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State Senate

State Assembly

Department of  
Insurance

This week, the full Assembly and Senate held floor sessions in order to consider legislation by the June 1, 2018 joint rule deadline to pass bills from their house of origin.

## Full Assembly & Senate Pass A Variety Of Insurance Related Measures Prior To Legislative Deadline

### **AB 1875 (Wood, Dem-Santa Rosa) Online Home Insurance Finder**

This bill requires the Department of Insurance to establish the California Home Insurance Finder on its website to help homeowners connect with an insurance agent or broker for residential property insurance. The bill requires the Department to survey agents, brokers, insurers, and appropriate trade associations about inclusion in the finder, and post participants' names, addresses, phone numbers, and websites to the finder on or before July 1, 2020. The bill requires the Insurance Commissioner to use social media and other tools to promote the finder, to create materials in multiple languages, and to develop a pamphlet no later than July 1, 2020, that provides information on how to accurately estimate dwelling replacement costs.

Support & Opposition: Department of Insurance, Independent Insurance Agents & Brokers of California, Pacific Association of Domestic Insurance Companies, Property Casualty Insurers Association of America, American Insurance Association, and Personal Insurance Federation of California. There is no opposition.

Vote: Assembly Passed 75-0. Ordered to the Senate.

### **AB 1956 (Limón, Dem-Santa Barbara) Fire Prevention Activities**

Current law requires the Director of the Department of Forestry and Fire Protection to establish a working group to identify potential incentives for landowners to implement prefire activities in state responsibility areas and urban wildland communities and to identify all federal, state, or local programs, private programs, and any other programs requiring a cost share that involves prefire activities. This bill revises the membership to include representatives from industries with experience in fire prevention, as well as academics in the field.

## Secretary of State

### Official Legislative Information

Support & Opposition: This bill is supported by the Rural County Representatives of California and Nature Conservancy. There is no opposition.

Vote: Assembly Passed 78-0. Ordered to the Senate.

#### **AB 2046 (Daly, Dem-Anaheim) Workers Compensation Insurance Fraud Reporting**

This bill adopts two recommendations from the State Auditor regarding workers' compensation fraud fighting efforts: (1) requires that a governmental agency in possession of information relating to workers' compensation fraud to, upon request of another governmental agency that uses the information for purposes of investigation, prosecution, or detection of workers' compensation fraud, provide that information to the requesting agency, and (2) authorizes the Fraud Assessment Commission to augment, rather than offset, its annual assessment on employers to fund the workers' compensation fraud program with unused funds from previous assessments.

Support & Opposition: This bill is supported by the Property Casualty Insurers of California. There is no opposition.

Vote: Assembly Passed 78-0. Ordered to the Senate.

#### **AB 2091 (Grayson, Dem-Concord) Prescribed Burns**

This bill renames the State Board of Forestry and Fire Protection the State Board of Forestry and Fire Prevention and Protection. The bill requires members to have general knowledge of, interest in, and experience with fire prevention. The bill also requires at least one member to be selected with a background and understanding of fire prevention, including prescribed fire. The bill requires the board to appoint a prescribed fire advisory committee and requires the advisory committee to consult with the board on prescribed fire issues, including the development of a certificate of specialization.

Support & Opposition: The bill is supported by the Pacific Forest Trust and has no opposition.

Vote: Assembly Passed 76-0. Ordered to the Senate.

#### **AB 2276 (Burke, Dem-Inglewood) Automobile Body Rate Survey**

This bill requires an auto body repair shop participating in an auto body repair labor rate survey to declare specified information, including that it meets equipment requirements and has proof of insurance. The bill requires an auto body repair labor rate survey to meet standards, including that it randomly surveys the number of shops necessary to obtain responses that achieve a minimum confidence level of 90% and a standard error of no more than 10%, and provides for a rebuttable presumption that the insurer has attempted, in good faith, to effectuate a fair and equitable labor rate if the survey complies with the requirements of the bill.

Support & Opposition: This bill is supported by the American Insurance Association, National Association of Mutual Insurers, Pacific Association of Domestic Insurers, Personal Insurance Federation of California, Property Casualty Insurers Association of America, and California Chamber of Commerce. It is opposed by the California Autobody Association and Consumer Federation of America.

