watchdog. Ten to 15 individuals impacted by the northern and southern California wildfires commented in support.

Opposition Testimony

The **AIA, NAMIC, PADIC, PIFC, and PCIAA** opposed the bill unless it is amended. The groups maintain the legislation is trying to address a problem that does not exist, that there is no insurance availability problem and the homeowners insurance market is working. Nonetheless, these organizations recognize that after a disaster homeowners should feel secure in their ability to retain insurance. The opposition proposed an exception to the requirement to maintain a policy on a home under reconstruction or to renew for at least two years if such policies threaten the insurer's solvency, if the insurer would lose its reinsurance coverage, or if the insurer has withdrawn from offering homeowners' insurance in the state.

Insurers proposed to recast the time extensions for ALE from 36 months to 24 months, with an additional 12 months if the insured has acted in good faith and due diligence but has faced unavoidable delays. In addition, they note that the ALE extension should only apply to policies with a set dollar limit.

Kara Cross, General Counsel, **Personal Insurance Federation of California**, testified from day one member companies have been on the ground, issuing temporary housing funds. To date, PIFC has not been able to reach agreement with the author on this bill though. Demand surge is what people are dealing with from the wildfires. Demand surge occurs when construction

labor and material costs rise significantly after a disaster. Insurers account for that and inform insureds this exists. A bill of rights for homeowners asks them to be sure they have the right amount of insurance to address this scenario. Also, extended replacement coverage provides 150% of coverage.

Cross went on to explain that combining pots of coverage is an apples and oranges proposition because each are priced differently based on risk. This will result in rate increases. Paying out limits not based on what was lost is the issue. This could result in less coverage choice, and undermine methods insurers use to keep rates low.

Armand Feliciano, Vice President of Government Affairs, **Property Casualty Insurers of California**, expressed concern this bill could result in less insurers in the market. Other issues with the bill are retroactivity language, including the threat that settled claims could be reopened. An **individual representing several organizations on behalf of disadvantaged communities** opposed the bill because of unfairness of low income individuals subsidizing coverage for the wealthy living in wildfire risk areas.

Member Comments

Senator **Richard Roth** (Dem-Riverside) said changing the architecture of an insurance contract, which is what the combined coverage component does, faces difficult legal hurdles. An alternative is to request the Governor to approve an addition to the budget to make insurers whole.

Joel Laucher, Chief Deputy Commissioner, **Department of Insurance**, responded that the package of CDI bills close the underinsured gap and these do not impact rates. Regarding this measure, the four main parts of homeowners insurance policies are rated collectively.

Senators **Ted Gaines** (Rep-El Dorado Hills) and **Josh Newman** (Dem-Anaheim) shared Senator Roth's concerns about reopening insurance contracts and supported pursuing General Fund assistance for those that are short on coverage to rebuild homes. Senate Insurance Committee Chair **Steve Glazer** (Dem-Orinda) also raised concerns about combining the silos of homeowner insurance, particularly with respect to implications to availability and cost. Regarding Chair Glazer's concern, **Cross** advised this will impact price and insurers could not be able to offer the same kinds of coverage provided now.

Senator **Ben Hueso** (Dem-Chula Vista) also supported seeking relief to the wildfire victims through a state budget proposal, and went as far to say the measure "games the system" with respect to forcing insurers to combining policy component pots.

Chair **Glazer** urged the author to suspend vote, given the legislation does not need to be referred to the Senate Appropriations Committee. This provides 30 days to negotiate differences over the combined policy element. Senator **Dodd** requested a vote, as the Committee has authority to grant reconsideration of the measure. The bill has a steep climb, the author acknowledged, and holding the vote now only creates further delay in the legislative process and discussion with the Governor.

Amendments

Senator **Dodd** agreed to the following amendments.

