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State Senate

State Assembly

**Department of
Insurance**

Department of Insurance Issues SB 189 Notice: Bill Exempts Executives & Professional Corporation Principals From Workers' Compensation Coverage Requirement

The California Department of Insurance (CDI) issued a Notice regarding Senate Bill 189 (Bradford) on November 14. The Notice confirms most of what the workers' compensation community has already determined regarding the implementation of this legislation. CDI also confirms that the substantive changes on July 1, 2018 apply to policies on and after that date for new and renewal policies but do not apply to policies in force. In addition, CDI announced two waiver forms – one for general corporations and one for partnerships or limited liability companies. CDI did not include draft waiver forms for professional corporations (PC) and cooperative corporations, which have different requirements for executing a waiver.

CDI emphasized the need for all licensees to provide adequate notice of two important parts of SB 189. The first is the discretion of an insurer to deem a waiver received on or before December 31, 2017 to be effective January 1, 2017. The second is to make sure policyholders know of the different standards for executing a waiver that will become effective July 1, 2018. The Workers' Compensation Insurance Rating Bureau should be revising endorsements excluding business owners from workers' compensation policies shortly.

For review, SB 189 expands the scope of the exception from the definition of an employee, for workers' compensation purposes, to apply to an officer or member of the board of directors of a quasi-public or private corporation who owns at least 10% of the issued and outstanding stock, or one percent of the issued and outstanding stock of the corporation if that officer's or member's parent, grandparent, sibling, spouse, or child owns at least 10% of the issued and outstanding stock of the corporation and that officer or member is covered by a healthcare service plan or a health insurance policy, and executes a written waiver.

SB 189 makes a number of changes in the ownership thresholds that will allow a larger segment of owners to be eligible to file an affidavit to be exempt. This is especially true of PCs and co-ops, where no ownership threshold applies; however, there is a requirement that

the PC maintain health insurance on the owners and the co-ops maintain both health and disability insurance on the owners. The legislation also delays the effective date of the changes in law, with respect to employees eligible to waive workers' compensation coverage, proposed by the bill until July 1, 2018.

This is an attempted clean-up of last year's enacted AB 2883 (Insurance Committee), a workers' compensation anti-fraud bill. Specifically, AB 2883 cracks down on a specific type of workers' compensation premium fraud: employers providing their employees with a de minimus ownership stake in the company or giving the employee a fictional position and title on the company's board of directors to skirt workers' compensation requirements.

California Approves Testing Of Driverless Cars, But Local & Federal Interests Are Concerned

At the start of the year, efforts to put driverless cars on California's streets did not look promising. Uber had defied state officials by failing to get permits to test its technology and then the company shipped its cars to Arizona to test them there. After four years of trying, regulators were still attempting to write rules for testing cars without anyone in the driver's seat. Lawmakers and technology industry representatives worried that California was losing its grip on innovation in a sector primed for growth.

Now, after this year's release of guidelines from the Department of Motor Vehicles, the climate has changed. Californians should expect to see driverless cars tested on the state's roads early next year. The turnaround in attitudes toward the state's autonomous vehicle (AV) rules comes as dozens of other states and the federal government continue to ramp up their efforts to regulate the technology.

In California, 43 companies, including Apple, Google subsidiary Waymo, Uber, General Motors and lesser-known start-ups are approved for testing under the state's rules that require a driver to be able to take control of the car at all times. Industry and regulatory officials expect numerous companies to apply for fully driverless permits once the DMV finalizes its rules in 2018 – a big change from warnings that companies might flee the state because regulators were not moving fast enough to allow the cars on the road.

Still, major challenges remain for state officials to harmonize their regulations with the concerns of the federal government and local jurisdictions. In the fall, the United States House of Representatives passed legislation that expands federal authority over AV operations by giving the federal government full control over the cars' design and performance, including blocking the ability of states to prohibit testing. The US Senate is considering its own AV bill. Around the same time, the National Highway Traffic Safety Administration released guidelines for state and local government regulators, also pointing to a more robust federal role.

Such federal efforts worry some, as there is concern that the federal government will constrain how far the state can go in requiring manufacturers to comply with more stringent safety guidelines. As written, California will not be able to flex its muscle with the automobile industry over AVs as it has done with emission rules. Local governments have their own interests. After Uber and the DMV engaged in a standoff in December over permitting for driverless cars the company was testing in San Francisco.

