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Insurance Commissioner Orders FAIR Plan to Cease & Desist Fire Insurance Moratorium

Yesterday, Insurance Commissioner Dave Jones issued a cease and desist order requiring the California Fair Access to Insurance Requirements Plan (FAIR) to terminate immediately the moratorium it initiated on writing new fire insurance coverage in wildfire-impacted areas and ordering the FAIR Plan to make its fire insurance products available to all eligible Californians in keeping with its statutorily mandated purpose. "I've been advised the FAIR Plan, after being notified of the cease and desist, agreed to lift its moratorium on writing new policies," Jones said.

The Insurance Commissioner stated that he originally took this action after receiving information that the FAIR Plan imposed a moratorium on writing new policies in current active fire zones across California. The FAIR Plan was established as the fire insurer of last resort to make certain California property owners have access to fire insurance coverage. There is no statutory allowance for the FAIR Plan to discontinue writing fire insurance policies for applicants anywhere in the state who need fire insurance coverage to protect themselves from financial loss.

While the FAIR Plan is required to write coverage, any individuals or entities who attempt to commit insurance fraud by placing FAIR Plan or any other insurance coverage on damaged property to cover losses that already occurred will be investigated and prosecuted.

Review of 2017 Legislative Activity: Law & Court Issues

Department of Insurance

Secretary of State

Official Legislative Information

AB 281 (Salas, Dem-Bakersfield) Labor Violation Right to Cure

The Labor Code Private Attorneys General Act (PAGA) authorizes an aggrieved employee who complies with notice and filing requirements to bring a civil action to recover specified civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency. The Act provides an employer a right to cure labor violations, except for certain specified violations, including health and safety violations, before the aggrieved employee may bring a civil action. This bill would extend the period of time in which the employer may cure the violation from 33 to 65 calendar days.

Legislation along these lines typically does not get considered by the Democratic majority. California has some of the most onerous and complex labor laws in the country. This complexity is exemplified by PAGA, which essentially allows an individual to pursue a “representative action” on behalf of similarly aggrieved employees against an employer for almost any Labor Code violation. PAGA requires a \$100 penalty per employee, per pay period for the first violation, and \$200 per employee, per pay period for each subsequent violation. With this statutory scheme, one unintentional and minor violation of the Labor Code can result in the threat of financially devastating civil litigation against an employer, which the plaintiff's bar has utilized to leverage quick monetary settlements.

Status: AB 281 was not taken up for a vote in the Assembly Labor and Employment Committee hearing, making it a two-year bill.

AB 889 (Stone, Dem-Santa Clara) Civil Litigation Secrecy Agreement

Current law generally permits the parties to a civil action to include, as a condition to a settlement, a provision requiring that information about the settlement or the underlying dispute be kept confidential; however, existing law prohibits a confidential settlement agreement in a civil action with a factual foundation establishing a cause of action for civil damages for an act that may be prosecuted as a felony sex offense. Current law also establishes that flouting this prohibition is grounds for professional discipline for an attorney, and it requires the State Bar of California to investigate and take appropriate action in any case brought to its attention. This bill instead authorizes, but does not require, the State Bar to investigate these cases of attorney misconduct.

The bill declares that any settlement agreement that restricts disclosure of information about a danger to public health or safety is contrary to public policy, and is therefore void and

unenforceable unless the court finds an interest in secrecy that overrides the presumption favoring disclosure. The bill only applies to those provisions of the settlement agreement that restrict disclosure of evidence of a public danger.

Status: This bill was not taken up for a vote on the Assembly Floor, making it a two-year bill.

AB 1429 (Fong, R-Bakersfield) Employee Tort Action Limitation

This bill limits the violations for which an aggrieved employee is authorized to bring a civil action under the Private Attorneys General Act. The measure also caps the civil penalties recoverable at \$10,000 per claimant and excludes the recovery of filing fees by a successful claimant. Lastly, it requires the superior court to review any penalties sought as part of a settlement agreement under these provisions.

While Republicans introduce a handful of tort reform bills each year, the liberal composition of both house Judiciary Committees prevent even a hearing.

Status: This bill was not taken up for a vote in the Assembly Labor and Employment Committee, making it a two-year bill.

AB 1693 (Judiciary Committee) Civil Judicial Action Intervention

Current law provides that a third person may become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, uniting with the defendant in resisting the claims of the plaintiff, or demanding anything adversely to both the plaintiff and the defendant, by filing a complaint setting forth the grounds upon which the intervention rests. This bill requires that a nonparty seeking to intervene in an action or proceeding, deemed the intervenor, petition the court for leave to intervene by noticed motion or ex parte application setting forth the grounds upon which the intervention rests.