- 1) That a two year renewal include an exception if the covered property has experienced additional losses after the disaster related loss;
- 2) Requiring an insurer who decides not to offer to renew a policy after the expiration to report the decision to the IC;
- 3) Adding provisions of the bill are inapplicable if renewal of a policy threatens the solvency of the insurer or if the insurer suffers the withdrawal of reinsurance covering all or part of the risk and this withdrawal will likely threaten the financial solvency of the insurers, or if the insurer has withdrawn business from the state;
- 4) Add for a policy with a dollar limit on coverage for ALE, an insurer must grant an extension of up to 12 additional months for a total of 36 months where an insured acting in good faith and with reasonable diligence encounters a delay in the reconstruction process which are a result of circumstances beyond the control of the insured. Circumstances beyond the control of the insured include, but are not limited to, unavoidable construction permit delays, lack of necessary constructions materials and contractors unavailable to perform the work; and,
- 5) Limit retroactivity of policy renewal extension to only those policies in effect over the last two months.

Senator **Dodd** rejected amendments that prohibit combining policy coverages.

*As a courtesy, Senator **Cathleen Galgiani** (Dem-Stockton) moved and Senator **Anthony Portantino** (Dem-Glendale) seconded approval of SB 894, with amendments, for referral to the Full Senate.*

Failed (2-0)

(Aye) Galgiani (D), Portantino (D)

(Nay) None

(Abstain) Glazer (D), Gaines (R), Hueso (D)

(Absent) Berryhill (R), Hernandez (D), Lara (D), Mitchell (D), Moorlach (R), Morrell (R), Newman (D), Roth (R)

SB 894 was granted Committee reconsideration.

After a long stalemate, a deal was brokered to achieve bill passage with the commitment from the author that the measure would not be taken up on the Senate Floor without consent of the Committee Chair.

The Committee moved and seconded approval of SB 894, with amendments.

(Approved 8-0)

(Aye) Glazer (D), Galgiani (D), Hernandez (D), Hueso (D), Lara (D), Mitchell (D), Moorlach (R), Roth (D)

(Nay) None

(Abstain) Gaines (R), Newman (D), Portantino (D)

(Absent) Berryhill (R), Morrell (R)

SB 897 (McGuire) – Fire & Property Insurance Additional Living Expenses

Senator **Mike McGuire** (Dem-Healdsburg) outlined the provisions of SB 897, which requires additional living expenses to include all reasonable expenses incurred by the insured to maintain a comparable standard of living following a covered loss, including housing, furniture rental, food, transportation, storage, and boarding of pets and livestock. And, it allows an insured to choose to collect the monthly fair rental value of the dwelling as ALE in lieu of itemized expenses, up to the policy limits. It makes these above provisions retroactive to any claim filed on or after July 1, 2017.

The legislation requires the following to apply in the case of a total loss that is a result of a state of emergency:

- 1) Upon request of the insured, the insurer to provide an advance payment of no less than four months of ALE or fair rental value, with additional payments upon proper proof following the advance period;
- 2) Requires insurers to adopt a standard four month or fair rental payment amount;
- 3) Requires an insurer to make an initial advance payment of no less than 25% of the policy limit for a claim for contents related to a total loss of a primary residence without completion of an inventory, and make additional payments upon request with proper proof;
- 4) Prohibits an insurer in the case of a claim for contents from requiring the use of a company-specific inventory form if the insured can provide an inventory using a form that contains substantially the same information, and requires the insurer to accept an inventory that includes grouping of categories; and,
- 5) Requires an insurer to offer no less than 80% of the policy limits if an insured has made a claim for contents without requiring the insured to file an itemized claim, and requires the insurer to notify the insured that they retain the option to recover additional benefits if the insured subsequently completes a full inventory.

Also, the measure requires insurers, in the event of a state of emergency, to grant a 30-day grace period for payment of premiums for all homeowners policies covering properties within the affected area, and prohibits the cancellation of policies for non-payment of premium or assessing of late fees during that period. It provides the provisions of the bill are severable.

Senator **McGuire** contends the bill is needed to create a fair compromise for homeowners and renters by creating standards to expedite residential insurance claims after a Governor-declared disaster, allowing survivors to start rebuilding their lives and homes. Along with the

Department of Insurance, the author argues this bill helps alleviate the burden on as many wildfire survivors as possible.