Vote: Assembly Passed 58-1. Ordered to the Senate.

**AB 2395 (Calderon, Dem-Whittier) California Life & Health Insurance Guarantee Association**

This bill increases the surveillance of potentially insolvent longterm care insurers and expands the California Life Health Insurance Guarantee Association's (CLHIGA) authority to manage the liquidation of insolvent insurers. Specifically, the bill permits CLHIGA to request actuarially justified rate increases for covered policies, require longterm care insurers with more than 10,000 longterm care insurance policies in force to annually report additional financial information to the Department of Insurance and requires CLHIGA to submit an annual report to the Legislature regarding its capacity to absorb the claims of insolvent insurers.

Support & Opposition: This bill is sponsored by the Association of California Life & Health Insurance Companies and Guardian Life Insurance Company of America. There is no registered opposition.

Vote: Assembly Passed 77-0. Ordered to the Senate.

**AB 2802 (Friedman, Dem-Los Angeles) Insurance Payment Interception**

Beginning January 1, 2020, this legislation requires an insurer to cooperate with the Department of Child Support Services to match claimants with obligors who owe past-due child support, and to report those claimants to the Department. The bill requires an insurer to match and report a claimant if his or her claim seeks an economic benefit, but exempts specified economic benefits, including a claim under a personal automobile insurance policy for actual repair, replacement, or loss of use of an insured vehicle.

Support & Opposition: This bill is sponsored by the Department of Insurance and there is no other registered support or opposition.

Vote: Assembly Passed 74-3. Ordered to the Senate.

**SB 824 (Lara, Dem-Bell Gardens) Homeowners Insurance & Declared Disasters**

This legislation 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. It 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. It also directs the Department of Insurance to conduct a data call on wildfire and fire loss experience from insurers writing homeowners insurance. It includes a provision to protect insurers from applicability when the renewal of a policy threatens the solvency of the insurer.

Support & Opposition: The bill is supported by United Policyholders, Rural County Representatives of California, California State Association of Counties, and Consumer Attorneys of California. The American Insurance Association, National Association of Mutual Insurance Companies, Pacific Association of Domestic Insurance Companies, Personal

Insurance Federation of California, and Property Casualty Insurers Association of America oppose unless it is amended.

Vote: Senate Passed 27-5. Ordered to the Assembly.

### **SB 894 (Dodd, Dem-Fairfield) Post Natural Disaster Residential Insurance Policies**

This bill, after a total loss of a home in a declared disaster area, (1) requires an insurer to renew a residential insurance policy for at least 2 annual renewal periods or 24 months, whichever is greater; (2) requires an insurer to grant an additional 12-month extension for a total of 36 months for additional living expense (ALE) if an insured acting in good faith and with reasonable due diligence encounters a delay in the reconstruction process, subject to policy limits; (3) allows an insured to combine payments for actual losses up to the policy limits for the primary dwelling, other structures and contents, limited to the amount necessary to rebuild or replace the home if the policy limits for the dwelling are insufficient; (4) specifies that the payments for losses under this provision be full replacement value without requiring the replacement of the other structures or contents; (5) provides that the requirements for policy renewals are retroactive for any claim filed after July 1, 2017, for policies in effect on January 1, 2019; and, (6) specifies that the sections of this bill are severable.

Senate Floor amendments (1) clarified that after a total loss of a home in a declared disaster an insured may combine payments for actual losses up to the policy limits for the primary dwelling, other structures and contents, limited to the amount necessary to rebuild or replace the home if the policy limits for the dwelling are insufficient; (2) specified that the losses under this provision be treated as full replacement value without requiring the replacement of the other structures or contents; (3) deleted a requirement that additional time to collect ALE benefits applies only to policies with a dollar limit on ALE; and, (4) deleted retroactivity for the extension of time for ALE claims.