The author explains that this bill eliminates confusion by allowing an intervenor to either file a complaint in intervention, an answer in intervention, or in some instances, both. This bill also adopts a good litigation practice to ensure that parties in an existing lawsuit are properly noticed after the court grants the intervention.

Assembly Vote: 77-0

Senate Vote: 33-0

Status: This bill was signed by the Governor. Chapter 131, Statutes of 2017

SB 33 (Dodd, Dem-Napa) Depository Institution Arbitration Waiver

SB 33 allows a person to waive forced arbitration in cases of alleged fraud committed by a state or federally chartered depository institution. The bill is in response to the Wells Fargo fraud scandal. Starting in 2011, the bank's employees opened more than two 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 fake 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.

Initially, the measure applied to "financial institutions," which by definition would have applied to insurers and annuities brokers, but the bill was amended removing this exposure. The California Chamber of Commerce opposed the bill because it will negatively impact employers with unnecessary and costly class action litigation that benefits trial attorneys, not consumers. This legislation, however, is likely preempted by the Federal Arbitration Act.

Assembly Vote: 46-23

Senate Vote: 25-13

Status: This bill was signed by the Governor. Chapter 480, Statutes of 2017

SB 298 (Wieckowski, Dem-Fremont) Money Judgement Enforcement Exemptions

Current law authorizes a judgment creditor to levy upon the property of a judgment debtor to satisfy a judgment, and authorizes the judgment debtor to claim that certain property is exempt from the levy by following a specified procedure. Current law authorizes a claimant to assert an exemption by filing a claim of exemption with the levying officer within 10 days after the date the notice of levy on the property claimed to be exempt is served on the judgment debtor. This bill authorizes a claimant to file a claim of exemption with the levying officer either in person or by mail and specifies that the period for filing the claim is 15 days if

the judgment debtor is personally served with a notice of levy on the property claimed to be exempt, and 20 days if the claimant is served with notice by mail.

According to the Western Center on Law and Poverty, the sponsor, many low-income debtors in California live a step away from a downward financial spiral that may be triggered by having up to 100% of the money in their bank account seized by creditors as the result of a bank levy. They contend that the current claim of exemption process, in which a debtor may try to convince the court that certain funds are exempt under law and ought to be returned, is problematic because it leaves people with no way to pay for their rent, food, medicine, transportation, and other life necessities until the claim can be considered by the court. To address this reported problem, this bill exempts an amount up to \$2,250 from being levied from a debtor's bank account. It should be noted that nothing in this bill acts to discharge any part of the underlying debt.

Status: This bill was not taken up for a vote on the Assembly Floor, making it a two-year bill.

SB 632 (Monning, Dem-Monterey) Civil Discovery Deposition Limitation

SB 632 requires that, in any civil action for injury or illness that results in mesothelioma, a deposition examination of the witness by counsel other than the witness' counsel of record be limited to seven hours of total testimony if a licensed physician attests in a declaration that the deponent suffers from mesothelioma, raising substantial medical doubt of the survival of the deponent beyond six months. A party is authorized by this bill to seek up to seven hours of additional deposition testimony for no more than 14 hours of total testimony.

If additional time is needed, this bill authorizes judicial discretion to extend the deposition beyond seven hours, not to exceed 14 hours, if the health of the deponent does not appear to be endangered by the grant of additional time. Versions of this leeway were an industry-led effort.

Status: This bill was not taken up for a vote on the Senate Floor, making it a two-year bill.

Review of 2017 Legislative Activity: Tax Issues

AB 449 (Calderon, Dem-Whittier) Income Tax Demand Penalty Reduction

Under current law, the Franchise Tax Board (FTB) is authorized to impose a penalty for failure to file a return upon notice and demand and failure to furnish information in response to a written request. Under existing law, this penalty amount is 25% of the amount of tax determined to be owed or of any deficiency tax assessed by the Board. This bill, instead, for taxable years beginning on and after January 1, 2018, reduces the penalty amount that the FTB may impose to 15% of the amount of total unpaid tax as of the date and time the notice and demand is issued or of any deficiency tax assessed.

According to the author, the current structure of the demand penalty is excessive and is not appropriate for some situations. AB 449 aims to reduce the impact of the penalty and restructure it so that it is based on the remaining tax owed and not the original tax liability amount.

