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**State Senate**

**State Assembly**

**Department of  
Insurance**

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## Assembly Communications Committee Approves Net Neutrality Measure

On Wednesday, the Assembly Communications and Conveyance Committee voted 8-2 party line, with Republican Assembly Member Brian Maienschein (San Diego) not voting, to pass [SB 822](#) (Wiener, Dem-San Francisco) to prohibit internet service providers (ISP) from engaging in activities that interfere with a user's ability to access content on the internet. Specifically, it makes it unlawful for an ISP to block content; impair traffic on the basis of content; and, charge edge providers for delivering traffic to end users. The legislation also prohibits engaging in paid prioritization and engaging in 3<sup>rd</sup> party zero-rating.

In December 2017, following the election of President Donald Trump, the Federal Communications Commission (FCC) adopted the Restoring Internet Freedom Order which repealed the 2015 Open Internet Order, the latter of which established net neutrality. The Trump Administration FCC argued that net neutrality rules were unnecessary because ISPs have publicly stated their opposition to violating such principles, and if an ISP were to engage in such activities, consumer expectations, market incentives, and the deterrent threat of enforcement actions by antitrust and consumer protection agencies, such as the Federal Trade Commission, will constrain such practices. To enact such changes, the FCC reclassified ISPs and asserted significant preemption over state and local regulations and laws. In June 2018, the repeal took effect.

At the hearing opponents, led by AT&T, objected to the bill's ban on interconnection fees and zero rating, as these two areas were not addressed in the 2015 Open Internet Order. ISPs explain that edge providers impose a cost on ISPs who must upgrade their infrastructure to keep up with demand, especially as the demand for products that require large quantity of data such as online streaming services continue to increase. This necessitates interconnection fees. Sponsored data plans, sometimes called zero-rating, allow ISPs to exclude certain edge provider content from end user's data usage allowances. The FCC has stated that there is evidence to suggest that these business models may in some instances provide benefits to consumers, with particular reference to their use in the provision of mobile service.

Assembly Member Jay Obernolte (Rep-Victorville) inquired about the justification for not allowing interconnection fees and zero rating, as these practices have been in place since the

## Official Legislative Information

inception of the internet. Business to business financial transactions in all forms are the basis of the economy, and untangling these agreements is impractical, Assembly Member Obernolte pointed out.

At the same hearing, and by the same vote, the Committee passed [SB 460](#) (De Leon, Dem-Los Angeles), which prohibits a state agency from contracting with an ISP for the provision of internet service unless the ISP certifies that it is in compliance with SB 822. Since SB 822 applies to all internet users, Republican Committee members questioned the need for the bill.

Net neutrality is the most impactful and controversial remaining issue this legislative session, which adjourns August 31. It is a floor fight measure. There are 48 entities that have registered support and 76 in opposition. Supporters include the American Civil Liberties Union of California, as well as consumer groups such as Common Cause and influential organized labor unions. Opponents consist of major ISPs, the California Cable & Telecommunications Association, and the California Chamber of Commerce.

### Electric Utility Legislative Attempt To Reduce Wildfire Liability Dies; Discussion Reduced To Utility Debt Bonding, Vegetation Management

The Assembly-Senate Wildfire Preparedness Conference Committee plans for up to seven hearings has stalled after four. Pacific Gas & Electric Company (PG&E) is negotiating with legislators on a deal that would allow it to securitize and bond its debt. The overall legislative package around wildfire will also include utility vegetation management to reduce fire load to be overseen by the Department of Forestry and Fire Protection (CalFire), as well as strengthening the power grid and fire suppression practices.

The most substantive news this week is that a PG&E-backed legislative effort to ease the utility's financial liability for wildfires such as the ones that scorched the North Bay Wine Country and other regions last October has died for this year, Conference Committee Chair Bill Dodd (Dem-Napa) said. The proposal would have dramatically reshaped California legal and regulatory frameworks set up to determine whether utilities and their shareholders – or the companies' ratepaying customers – ultimately pay for costs associated with wildfires sparked by the utilities' infrastructure. The policies, known as inverse condemnation, hold utilities strictly liable if their equipment was a factor in starting a wildfire, even if the utility properly conducted maintenance and facilities upgrades.