Assemblyman Phil Ting, a Democrat who represents the city, introduced legislation that would have levied large penalties on companies that put their cars on the road without proper permits. The bill did not go anywhere, and the Assembly Member said in an interview he is not sure if he is going to try again in 2018. Ting, who says he sees self-driving cars tested every day on San Francisco's streets, remains worried that the state has not given enough authority to local law enforcement if AVs violate traffic laws. Similarly, cities and counties want to get more data from the state about AV operation.

In southern California, the Los Angeles Department of Transportation notes the recent approval of a local ballot measure to fund billions of dollars in transit improvements in Los Angeles County. The city needs to know how driverless cars are changing traffic patterns to best use that money. DMV officials explain they have heard these concerns, and remain committed to requiring the highest safety standards for the technology. The time it has taken the agency to roll out its regulations shows its willingness to listen and how it will handle new rules as the technology continues to change, the agency argues.

California Governor's Race Polling Out; Close Contest

A University of Southern California Dornsife / Los Angeles Times poll finds that voters are divided in the governor's race, creating a close contest between Democrats Gavin Newsom and Antonio Villaraigosa. Newsom leads Villaraigosa by more than 10 percentage points in an election that is shaping up to be competitive. Newsom, the state's lieutenant governor, has dominated early polls and fundraising.

The poll results suggest a high probability the GOP being shut out in both races. The online poll of 1,296 registered California voters was conducted between October 27 and November 6, one year from the 2018 election. The race for governor has grown increasingly contentious. The margin of error was four points in either direction, and higher for subgroups.

The contest is expected to be among the nation's marquee races in 2018 as the Democratic Party undergoes a turbulent power struggle between its progressive left and more centrist establishment, especially on issues such as single-payer healthcare. Many millions of dollars will be spent on these premiere political posts in the nation's most populous and economically powerful state. Democrats hold a 19-point voter registration edge over Republicans and the GOP has not elected a statewide candidate since 2006. The poll

indicates that Democrats' iron grip on political power in California will not weaken any time soon.

Newsom, who briefly ran for governor in 2009 before dropping out, had the support of 31% of registered voters who plan to cast ballots in the June 5 primary. He was followed by Villaraigosa who had the support of nearly 21%. Two Republicans – Assemblyman Travis Allen of Huntington Beach and businessman John Cox – are running for governor. Allen stood in third place, winning the support of 15% of voters who plan to cast ballots in the primary. Cox received the support of more than 11% – and the difference between them was within the margin of error. Allen has little money but is a familiar face to state Republican Party activists. Cox, who is lesser known in state GOP circles, has put \$3 million of his own money into his campaign.

According to the poll, 43% of Republican voters favored Allen and 33% backed Cox. A fair share of Republicans – 15% – sided with one of the Democrats. Villaraigosa topped that list, winning the favor of 6% of GOP voters. The Republicans running for governor, on the other hand, were shunned by Democratic voters: Cox and Allen each had the support of about 1.5% of voters from the other party.

Cox's standing is roughly tied with state Treasurer John Chiang, a Democrat who has raised several million dollars and is aggressively campaigning across the state. Chiang had 12% support. Former state schools chief Delaine Eastin, also a Democrat, lagged far behind at 4%. The top picks among independent voters – a growing share of the California electorate – were Newsom and Villaraigosa. Twenty-seven percent backed Newsom and 26% chose Villaraigosa. Among Republican candidates, Allen won 13% of independents compared with 8% for Cox.

Newsom dominated across racial groups and genders, with the sole exception of Latino voters, who favored Villaraigosa, the former Los Angeles mayor, by nearly two to one. The group is pivotal to Villaraigosa's campaign. The same goes for voters in southern California, where Villaraigosa leads in Orange and San Diego counties as well as the Inland Empire. Voters in Los Angeles County, where Villaraigosa made his name in politics and a linchpin of his path to the governor's mansion, were split between the two leading candidates. Newsom and Villaraigosa were effectively tied at about 20% each among registered voters. Up north, on Newsom's home turf, the former San Francisco mayor swamped Villaraigosa, with support from more than 53% of registered voters in the Bay Area compared with Villaraigosa's 6%. The field is not settled, with former GOP Representative Doug Ose of the Sacramento Valley considering entering the race.

It is the most competitive contest in California since 2010, when billionaire Meg Whitman spent more than \$178 million – including \$144 million of her own money – trying unsuccessfully to stop Jerry Brown from returning to the governor's mansion. Brown, who

also was governor from 1975 to 1983, is finishing his second term of this era and remains the most popular elected official in the state with a 44% job approval rating.