Support Testimony

The **California State Association of Counties** supports the bill because in its view the post-disaster process can pose significant challenges to impacted residents, including finding temporary housing after a residence has been damaged or destroyed and the arduous process of making detailed insurance claims. Insurance companies often require paperwork from a claimant, which in many cases could have been destroyed by wildfire. By allowing residents in Governor-declared disaster areas flexibility in complying with claim requirements, this bill creates a reasonable process for homeowners and insurance companies. **United Policyholders** supports SB 897 because most homeowners insurance policies are written in such a way that an insurance company can require the policyholder to prepare a detailed inventory in order to make a payment for personal property. However, this anti-fraud measure is more suited for a routine burglary claim, for example.

Opposition Testimony

The **AIA, NAMIC, PADIC, PIFC, and PCIAA** oppose SB 897 unless it is amended because in its current form it will negatively impact both price and coverage of insurance by mandating unnecessary requirements that will jeopardize insurers' flexibility to offer homeowners choice in coverages and increase premiums for all homeowners across the state. Insurers have asked for technical changes to the 30-day grace period and to limit the provision to only those who have had a total loss and been displaced from their homes rather than all households in the state of emergency area.

Amendments

Senator **McGuire** agreed to the following amendments.

- 1) Delete ALE applicability to livestock;
- 2) Delete under a residential property insurance policy for which the insured has made a claim for ALE, the insured may, in lieu of itemized expenses, collect the monthly fair rental value of the dwelling for the duration of the time it is not inhabitable due to the covered loss, up to the limits of the policy;
- 3) Delete insurers must adopt a standard four-month ALE or fair rental payment amount;
- 4) Add the bill cannot be construed to require any change to insurer billing practices regarding billing, automatic payment or cancellation for nonpayment if the insurer reinstates, without a lapse in coverage or late fee, any policy that was canceled for nonpayment of premium, if requested by the insured and upon reasonably timely payment of all premiums due;
- 5) Delete retroactivity language and replace with to be determined qualified retroactivity for an insured that has made a claim for contents related to a total loss

of a primary residence, and groupings of categories of personal property, as well as the insurer must notify the insured that he or she retains the option to recover additional benefits if the insured subsequently completes a full inventory.

Senator **McGuire** rejected replacing 80% with 50% ALE of the policy limit for contents that are not inventoried.

Senator **McGuire** pushed to have the measure put to a vote by the Committee, despite the Committee Chair urging more time be permitted for sides to negotiate the percentage of ALE for items not inventoried. After a long stalemate, a deal was brokered to achieve bill passage with the commitment from the author that the measure would not be taken up on the Senate Floor without consent of the Committee Chair.

The Committee moved and seconded approval of SB 897, with amendments.

(Approved 8-0)

(Aye) Glazer (D), Galgiani (D), Hernandez (D), Hueso (D), Lara (D), Mitchell (D), Portantino (D), Roth (D)

(Nay) None

(Abstain) Gaines (R), Moorlach (R), Newman (D)

(Absent) Berryhill (R), Morrell (R)

SB 917 (Jackson) – Landslide Insurance

Senator **Hanna Beth Jackson** (Dem-Santa Barbara) presented SB 917, which provides that if loss or damage results from a combination of perils, one of which is a landslide, insurance coverage must be provided if an insured peril is the efficient proximate cause of the loss or damage. The legislation provides that this is declaratory of existing law.

Senator **Jackson** contended, in practical application, the mudslides that damaged or destroyed hundreds of homes in Montecito in January 2018 would not have happened but for the fire, a covered peril. This bill is intended to provide clarity to homeowners facing similar situations in the future and codify what California courts have interpreted as existing law.

Support Testimony

Amy Bach, Staff Attorney, **United Policyholders** supported SB 917, arguing it will help policyholders avoid unnecessary disputes with their insurers and reflects the reality that there is no insurance product that can be purchased specifically to cover this risk. Lee Harris, President, **Consumer Attorneys of California**, supported SB 917 because it codifies California case law dating back to 1963, which requires property insurers to provide coverage whenever an insured peril is the efficient proximate cause of a loss. Other supporters include Consumer Watchdog and the Rural County Representatives of California.