Among the measures that remain alive are a proposal that would enable PG&E to seek state-secured bonds – essentially a type of mega credit card – to finance, up front, billions of dollars in costs for the infernos so fire victims could be paid rapidly. The amount financed through the securitization scheme could be paid back by PG&E at a relatively low-interest expense. This proposal, embodied within [AB 33](#) (Quirk, Dem-Alameda) could potentially mean that PG&E customers are on the hook to repay the secured bonds. Ratepayer

Protection Network, a consumer group, is opposed to the prospect of PG&E ratepayers becoming obligated to pay off any securitized bonds.

CalFire investigators found that PG&E equipment caused 11 of 16 of last year's North Bay fires. PG&E could face as much as \$17 billion in liabilities for the 2017 fires, according to JPMorgan Chase & Co.

## Wildfire Insurance Related Legislation In 2018: Where The Key Measures Stand

As firenadoes ravage California and legislators rush toward the August 31 end of session, a sizable legislative package proposed by the Department of Insurance earlier this year that make it more difficult for insurers to raise rates and provide coverage has mostly been quashed or sidelined. Of the 10 major bills originally proposed (some have been combined), 6 have died or stalled, including measures that expedite fire victims' claims, advance payment, and let those with a total loss rebuild at a different location. The few bills that remain have been substantially watered down, says California Insurance Commissioner Dave Jones.

Among the remaining measures is [SB 894](#), authored by Senator Bill Dodd, a Napa Democrat whose district was ravaged by last year's Wine Country fires. Senator Dodd's bill make it easier for homeowners to get coverage to rebuild, gives them more time to claim living expenses after a disaster, and extends policy renewal protections. That bill, inspired by homeowners who were underinsured after last year's fires, is bound for the full Assembly after a tough fight in which its reach was narrowed by insurers.

And, [SB 824](#) from Bell Gardens Democratic Senator Ricardo Lara, who is running to succeed Jones as Insurance Commissioner in November, aims to prevent insurers from dropping or not renewing homes after a disaster. It provides that homeowners have their policies renewed the year following a declaration of emergency in their area, and requires insurance companies to submit fire loss data to the state. The bill is up for a floor vote in the Assembly after initial opposition from the Property Casualty Insurers of America. Insurers feared the initial mandates would have a chilling effect on the entire market; but now it contains some exceptions, such as allowing insurers to cancel in the case of fraud.

### Top 10 Major Wildfire Insurance Bills

[AB 1772](#) (Aguiar-Curry, Dem-Napa): This gives homeowners more time to rebuild, allowing them to collect full replacement cost 36 months after a declared disaster. Status: Moved to Inactive

[AB 1797](#) (Levine, Dem-Marin): This requires insurers to either provide policyholders with a full replacement cost estimate every other year or apply an inflation factor to the dwelling limit at each renewal to offer the homeowner the option of a full replacement cost estimate. Status: Referred to Governor

[AB 1799](#) (Levine): This will require insurers to provide a copy of complete policy documents to insured homeowners upon request. Signed by the governor.

[AB 1800](#) (Levine): This would allow homeowners to use their coverage to rebuild on a different lot or buy a home at a different location after a total loss. Moved to inactive.

[AB 1875](#) (Wood): This would require an insurer that does not provide at least 50 percent extended replacement cost coverage to refer the homeowner to another insurer that does. Held on suspense.

[AB 1923](#) (Limón): This would require insurers to participate in the debris removal program after a declared disaster if the property owner consents. Held on suspense.

[AB 2594](#) (Friedman): This would extend a homeowner's right to sue their insurer after a declared disaster from 12 months to 24 months. Held on Assembly floor.

[SB 894](#) (Dodd, Dem-Napa): This bill allows a homeowner the option to combine portions of their homeowner insurance policy to help rebuild their home. It also extends policy renewal protections for those suffering a total loss from one renewal to 2 renewals or 24 months and extends the time to collect additional living expenses from 24 to 36 months after a declared disaster. Status: Assembly Floor.

[SB 897](#) (McGuire): This bill would have expedited the claims process after a disaster by providing homeowners with payment of up to four months of advanced additional living expenses and allowing them to receive 80 percent of their contents coverage without having to itemize a full home inventory. Died on Senate floor.

[SB 1291](#) (Dodd): This would allow the state to revise the licensing law for independent insurance adjusters to include an exam, background check and education requirements. Held on suspense.

## Public Health Insurance Option Feasibility Panel Bill Sent To Governor

On Wednesday, the Senate passed 27-10 (party line) [AB 2472](#) (Wood, Dem-Santa Rosa) which creates the Council on Healthcare Delivery Systems. This panel is charged with preparing an analysis and evaluation to determine the feasibility of a public health insurance plan option. It requires, at a minimum, the feasibility analysis to include an actuarial and economic analysis of a public health insurance plan; and, a discussion of potential funding and state costs for a public health insurance plan.