Legislation Enacted In 2017: New Automobile Insurance & Business Of Insurance Laws

The insurance arena was relatively quiet again this legislative session. Of note were bills to allow insurance agents and brokers to use any Federal Deposit Insurance Corporation bank for purposes of establishing a premium trust account; legislation requiring homeowners in a condominium development to provide insurance coverage for the installation of solar panels; a bill to allow the Insurance Commissioner to add new products to the export list for placement in the non-admitted market; legislation that allows the California Insurance Guarantee Association the ability to utilize reinsurance with the Commissioner's approval; legislation allowing an insurance agent or broker to be licensed with a social security number as opposed to a federal employer identification number; a bill to raise the age from 18 to 21 that a new driver is required to obtain a provisional driver's license; legislation to require large insurers to file reports on diversity efforts and limit the Commissioner's ability to make data calls; and, a bill to adopt statutory rules relative to auto body steering by insurance companies as opposed to the regulations on this topic adopted by the Commissioner.

AB 1027 (Acosta, Rep-Santa Clarita) Motorcycle Drivers License Training

This bill authorizes the Department of Motor Vehicles to accept any certificate of satisfactory completion of an approved motorcyclist training program in lieu of a driving test on motorcycle license applications. With regard to a person under 21 years of age, the bill instead requires completion of a novice motorcycle safety training program for issuance of a class M1 or M2 license or endorsement.

According to the author, under current law, experienced and knowledgeable motorcycle riders are disincentivized from taking the three-day novice course that is well below their skill level and instead elect to pass the DMV driving test rather than improve their skillset. These individuals could better improve their riding abilities by taking an intermediate class to receive a DMV waiver. These riders would still be required to pass a written DMV motorcycle test.

Assembly Vote: 76-0

Senate Vote: 39-0

Status: This bill was signed by the Governor. Chapter 205, Statutes of 2017

SB 145 (Hill, Dem-San Mateo) Autonomous Vehicle Public Road Testing

Current law requires the Department of Motor Vehicles (DMV) to notify the Legislature if it receives an application from a manufacturer seeking approval to operate an autonomous vehicle (AV) capable of operating without the presence of a driver inside the vehicle. Current

law additionally prohibits such an application from becoming effective any sooner than 180 days after that application is submitted. This bill repeals the requirement that the DMV notify the Legislature of receipt of an application seeking approval to operate an AV capable of operating without the presence of a driver inside the vehicle. The bill also repeals the requirement that the approval of such an application not be effective any sooner than 180 days after the date the application is submitted.

The DMV posts on its website extensive information on manufacturers holding permits to test AVs under its current regulatory framework and will likely continue that practice for driverless vehicles.

Assembly Vote: 76-2

Senate Vote: 38-0

Status: This bill was signed by the Governor. Chapter 725, Statutes of 2017

AB 407 (Bigelow, Rep-Auburn) Non-Traditional Mennonite Group Liability Insurance

AB 407 adds insuring against liability to the insurable losses by non-traditional insurers, including religious organizations. Current law authorizes these organizations to insure against a list of losses, including vandalism or malicious mischief, vehicles owned or operated by the insured or by any tenant of premises, falling trees, burglary and theft, and mysterious disappearance.

Since the law was put on the books in 1949, Mennonite Aid Plan (MAP) has not been allowed to include liability coverage in its policies. However, in recent years, the need for liability coverage for homeowners purchasing fire insurance policies from MAP has increased. Separate standalone liability coverage is available, but it is becoming increasingly difficult to obtain. This bill will allow those non-traditional insurers to add liability coverage.

Assembly Vote: 78-0

Senate Vote: 38-0

Status: This bill was signed by the Governor. Chapter 190, Statutes of 2017

AB 634 (Eggman, Dem-Stockton) Solar Panel Liability Insurance Requirement

This bill prohibits a homeowners association (HOA) from establishing a general policy prohibiting the installation or use of a rooftop solar energy system for household purposes on the roof of the building in which the owner resides, or a garage or carport adjacent to the building that has been assigned to the owner for exclusive use. However, the bill allows an HOA to require the owner and each successive owner to maintain a homeowner liability coverage policy at all times and provide it with the corresponding certificate of insurance annually.

The bill was amended to remove a requirement that the HOA be named as an additional insured with the right of notice of cancellation.

Assembly Vote: 73-4

Senate Vote: 34-6

Status: This bill was signed by the Governor. Chapter 818, Statutes of 2017

AB 938 (Cooley, Dem-Rancho Cordova) Life Insurance & Annuity Reinsurance Authorization

AB 938 authorizes the Insurance Commissioner to adopt regulations applicable to reinsurance arrangements for certain life insurance policies, longterm care insurance policies, and annuities. The bill authorizes the Commissioner, with regard to credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting certain requirements, to adopt by regulation additional requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance arrangements for life insurance policies, longterm care insurance policies, and annuities, and the circumstances for which a credit would be reduced or eliminated.