Opposition Testimony

The **AIA, NAMIC, PADIC, PIFC, and PCIAA** oppose SB 917 unless it is amended because it does not reflect existing law. These organizations maintain the bill appears to require insurers to cover a loss whenever a covered peril is the efficient proximate cause even if there is some other reason that they are not required to provide coverage, such as if there has been fraud or concealment by the insured, or other legal and enforceable policy terms or conditions that would void coverage. This could lead to increased costs for all policyholders, or a decision by insurers to limit their books of homeowners insurance.

Katherine Pettibone, Vice President of State Affairs, **American Insurance Association**, advised that insurers already comply with the doctrine of efficient proximate cause. The industry has done well covering damage and loss from the Montecito mudslide. Kim Stone, Representative, **Allstate**, said not changing statute is necessary. And, following language case law is paramount. Case law states: When loss or damage results from a combination of perils, one of which is landslide, and the efficient proximate cause of the loss or damage is a covered peril, coverage may not be denied on the ground that landslide is not a covered risk.

Member Comments

Senator **John Moorlach** (Rep-Costa Mesa) had not heard any accounts of uncovered Montecito residents, to which Senator **Jackson** said there are insurers hesitating coverage, according to her personal conversations with constituents. Senator **Richard Roth** (Dem-Riverside) was satisfied existing law is not changed by the bill. To Senator **Ted Gaines'** (Rep-El Dorado Hills) inquiry, **Stone** advised that industry language does not impact rates. The fear is that language in the author's amendment changes the status of existing law and creates coverage where it may not otherwise exist.

Amendments

Senator **Jackson** accepted the following language: If a loss or damage results from a combination of perils, one of which is a landslide, mudslide, mudflow, debris flow, or other similar earth movement, coverage shall be provided if an insured peril is the efficient proximate cause of the loss or damage and coverage would otherwise have been provided for the insured peril. Coverage shall otherwise be provided under the same terms and conditions as the insured peril.

The Committee moved and seconded approval of SB 917, with amendments, for referral to the Full Senate.

(Approved 8-1)

(Aye) Glazer (D), Galgiani (D), Hueso (D), Lara (D), Mitchell (D), Newman (D), Portantino (D), Roth (D)

(Nay) Moorlach (R)

(Abstain) Gaines (R), Berryhill (R), Hernandez (D)

(Absent) Morrell (R)

Assembly Bill With Far Reaching Ramifications Receives Special Hearing By Assembly Health Committee; Legislation Would Lead To Regulate Healthcare Prices

On Tuesday, the Assembly Health Committee heard legislation that allows a state board to set prices for services and procedures provided by healthcare providers. [AB 3087](#), the Healthcare Price Relief Act, authored by Assembly Member Ash Kalra (Dem-San Jose), establishes the Healthcare Cost, Quality and Equity Commission to control in-state healthcare costs and set the amounts accepted as payment by health plans, hospitals, physicians, and physician groups. Healthcare rates would be based off what the government pays for services under Medicare. Also, the Commission is charged with determining methods for state government to reduce the cost of prescription drugs and medical devices paid for by private purchasers in the commercial market.

The Commission, appointed by the Legislature and Governor, cannot be affiliated with an insurer, an agent or broker, a pharmaceutical manufacturer (including a drug manufacturer trade association), or healthcare provider. Membership is to be composed of one individual with demonstrated expertise in healthcare policy; one with expertise in healthcare delivery; a health economist; a consumer advocate; an individual with expertise in healthcare financing; a representative of a labor union organization who serves as a trustee of a trust fund organized under state or federal law; a representative of an organization of employers with expertise in healthcare purchasing; a physician; and, a person with experience in hospital administration.

The proposal takes some inspiration from the model established by Maryland, in which the state sets the prices paid by all payers – including insurance companies and public healthcare programs – for hospital services.

Assembly Member Kalra maintains enforcing base prices prevents facilities from overcharging patients for care, which in turn saves money for employers who purchase healthcare plans for their workers. Proponents of the bill argue it gives Californians greater access to healthcare by lowering costs. The author cites a study by the International Federation of Health Plans that suggests American hospitals charge up to 20 times more for healthcare than other developed countries. From 2002 to 2016, premiums for those who get insurance through their employer have gone up more than 240%, according to the California Healthcare Foundation.