The council, in developing the feasibility analysis, is to consult with stakeholders, including but not limited to, consumer advocates, healthcare providers, and health plans. The report is

due to the Legislature October 1, 2021. It is supported by 8 organizations including Health Access, Consumer Union, and American Federation of State, County & Municipal Employees. There is no registered opposition.

An evaluation along these lines has already been conducted on some level by various public and private entities already. Single payer healthcare has been scored at \$400 billion, more than twice the entire state budget. Assembly Speaker Anthony Rendon (Dem-Lakewood) shelved a bill to require single payer earlier this year. This bill functionally helps advocates keep the conversation alive to some extent. Governor Jerry Brown is expected to sign the measure.

## Bill To Ban Short-Term Healthcare Insurance Presented To Governor

The California Legislature has passed a bill banning the sale of short-term health insurance plans, a type of insurance the Trump Administration is seeking to expand. The bill, [SB 910](#), authored by Senator Ed Hernandez (Dem-West Covina), was approved by the Senate (27-9) on Monday and the Assembly last week. It will need the signature of Governor Jerry Brown to become law.

Short-term plans are less expensive, but do not need to cover all the benefits required under the Affordable Care Act, such as preventive care, essential health benefits and protections for people with pre-existing conditions. An estimated 10,000 people in California are currently enrolled in such plans. The United States Department of Health and Human Services (HHS) this month finalized a rule extending the amount of time consumers can be on short-term plans from 3 months to almost 12 months, after which they can be renewed for up to 3 years. However, the HHS rule allows states to regulate the sale of such plans on their own terms.

California had long capped the amount of time consumers could be on short-term plans to 6 months; the Obama Administration limited it even further, to 3 months. Senator Hernandez's bill eliminates the sale of such plans altogether, for any amount of time. If Brown signs the bill, California would join a handful of states, including New Jersey, Massachusetts, and New York, that have severely restricted or banned short-term plans.

If the bill becomes law, it would take effect in January 2019. Californians would still be able to buy short-term coverage – if they are in between jobs, for instance – through the state insurance exchange Covered California, or directly from health insurers like Blue Shield or Kaiser Permanente. These plans do comply with Affordable Care Act consumer protections like essential health benefits. Consumers would be able to do this at any time during the year, not just during annual enrollment, because losing job-based coverage counts as a qualifying life event.

## Workers Compensation Apportionment Bill To Be Sent To Governor

[SB 899](#) (Pan, Dem-Elk Grove), approved by the Assembly and Senate without opposition this week, excludes race, gender, and national origin as factors that can be used in a workers' compensation apportionment determination. Current law establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of and in the course of employment, irrespective of fault. This system requires that any physician who prepares a report addressing the issue of permanent disability include an apportionment determination, where the physician determines what approximate percentage of the permanent disability was caused by other factors, including prior industrial injuries.

The bill is in response to the *City of Jackson v. Workers Compensation Appeals Board* decision that a qualified medical examiner can apportion injured worker's permanent disability award "because a condition has a correlation to the genetics of African American males." This bill is supported by the California Coalition on Workers Compensation, California Applicant Attorneys Association, California State Association of Counties, and League of California Cities. The measure has no opposition. It is expected to be signed by Governor Jerry Brown.

## Legislation Requiring CDI Working Group On Climate Change Approved By Assembly; Measure Previously Passed Senate

[SB 30](#), by Senator Ricardo Lara (Dem-Bell Gardens), requires the Department of Insurance to convene a working group to identify, assess, and recommend risk transfer market mechanisms that promote insurer investment in natural infrastructure to address "climate change" related to catastrophic events and create incentives for investment in natural infrastructure to reduce "risks" to communities. The bill is supported by the Nature Conservancy and has no registered opposition. It passed the Assembly 72-0 and is in the Senate for amendment concurrence.

At introduction of the legislation, the author stated that certain reinsurance companies and natural resource groups recently created an insurance policy in Cancún, Mexico whereby local organizations with an interest in coral reef tourism pay into an insurance fund for the reef. The reef provides protection against storm events, and if any destructive storms damage the reef system, the insurance fund will pay out sums for restoration. It is Senator Lara's view that this is an innovative approach to risk reduction related to "climate change." The Senator introduced this bill to address the question, "What are the California equivalencies to these international examples that create incentives for investment in natural infrastructure?"