The Department of Insurance sponsored this bill because it ensures that California law and practice is in line with the National Association of Insurance Commissioners model law regarding credit for reinsurance. According to the Reinsurance Association of America, AB 938 will make many transactions more transparent by changing rules that address the regulation of credit for reinsurance with respect to captive insurance transactions.

Assembly Vote: 69-0

Senate Vote: 38-0

Status: This bill was signed by the Governor. Chapter 202, Statutes of 2017

AB 1398 (Kalra, Dem-San Jose) Annuity Cash Surrender

Current law governs annuities and, for those insurance contracts that provide cash surrender benefits, prescribes the cash surrender benefit available prior to maturity. Current law also requires that no contract of annuity be issued for delivery unless it contains provisions that in the opinion of the Insurance Commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract. This bill requires the insurer, for an individual annuity contract issued on or after January 1, 2019, to return to the owner all monies due for annuity contracts that are surrendered by the contract owner as expeditiously as possible after the request for surrender is received but no later than 45 days from the date of surrender.

According to the author, fixed indexed annuities have grown in popularity with seniors and others looking for higher gains without the risk of a variable annuity. In 2015, non-variable annuity sales reached a record-breaking \$54.5 billion, an increase of 13% from 2014. Under

current law, insurers are not required to use the date a surrender request is received for these annuities to determine the surrender value. Many of these annuities are linked to financial markets and indices where a market value adjustment (MVA) factor is applied upon surrender. This factor fluctuates and can negatively affect the cash surrender value of an indexed annuity depending upon the date used to determine the MVA factor applied in the calculation by the insurer. Under these circumstances, insurers may have a financial incentive to use a market rate that benefits them, not the contract owner. As annuities become more common, the author maintains consumers are being harmed by inconsistent valuation standards and time limits when calculating surrender values.

Assembly Vote: 73-0

Senate Vote: 39-0

Status: This bill was signed by the Governor. Chapter 228, Statutes of 2017

AB 1460 (Dababneh, Dem-Encino) Insurance Agent & Broker Interstate Banking

Authorization

AB 1460 permits California insurance agents and brokers to utilize out of state banking services for deposit of premium dollars. AB 1460 requires trust accounts be maintained in a California or federally chartered bank or financial institution. In addition, the bill requires that such financial institution agree to litigate or arbitrate any dispute relative to such accounts in California insured by the Federal Deposit Insurance Corporation and appoint an agent for service of process in California.

AB 1460 was sponsored by the Independent Insurance Agents & Brokers of California. California's agents and brokers will now be able to take advantage of banking services tailored to the insurance sector and the premiums related to their products. InsurBanc is one of these firms. It was established by the Independent Insurance Agents & Brokers of America (the national association) and it provides a broad range of services and access to capital specifically designed to cater to the needs of independent insurance agents and brokers.

Assembly Vote: 74-0

Senate Vote: 39-0

Status: This bill was signed by the Governor. Chapter 69, Statutes of 2017

AB 1641 (Daly, Dem-Anaheim) Surplus Line Insurance New Product Authorization

Current law authorizes the Insurance Commissioner, by order, to declare permissible for placement for a home state insured with a nonadmitted insurer, exempt from requirements except the filing of a confidential written report, any type of insurance coverage or risk for which the Commissioner finds, after a public hearing, that there is not a reasonable or adequate market among admitted insurers. The Commissioner is required to maintain an export list showing all those exempt coverages and risks.

AB 1641 allows the export list maintained by the Department of Insurance to be expanded by the Insurance Commissioner to add new, innovative products for which a reasonable or adequate market among admitted insurers has not had time to develop.

Assembly Vote: 40-0

Senate Vote: 79-0

Status: This bill was signed by the Governor. Chapter 447, Statutes of 2017

AB 1696 (Insurance Committee) Insurance Omnibus

This legislation streamlines the redomestication process applied to insurers; requires admitted insurers to maintain financial records for the current year plus five years thereafter; aligns the publication requirements of the two notices issued when an insurer becomes insolvent so that both must be published in geographic areas pertinent to the liquidation; recasts and updates several provisions of law governing licensees; expands the prohibition against repeatedly taking the same licensing examination to cover all exams within the same category of license; and, clarifies that a longterm care insurance policyholder and an insurer may agree to an alternate plan of care even if the policy does not explicitly authorize them.