In total, AB 3087 is supported by 29 organizations, including the state's major labor organizations, consumer advocacy groups, and health access groups. These including the California Labor Federation, Service Employees International Union, California Teachers Association, Consumers Union, and Health Access California.

The California Association of Health Plans opposes the measure because government price regulation disrupts the healthcare system. The California Hospital Association (CHA), a trade group representing 400 hospitals and health systems, opposes AB 3087 over concerns that it

would lead to staff cuts and hospital closures. CHA estimates that the state's hospitals may lose at least \$18 billion annually in revenues. Approximately 60% of hospitals would likely lose money under this legislation; and, an estimated 175,000 healthcare workers could lose their jobs.

The bill is opposed by 280 hospitals and providers, as well as major the state's largest business advocacy organizations – the Chamber of Commerce and National Federation of Independent Business.

The bill is certain to receive fierce opposition from physicians and hospitals, setting the stage for a battle between some of the Capitol's top lobbying heavyweights.

Labor & Employment Legislative Developments & Committee Action: Harmful Employer Bills Very Much In Play

The following legislative developments occurred over the last week, some of which was committee action and others revolve around industry efforts to reduce the effects of bills that impact employers' ability to operate in the state.

AB 2841 (Gonzalez-Fletcher, Dem-San Diego) Sick Leave Accrual

This legislation changes the requirements of the employer's alternate sick leave accrual method to require no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment. The bill also provides an employer is under no obligation to allow an employee's total accrual of paid of sick leave to exceed 80 hours or 10 days. The bill raises the limitation on sick leave carried over to the following year of employment to 40 hours or 5 days. The CalChamber has finally obtained a meeting with the author in an effort to only increase leave to 2 days, which is not promising.

The bill is supported by the California Employment Lawyers Association. Opposition includes 15 of the largest industry trade groups, including the Chamber.

The bill previously passed the Assembly Labor Committee on a party line vote, and has been referred to the Assembly Appropriations Committee.

AB 3087 (Kalra, Dem-San Jose) California Healthcare Cost, Quality & Equity Commission

This bill establishes the Healthcare Cost, Quality and Equity Commission. The legislation allows the Commission to set prices for healthcare costs and set the amounts accepted as payment by health plans, hospitals, physicians, and physician groups. Healthcare rates would be based on what the government pays for services under Medicare. Also, the Commission is charged with determining methods for state government to reduce the cost of prescription drugs and medical devices paid for by private purchasers in the commercial market. A member of the Chamber Coalition reported that a conversation with Assembly Speaker Anthony Rendon was positive. The Speaker appeared hesitant about an Assembly Floor fight

occurring. The Speaker let the bill move out of Committee to keep the healthcare cost containment discussion at the forefront.

The bill is sponsored by the California Labor Federation, Health Access, and the Service Employees International Union. It is opposed by 280 hospitals and providers, as well as the state's largest business advocacy organizations – the Chamber and National Federation of Independent Business.

The bill passed the Assembly Labor Committee on a party line vote. It is pending further committee referral.

SB 937 (Wiener, Dem-San Francisco) Workplace Lactation Accommodation

This bill requires a lactation room or location to include prescribed features and requires an employer to provide access to a sink and refrigerator in close proximity to the employee's work space. The bill requires an employer to develop and implement a policy regarding lactation accommodation and make it available to employees. The author has been easy to work with, as opposed to Assembly Member Monique Limon (Dem-Santa Barbara) who has a very similar measure. The author is amending the bill to more closely mirror an existing San Francisco ordinance on the subject, but has not yet agreed to take private right of action language out.

The bill is supported by the California Employment Lawyers Association, California Labor Federation, and California Teachers Association. Opponents include the Chamber, American Insurance Association, and 8 large industry trade groups.

The bill previously passed the Assembly Labor Committee on a party line vote, and has been referred to the Assembly Appropriations Committee.