Status: This bill was not taken up for a vote in the Assembly Appropriations Committee, making it a two-year bill.

AB 600 (Cooper, Dem-Sacramento) Manufacturing & Research & Development Tax Credit

Current law exempts 3.9% of sales and use tax for purchases of tangible property, such as machinery and equipment used for research and development (R&D) in manufacturing. One restriction of the exemption is that any property treated as having a “useful life” of less than one year is not eligible. This bill expands the definition of “useful life” to include warranties, maintenance contracts, and actual business practices as factors when determining if the property has a useful life of more than one year. Additionally, AB 600 extends the sunset of the exemption from July 1, 2018 to July 1, 2030.

This manufacturing R&D tax credit legislation was part of the greenhouse gas cap-and-trade law (C&T) extension and the industry negotiated it into the C&T bill. This was the California Taxpayers Association’s strategy. The original strategy was for AB 600 to be put into the State Budget 2017-2018 Act, but it was scored too costly for conference committee to accept. Some manufacturing and biotech research equipment is already exempt from the sales and use tax, and the bill maintains that carve out through 2030, eight years beyond its planned 2022 expiration.

Status: This bill was signed by the Governor as part of the greenhouse gas cap-and-trade law extension.

AB 1216 (Choi, Rep-Irvine) Corporation Employee Increase Tax Credit

The Corporation Tax Law allows various credits against the taxes imposed by that law. This bill, upon appropriation of funds by the Legislature, for each taxable year beginning on and after January 1, 2018, and before January 1, 2025, allows a credit against the taxes imposed under that law to a taxpayer, as defined to mean a taxpayer that increases its workforce by 20 annual full-time equivalent qualified employees, as compared to the taxpayer's base year, in an amount equal to 17.5% of qualified wages paid or incurred during the taxable year to an employee, not to exceed \$5 million per qualified taxpayer per taxable year.

According to the author, AB 1216 will incentivize businesses to relocate to California. Supporters argue that this proposed credit will encourage small businesses to grow, strengthening California's economy.

Status: This bill was not taken up for a vote in the Assembly Appropriations Committee, making it a two-year bill.

AB 1566 (Irwin, D-Thousand Oaks) Sales & Use Tax Overpayment Credit Eligibility Timeline

AB 1566 requires the Board of Equalization, on and after January 1, 2018, and before January 1, 2023, to credit and setoff underpayment of taxes barred by the statute of limitations in one quarter against an overpayment of taxes in another quarter within the same calendar year, if both the set off and overpayment occurred during the same period put at issue by the taxpayer's claim to refund.

According to the author's office, AB 1566 is a practical measure that supports businesses that may have inadvertently paid the wrong amount in taxes in a given quarter. This allows these businesses to avoid a difficult appeals process.

Status: This bill was not taken up for a vote in the Assembly Appropriations Committee, making it a two-year bill.

AB 1629 (Maienschein, Rep-San Diego) Developmental Disability Employee Hiring Tax Credit

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws. This bill, for taxable years beginning on and after January 1, 2018 and before January 1, 2023, allows a credit under those laws to a qualified employer that pays or incurs to a qualified employee a wage equal to or exceeding the minimum wage during the taxable year.

According to the author, AB 1629 will create an incentive for employers to hire Californians with developmental disabilities and pay them the minimum wage or higher. According to the bill's sponsor, special wage certificates offer people the ability to work when they would otherwise be excluded.

Status: This bill was not taken up for a vote in the Assembly Appropriations Committee, making it a two-year bill.

AB 1664 (Bocanegra, Dem-North Hollywood) California Film Commission Workforce Development Program

Current law establishes and generally sets forth the duties of the California Film Commission (CFC) in encouraging and promoting the film industry in the state, including requiring the Commission to develop and oversee the implementation of the Cooperative Motion Picture Marketing Plan. Current law requires the CFC to adopt rules and regulations to implement a career readiness requirement. This bill requires the CFC to develop a workforce development program that is consistent with the career readiness requirement.

According to the author, data from the Motion Picture Association of America shows, since 2015, over 15,000 Californians have been employed as behind-the-camera crew on film and television sets throughout the state, receiving \$1.1 billion in wages. A large percentage of those jobs can be attributed to the successful implementation of the CFC tax credit program. While the revived tax credit program has helped bring back and create thousands of good-paying, middle-class jobs, the only way to ensure that this remains a home-grown industry is by ensuring a skilled workforce is ready to assume those jobs.

Status: This bill was not taken up for a vote in the Senate Business, Professions and Economic Development Committee, making it a two-year bill.