Support & Opposition: The bill is sponsored by the Department of Insurance, City of Santa Rosa, Consumer Attorneys of California, Napa County Board of Supervisors, and United Policyholders. It is opposed by the American Insurance Association, National Association of Mutual Insurance Companies, Pacific Association of Domestic Insurance Companies, Personal Insurance Federation of California, and Property Casualty Insurers Association of America.

Vote: Senate Passed 24-11. Ordered to the Assembly.

### **SB 901 (Dodd, Dem-Napa) Deenergization Policies**

This legislation requires a wildfire mitigation plan prepared by an electrical corporation, and wildfire mitigation measures prepared by a local publicly owned electric utility or electrical cooperative, to include protocols the preparing entity may use to determine when it may be necessary to deenergize its electrical lines and deactivate its reclosers. The bill requires those protocols to include an assessment of factors, including meteorological and fire threat conditions, and to include appropriate and feasible procedures for notifying customers, including, as a priority, critical first responders, healthcare facilities, and operators of telecommunications infrastructure, who may be impacted by the deenergizing of electrical lines.

Support & Opposition: The bill is supported by Southern California Edison, San Diego Gas & Electric, California Professional Firefighters, Consumer Action, and Sonoma County. There is no opposition.

Vote: Senate Passed 39-0. Ordered to the Assembly.

### **SB 1088 (Dodd, Dem-Napa) Electric Utility Safety Resiliency Planning**

The California Emergency Services Act establishes the Office of Emergency Services for the purpose of mitigating the effects of natural, manmade, or war-caused emergencies and makes findings and declarations relating to ensuring that preparation within the state will be adequate to deal with those emergencies. This bill requires the Office by September 30, 2019 to adopt standards for reducing risks from a major event. It also requires electric utilities file resiliency plans with the Public Utilities Commission every 2 years.

Support & Opposition: This bill is supported by Southern California Edison, San Diego Gas & Electric, Pacific Gas & Electric, Sonoma County, and California Labor Federation. Opposition comes from the Solar Energy Industries Association, Environmental Defense Fund, and The Utility Reform Network.

Vote: Senate Passed 34-2. Ordered to the Assembly.

### **SB 1260 (Jackson, Dem-Santa Barbara) Prescribed Burns**

Current law requires a local agency to designate, by ordinance, very high fire hazard severity zones in its jurisdiction, as provided in connection with a state program for fire prevention. This bill requires the local agency to transmit a copy of the adopted ordinance to the State Board of Forestry and Fire Protection within 30 days of adoption.

Support & Opposition: This bill is supported by San Diego Gas & Electric, Nature Conservancy, Sonoma and Ventura Counties, and 6 additional environmental organizations. There is no opposition.

Vote: Senate Passed 36-0. Ordered to the Assembly.

## Property & Casualty Insurers Defeat Wildfire Residential Property Insurance Measure

Yesterday, **SB 897** (McGuire, Dem-Healdsburg) – Wildfire Residential Property Insurance, one of the major components of the Legislature’s fire insurance legislative package, was defeated as a result of heavy lobbying by the property and casualty insurance carriers in the state.

This bill (1) requires additional living expense (ALE) coverage to include all reasonable expenses incurred by the insured to maintain a comparable standard of living following a covered loss; (2) requires, in the case of a total loss that is a result of a state of emergency, an insurer to provide an advance payment of no less than four months of ALE or fair rental value, 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, to offer no less than 80% of the policy limits for contents without requiring the insured to file an itemized claim, and prohibits an insurer in the case of a claim for contents from requiring the use of a company-specific inventory form; (3) 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, (4) makes provisions retroactive for any claim filed after July 1, 2017 but not submitted by January 1, 2019.

The bill is supported by the California State Association of Counties and United Policyholders. It is opposed by the American Insurance Association, National Association of Mutual Insurance Companies, Pacific Association of Domestic Insurance Companies, Personal Insurance Federation of California, and Property Casualty Insurers Association of America.

The author, Senator Mike McGuire (Dem-Healdsburg) declined a compromise with the industry, a mandate required by Senate Insurance Committee Chair Steven Glazer (Dem-Orinda), which was 50% of the policy limits for contents without requiring the use of an inventory form. Senator McGuire offered 75% of a policy's maximum limit. The author said, "This fight is far from over ... which is why this state may eventually need to put this on the ballot for voters to decide."