SB 1284 (Jackson, Dem-Santa Barbara) Employer Paydata Reporting

This bill requires private employers with more than 100 employees to submit an annual paydata report to the Department of Industrial Relations. This bill requires the Department to make the reports available to the Department of Fair Employment and Housing upon request. It imposes a civil penalty of \$500 on any employer who does not comply with the reporting requirement, and requires any penalties collected to be deposited into the Labor Enforcement and Compliance Fund, to be allocated upon appropriation by the Legislature to the Division of Labor Standards Enforcement to enforce wage differential laws. The Chamber remains concerned that this information could make its way to a courtroom via subpoena. If the author agrees to language to seal this data, the Chamber will move it off its Job Killer list but still oppose on the principal of government overreach.

The bill is supported by the Consumer Attorneys of California and the Service Employees International Union. There are 20 local chambers of commerce in opposition, in addition to the Chamber, as well 11 large industry trade organizations.

The bill previously passed the Senate Judiciary Committee on a party line vote, and is pending before the Senate Appropriations Committee.

SB 1412 (Bradford, Dem-Inglewood) Job Candidate Criminal History

This bill prohibits an employer from asking an applicant about, or seeking from any source information regarding, a particular conviction of the applicant if it does not directly apply to job duties. The California Bankers Association (CBA) is leading the effort against this bill, along with the Chamber, as CBA is very concerned if a full background check cannot be obtained on a prospective employee, this will open the employer to hiring negligence litigation. The measure contradicts federal law, which is beneficial, but legal confusion could still arise if enacted. The author says he is open to dialogue, but amendments to resolve problems are not being taken. This is shaping up to be a legislative floor battle.

This bill is sponsored by New Way of Life Reentry Program, a former Senator Rod Wright (Dem-Gardena) led organization. The Chamber and CBA oppose the measure, but the Committee Analysis does not have any others registered.

The bill passed the Senate Public Safety Committee by a vote of 5-2, and has been referred to the Senate Appropriations Committee.

Sexual Harassment Legislation

The following are the 5 sexual harassment priority amend or kill measures for the Chamber, of the 11 on the subject pending in the Legislature.

AB 1867 (Reyes, Dem-Fontana) Employee Sexual Harassment Recordkeeping

This legislation requires an employer with 50 or more employees to maintain records of employee complaints of sexual harassment for 10 years from the date of filing. The Chamber negotiated amendments to reduce this to three years postemployment.

The bill is sponsored by the California Teamsters and the California Employment Lawyers Association. Opponents include the Chamber, Associated Builders & Contractors Association, and 23 other trade groups.

The bill previously passed the Assembly Labor Committee 6-0, and has been referred to the Assembly Appropriations Committee.

AB 2366 (Bonta, Dem-Alameda) Employee Sexual Harassment Protections

Current law prohibits an employer from discharging, or discriminating or retaliating against, an employee who is a victim of domestic violence, sexual assault, or stalking and who takes time off from work to obtain, or attempt to obtain, any relief to help ensure the health, safety, or welfare of the victim or his or her child. This bill extends these employment protections to victims of sexual harassment. It also contains language that permits an employee to take leave from work to support family members that are sexual harassment victims. The author has been willing to work with the Chamber to require police reports be

filed that document associated events. The motivation of the bill is to support children that are victims.

The bill is sponsored by Legal Aid at Work and supported by the California Employment Lawyers Association. It is opposed by the Chamber and 15 large industry trade groups.

The measure passed the Assembly Judiciary Committee 8-0, and was referred to the Assembly Appropriations Committee.

AB 1870 (Reyes, Dem-Fontana) Sexual Harassment History Employment Discrimination

Current law authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred. This bill extends the period to 3 years for which complaints alleging unlawful employment or housing practices may be filed with the Department. The Chamber does not believe it is out of the question to change the bill to 2 years from which complaints can be filed.

This is supported by the American Civil Liberties Union of California, California Employment Lawyers Association, and California Teamsters, among other unions and consumer groups. It is opposed by over 30 organizations, including the Chamber and 17 industry trade groups, such as the California Building Industry Association and National Federation of Independent Business.