SB 11 (Gaines, Rep-El Dorado Hills) Income Tax Penalty Waiver

Current law requires the Board of Equalization (BOE) to administer various taxes and fees, including the Sales and Use Tax Law. This bill prohibits the assessment of interest and penalties against any person for failure to timely file a return or make payments of any taxes, surcharges, or fees imposed under this law if the failure to timely file a return is attributable to the failure of BOE's website, unless the person fails to file a return or pay the amount of tax within a reasonable time after the conclusion of the outage period.

The BOE currently has the authority to grant relief of interest and penalties in the case of a Board system failure that prevents a taxpayer from filing or paying a return, however, it is the responsibility of the taxpayer to request relief. None of the current statutory provisions provides for a proactive relief or authorizes the BOE not to impose penalties or interest in the case of a Board website failure. Now taxpayers, even if delays are the fault of a BOE computer failure, must file for relief. This bill gives the BOE authority to relieve taxpayers from having to jump through hoops to file for relief to waive penalties and interest in the event of another system failure.

Assembly Vote: 76-0

Senate Vote: 37-0

Status: This bill was vetoed by the Governor. The veto message can be found in Appendix F.

SB 66 (Wieckowski, Dem-Fremont) Punitive Damages Tax Deduction Repeal

The Personal Income Tax Law and the Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws. Both laws allow a deduction for ordinary and necessary business expenses, including a deduction for amounts paid or incurred for types of punitive damages as does federal law. This bill, for taxable years beginning on or after January 1, 2018, disallows, under both laws, a deduction for amounts paid or incurred for punitive damages.

Status: This bill was not taken up for a vote in the Assembly Revenue and Taxation Committee, making it a two-year bill.

SB 567 (Lara, Dem-Bell Gardens) Water's Edge Tax Election Repeal

The Personal Income Tax Law does not conform to specified provisions of federal law relating to the taxation of specified trusts. Current law exempts from taxation for the taxable year any charitable remainder annuity trust or charitable remainder unitrust, including that the value of the charitable remainder interest must be at least 10% of the initial fair market value of all of the property placed in trust. This bill, for charitable remainder annuity trusts formed on or after January 1, 2018, requires that the charitable remainder interest must be at least 40% of the initial fair market value of all of the property placed in trust. Most importantly, it repeals the water's edge tax election.

According to the author, SB 567 will eliminate California's largest tax loopholes used by the highest income earners. Millionaires take advantage of popular loopholes like the basis step-up option on inherited property, performance based compensation deductions, and charitable remainder trusts. This measure taxes business entity revenue from international affiliates as well.

Status: This bill was not taken up on the Senate Floor, making it a two-year bill.

SB 600 (Galgiani, Dem-Stockton) Manufacturing & Research & Development Tax Credit

Current law exempts 3.9% of sales and use tax for purchases of tangible property, such as machinery and equipment used for research and development (R&D) in manufacturing. One restriction of the exemption is that any property treated as having a "useful life" of less than one year is not eligible. This bill expands the definition of "useful life" to include warranties, maintenance contracts, and actual business practices as factors when determining if the property has a useful life of more than one year. Additionally, AB 600 extends the sunset of the exemption from July 1, 2018 to July 1, 2030.

This manufacturing R&D tax credit legislation was part of the greenhouse gas cap-and-trade law (C&T) extension and the industry negotiated it into the C&T bill. This was the California Taxpayers Association's strategy. The original strategy was for AB 600 to be put into the State Budget 2017-2018 Act, but it was scored too costly for conference committee to accept. Some manufacturing and biotech research equipment is already exempt from the sales and use tax, and the bill maintains that carve out through 2030, eight years beyond its planned 2022 expiration.

Status: This bill was signed by the Governor as part of the greenhouse gas cap-and-trade law extension.

SB 640 (Hertzberg, Dem-Van Nuys) Sales Taxation on Services

This bill makes legislative findings regarding responding to pending proposals for federal taxation reform and California's tax climate and states that the intent of the bill is to make three changes to taxation within the state, including broadening the tax base by imposing a sales tax on services. This bill also establishes the Retail Sales Tax on Services Fund in the State Treasury.

This measure was introduced by the author to continue the conversation around a new tax on services. The bill never was intended to move forward this session. Rather, it was designed to maintain exposure of a well-funded ballot measure that may appear at the next election.

Status: This bill was not taken up for a vote in the Senate Revenue and Taxation Committee, making it a two-year bill.