## Full Assembly Acts On Significant Labor Legislation Before Bill Passage Deadline

### **AB 1870 (Reyes, Dem-San Bernardino) Unlawful Employment Practices**

The Fair Employment and Housing Act makes specified employment practices unlawful, including discrimination against or harassment of employees. 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.

Support & Opposition: This bill is supported by the American Civil Liberties Union, California Employment Lawyers Association, and California Teamsters, among 16 other unions and consumer groups. The opposition is led by the California Chamber of Commerce, 15 large industry trade organizations, as well as multiple local chambers of commerce.

Vote: Assembly Passed 57-4. Ordered to the Senate.

### **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.

Support & Opposition: 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 California Chamber of Commerce, the 15 largest industry trade groups, and the Civil Justice Association of California.

Vote: Assembly Passed 47-25. Ordered to the Senate.

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

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 or because of the employee's status as a victim of domestic violence, sexual assault, or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of the status. This bill also prohibits 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. It contains employer-employee joint liability.

Support & Opposition: The bill is supported by the California Teamsters and several women's organizations, among 12 other entities. It is opposed by the Chamber, 13 business trade groups, and 12 local chambers.

Vote: Assembly Passed 47-23. Ordered to the Senate.

### **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.

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

Vote: Senate Passed 24-6. Ordered to the Assembly.

### **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.

Support & Opposition: This bill is supported by the California Employment Lawyers Association and Equal Rights Advocates. Opponents include the California Chamber of Commerce and California Council of the Society for Human Resources Management.

Vote: Senate Passed 21-13. Ordered to the Assembly.

### **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.

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

Vote: Senate Passed 24-13. Ordered to the Assembly.

### **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.

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

Vote: Senate Passed 22-11. Ordered to the Assembly.

### **SB 1343 (Mitchell, Dem-Los Angeles) Workplace Sexual Harassment Training Requirements**

Requires an employer who employs 5 or more employees to provide at least 2 hours of sexual harassment training to all employees by January 1, 2020, and once every 2 years after that. The bill requires the Department of Fair Employment and Housing to develop a 2-hour video training course on the prevention of sexual harassment in the workplace.

Support & Opposition: The bill is supported by 16 organizations, including 10 labor unions, such as California Teamsters, and the Consumer Attorneys of California. The California Manufacturers & Technology Association is the only registered opposition.

Vote: Senate Passed 38-0. Ordered to the Assembly.

## Defeated Legislation

### **AB 2613 (Reyes, Dem-San Bernardino) Failure to Pay Wage Penalties**

Current law provides for a civil penalty, in addition to, and entirely independent and apart from other penalties, on every person who fails to pay the wages of each employee and requires the Labor Commissioner to recover that penalty. Current law requires that a specified percentage of the penalty recovered under that provision be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws and that the remainder be paid into the State Treasury to the credit of the General Fund. This bill repeals those provisions and makes an employer or other person acting individually or as an officer, agent, or employee of another person who fails to pay wages of each employee subject to a penalty of \$200, payable to each affected employee, per pay period where the wages due are not paid on time. Penalties escalate financially for additional wage payment failure.

Support & Opposition: This bill is supported by 17 organizations, largely labor unions, such as the California Labor Federation, the Service Employees International Union – California, and the California Employment Lawyers Association. The 30 member opposition consists of the 15 large industry trade organizations, such as the California Chamber of Commerce.

Vote: No Vote Taken

### **AB 2946 (Kalra, Dem-San Jose) Labor Standards Enforcement Division Complaint Filing**

Current law authorizes a person who believes has been discharged or discriminated against in violation of any law under the jurisdiction of the Labor Commissioner to file a complaint with the Division of Labor Standards Enforcement within 6 months after the occurrence of the violation. This bill extends the period to file a complaint to within 3 years after the occurrence of the violation.