This bill previously passed the Assembly Labor Committee 6-0, and is on the Assembly Appropriations Committee calendar for May 2.

AB 3080 (Gonzalez-Fletcher, Dem-San Diego) Employment Discrimination Enforcement

This legislation prohibits an employer from, as a condition of employment or as a condition of entering into a contractual agreement, prohibiting an employee or independent contractor from disclosing to any person an instance of sexual harassment that the employee or independent contractor suffers, witnesses, or discovers in the workplace or in the performance of the contract. Such agreements help mitigate the cost and time needed for resolving employment lawsuits. By banning these agreements entirely, AB 3080 would remove one avenue for resolving employment disputes while opening up many more that are more costly and draining for employers. The Chamber testified in this regard.

This bill is sponsored by the California Labor Federation and supported by the American Civil Liberties Union of California and California Employment Lawyers Association. The opposition consists of the Chamber, the 15 largest industry trade groups, and the Civil Justice Association of California.

The bill passed the Assembly Judiciary Committee on a party line vote, and was referred to the Assembly Appropriations Committee.

AB 3081 (Gonzalez-Fletcher, Dem-San Diego) Sexual Harassment Filing Period

Current law prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off work to obtain relief. This bill also would prohibit an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's status as a victim of sexual harassment. The bill makes the filing deadline for these prohibitions and the reasonable accommodations requirement 3 years from the date of occurrence of the violation. Employees are already protected from sexual harassment under the Fair Employment and Housing Act, but AB 3081 takes those protections and places them in the Labor Code. Doing so provides more opportunities for lawsuits without providing any additional protections, placing unnecessary burdens on employers.

The bill is supported by Service Employees International Union and California Domestic Workers Coalition. Opponents include the Chamber and National Federation of Independent Business, along with 14 of the largest industry trade organizations.

The bill passed the Assembly Judiciary Committee 8-2, with Republican Assembly Member Brian Maienschein (San Diego) voting aye. The measure was referred to the Assembly Appropriations Committee.

SB 1038 (Leyva, Dem-San Bernardino) Employee Sexual Harassment History Discrimination

Current law prohibits discrimination and harassment in employment based on factors, including race, religious creed, gender, or sex. Current law prohibits discharging or discriminating against a person who has opposed any practices prohibited by these provisions. This bill imposes personal liability on employers for violating the prohibition against discharging or discriminating against a person who has opposed any practices prohibited by these provisions or has filed a complaint, testified, or assisted in any proceeding for a violation. The author is not likely to accept any Chamber amendments.

This bill is supported by the California Employment Lawyers Association and Equal Rights Advocates. Opponents include the Chamber and California Council of the Society for Human Resources Management, but the Senate Judiciary Committee does not list others that may exist. This is common practice for the Assembly and Senate Judiciary Committees.

The bill previously passed the Senate Judiciary Committee 4-2, with moderate Democrat Bob Hertzberg (Van Nuys) not voting. The bill is on the May 7 Senate Appropriations Committee calendar.

SB 1300 (Jackson, Dem-San Diego) Sexual Harassment Legal Standard

This measure provides that a plaintiff in an action alleging that a defendant failed to take all reasonable steps necessary to prevent discrimination and harassment from occurring is not required to prove that the plaintiff endured harassment or discrimination and provides that it suffices for the plaintiff to show that the employer knew that the conduct was unwelcome to the plaintiff, that the conduct would meet the legal standard for harassment or discrimination if it increased in severity or becomes pervasive, and that the defendant failed

to take all reasonable steps to prevent the same or similar conduct from recurring. The Chamber is encouraging industry representatives to meet with as many Members as possible to explain the litigation exposure this creates. This is the Chamber labor lobbyist's number one kill target.

This bill is sponsored by the California Employment Lawyers Association and Equal Rights Advocates. It is Chamber-opposed, along with over 15 industry trade groups and 12 local chambers of commerce.

The bill was previously approved by the Senate Labor and Judiciary Committees, and is scheduled to be heard by the Senate Appropriations Committee April 30.

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