## Governor Jerry Brown Has Legislation On His Desk That Makes Most Employment Arbitration Agreements Illegal; However, Has History Of Vetoing These Anti-Arbitration Bills

The California Legislature has been working to pass a bill, [AB 3080](#) (Gonzalez-Fletcher, Dem-San Diego), that makes most employment arbitration agreements unlawful in California. That bill has now passed both the Assembly and the Senate, and is headed to Governor Jerry Brown's desk to sign into law, allow to become law without signature, or veto sometime between now and September 30. Opponents explain that this is obviously harmful to employers, but also it is unconstitutional and preempted by the Federal Arbitration Act (FAA).

AB 3080 seeks to amend the Fair Employment and Housing Act (FEHA) and the Labor Code to make it an unlawful employment practice to require an applicant, employee, or independent contractor to agree in any contract entered into, modified, or extended on or after January 1, 2019 to arbitrate claims arising under FEHA or the Labor Code. AB 3080 also seeks to prohibit even voluntary employment arbitration agreements, whereby an applicant, employee, or independent contractor has the right to opt-out.

In the event the Governor signs the bill, employers are prepared to take immediate legal action, by seeking to enjoin the bill's enforcement as preempted by the FAA. Courts consistently have rejected legislative and judicial efforts to discriminate against arbitration agreements and / or arbitration as a dispute resolution forum.

## Labor Legislation Of Note On Assembly & Senate Floors

There are multiple labor bills pending before the full Assembly and Senate, but the following are those for which there is some new intelligence. August 31 is the last day for bills to be considered before adjournment for the year.

### [AB 3081](#) (Gonzalez-Fletcher, Dem-San Diego) Workplace Sexual Harassment

Status: Referred to Senate Floor

Summary: This bill prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of sexual harassment for taking time off work to obtain relief or because of the employee's status as a victim of sexual harassment and requires an employer to provide reasonable accommodations to the employee.

- This is one of two bills for which there is a separate California Chamber of Commerce coalition designed to defeat. The messaging to legislators is that it is not a Women's Caucus priority and the Department of Finance is opposed because of Department of Industrial Relations sexual harassment caseload cost increases.

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

Status: Referred to Assembly Floor

Summary: Requires an employer to provide a lactation room or location that includes prescribed features and requires an employer to provide access to a sink and refrigerator in close proximity to the employee's workspace. The bill requires an employer to implement a policy regarding lactation accommodation and make it available to employees. The bill also requires an employer to maintain records of requests for lactation accommodation for 3 years and to give the Labor Commission access to those records.

- The Chamber achieved amendments to remove private right of action litigation language, moving their position to neutral. Regarding the Assembly companion measure, [AB 1976](#) (Limon, Dem-Santa Barbara), the Chamber is moving to a neutral position, as previously reported, because of the hardship exemption that can be filed with the Department of Industrial Relations explaining that such an accommodation is not practical.

[SB 1300](#) (Jackson, Dem-Santa Barbara) Employment Discrimination & Harassment

Status: Referred to Assembly Floor

Summary: Provides that it is an unlawful employment practice, for an employer, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, to discharge, harass, or discriminate against the person. It also provides that it is an unlawful employment practice, for an employee, because of any of the above characteristics, to harass another person, if the employer knows or should have known of this conduct and failed to take immediate and appropriate corrective action.

- The Chamber removed this bill from its Job Killer list because it no longer provides an employee private right of civil action. Nevertheless, the intent language remains a concern, as it gives court direction on lowering the severe pervasive sexual harassment standard. This is the second bill that required employers to build a coalition to defeat.

[SB 1412](#) (Bradford, Dem-Inglewood) Job Applicant Criminal History

Status: Referred to Assembly Floor

Summary: Requires employers to only consider convictions relevant to the job when screening job applicants using a criminal background check. This bill limits the circumstances when an employer is prohibited from asking an applicant about criminal convictions that have been judicially dismissed or ordered sealed by limiting employer inquiries to "particular convictions" where conviction of a crime legally prohibits someone from holding that job.

- This bill has not been of great concern to Chamber Employment Coalition members, but for the California Bankers Association (CBA). CBA is now neutral, pending quality of the amendments requested. There will be an entry in the Senate Journal that



explains the measure is intended to permit an employer to perform a full job applicant background check.

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