Support & Opposition: This bill is supported by 20 organizations, including the Employee Rights Center, the National Immigration Law Center, and the Service Employees International Union – California. The opposition consists of 38 industry trade groups and local chambers. The California Chamber of Commerce is opposed to the legislation, as well as the California State Association of Counties and Civil Justice Association of California.

Vote: Assembly Failed 19-30

## Senate Passes Bill To Institute Net Neutrality

**SB 822** (Wiener, Dem-San Francisco) – Net Neutrality codifies portions of the rescinded Federal Communications Commission (FCC) rules related to net neutrality by prohibiting internet service providers (ISPs) from engaging in certain practices, including blocking lawful content, applications, services, or nonharmful devices, discriminating between lawful internet traffic, engaging in third-party paid prioritization, engaging in application-specific differential pricing, and engaging in deceptive or misleading marketing practices. The bill also prohibits monetary agreements between ISP's and edge providers and prohibits most zero rating.

This bill is supported by 164 entities, including the Electronic Frontier Foundation, the American Civil Liberties Union, Common Cause, Consumers Union, The Utility Reform Network, former FCC commissioners, and local officials. It is opposed by 86 entities, including the California Cable & Telecommunications Association, CTIA-The Wireless Association, and California Chamber of Commerce.

The majority-Republican FCC repealed the 2015 Open Internet Rules in December 2017, calling the rules government overreach and harmful to broadband investment. As for net neutrality's fate on the national level, the United States Senate recently passed its own bill in favor of restoring the regulations, too.

SB 822 passed the Senate 23-12 and will be referred to its jurisdictional committee in the Assembly in the coming days.

## **Senate Approves Far Reaching Legislation To Impose Data Breach Penalty**

Current law requires a business to take all reasonable steps to dispose of customer records containing personal information and imposes other requirements on a business relating to the custody of customer records containing personal information. **SB 1121** (Dodd, Dem-Napa) – Personal Information Data Breach Liability expands the civil liability of companies of all sizes providing goods and services in California. The legislation expands the scope of who can sue companies and nonprofits for data breaches. This bill imposes a minimum of \$200 and a maximum of \$1,000 in statutory damages per consumer breach.

This bill is supported by the American Civil Liberties Union, Consumer Federation of America, Privacy Rights Clearinghouse, and 12 other consumer and privacy protection advocacy groups. Opponents include the Independent Insurance Agents & Brokers of California, Personal Insurance Federation of California, California Chamber of Commerce, California Cable & Telecommunications Association, and 14 large industry trade organization.

Under SB 1121, people do not even have to be customers or users of a service to sue, which lets them take action against 3<sup>rd</sup> party data brokers such as Equifax. Damages could be sought if a company is found to have been lax in applying data-security measures or to have failed to notify consumers in a timely manner.

It passed the Senate 22-13 and will be referred to its jurisdictional committees in the Assembly in the coming days.

## Measure To Require Female Membership On Corporate Boards Of Directors Passes Upper Chamber

**SB 826** (Jackson, Dem-Santa Barbara) – Women Corporate Board of Directors Requirement requires a corporation or foreign corporation that is a publicly held corporation whose principal executive offices are located in California to have a minimum of one female on its board of directors. On or before December 31, 2021, the bill increases that required minimum number to 2 female directors if the corporation has 5 authorized directors or 3 female directors if the corporation has 6 or more authorized directors. The bill requires the Secretary of State to publish various reports on its website documenting the number of corporations in compliance with these provisions.

This bill is sponsored by the National Association of Women Owned Businesses – California, and supported by the Consumer Attorneys of California as well as Small Business California. The opposition is led by the California Chamber of Commerce, and is opposed by the Personal Insurance Federation of California, 7 large industry trade organizations, and 12 local chambers of commerce.

The CalChamber points out that SB 826 seeks to manage the directors of publicly traded corporations that have its principal executive offices in California yet are incorporated in another state. The internal affairs doctrine appears to dictate that the laws of the state where the company is incorporated apply for these issues, not the law of where the principal executive offices are located, such as California. Such confusion and ambiguity will only lead to costly fines as proposed under the bill and potential litigation.

The bill passed by a vote of 22 to 11, and will be referred to its Assembly committee next week.

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