The Assembly Insurance Committee traditionally introduces an annual omnibus bill that allows the Department of Insurance to identify necessary updates to the Insurance Code, and negotiate consensus with all relevant stakeholders. This bill reflects the result of that process.

Assembly Vote: 78-1

Senate Vote: 40-0

Status: This bill was signed by the Governor. Chapter 417, Statutes of 2017

AB 1699 (Insurance Committee) Insurance Fees Update

Current law authorizes the Department of Insurance (DOI) to make a single annual increase or decrease in fees, on a fiscal year basis, at any time during the year, provided it is announced by a bulletin issued at least 90 days prior to the effective date of that increase or decrease. Current law authorizes that fee increase or decrease to be rescinded by a majority vote of both houses of the Legislature, not later than 60 days after the issuance of the bulletin announcing the increase or decrease. This bill updates the fee amounts in the Insurance Code to reflect the actual fees charged by DOI.

Many of the fee amounts have not been updated in decades and bear no resemblance to the current DOI schedule. The Assembly Insurance Committee has considered a number of bills in recent years that touched on fee amounts and discussions of those bills have been complicated by the confusion caused by the disparity between stated and actual fee

amounts. Updating the fee amounts will increase transparency and reduce confusion in the Committee's future work.

Assembly Vote: 75-1

Senate Vote: 38-2

Status: This bill was signed by the Governor. Chapter 534, Statutes of 2017

SB 430 (Insurance Committee) California Insurance Guarantee Association Reinsurance Authorization

The California Insurance Guarantee Association (CIGA) is authorized to fulfill its duties either directly by itself or through a servicing facility or through a contract for reinsurance and assumption of liabilities by one or more member insurers or through a contract with the liquidator, upon terms satisfactory to CIGA and to the liquidator, under which payments on covered claims would be made by the liquidator using funds provided by the Association. This bill authorizes CIGA, with the Insurance Commissioner's express approval, to reinsure with, or transfer liabilities to, a California admitted and authorized reinsurer or other reinsurer approved by the Commissioner in order to limit or eliminate adverse development, to stabilize or limit the need for assessments, or to reduce its potential ultimate liability for covered claims.

SB 430 was sponsored by the California Insurance Guarantee Association as an optional tool to transfer liabilities and reinsure longtail policies.

Assembly Vote: 73-0

Senate Vote: 37-0

Status: This bill was signed by the Governor. Chapter 268, Statutes of 2017

SB 569 (Monning, Dem-Monterey) Homeowner Insurance Policy Notification

SB 569 requires the Insurance Commissioner, in the case of a declaration of a disaster, and at the request of a property owner-approved family member or other contact that is unable to identify the insurer for property located in the disaster area, to provide homeowners' insurer information.

According to the author, occasionally, victims of a major disaster such as a wildfire, particularly if the homeowner has died in that fire, cannot identify the insurer of the property. The bill essentially allows the Insurance Commissioner to share the victim's information in an effort to identify the proper insurer.

Assembly Vote: 76-0

Senate Vote: 40-0

Status: This bill was signed by the Governor. Chapter 369, Statutes of 2017

SB 764 (Moorlach, Rep-Costa Mesa) Real Estate Trust Fund Fidelity Insurance Requirement

Current law authorizes a real estate salesperson licensed to a real estate broker to withdraw funds from a trust fund account of the broker if specifically authorized in writing. Current law authorizes an unlicensed employee of the broker to withdraw funds from the broker's trust fund account if the broker has fidelity bond coverage equal to the maximum amount of the trust funds to which the unlicensed employee has access to at any time. This bill authorizes an unlicensed employee of the broker to withdraw funds if the broker has insurance coverage equal to the maximum amount of the trust funds to which the unlicensed employee has access to at any time.

SB 764 expands options available to real estate brokers to protect their client's money, the author states. It allows brokers to utilize an insurance policy to protect money being held in a client trust fund account. This is an expansion of current law which restricts protective options to only fidelity bonds.

Assembly Vote: 76-0

Senate Vote: 39-0

Status: This bill was signed by the Governor. Chapter 148, Statutes of 2017

SB 788 (Lara, Dem-Bell Gardens) Insurance Agent Individual Taxation Identification Number Requirement

SB 788 mandates the Insurance Commissioner require either a social security number (SSN) or an individual taxpayer identification number (ITIN) if an insurance agent applicant or licensee is an individual applying for or renewing a production agency license. Under current law the Department of Insurance (DOI) does not accept an individual taxpayer identification number, which can be used by those persons not eligible to obtain a SSN to pay taxes.

A Little Hoover Commission report indicated this practice amounted to a barrier for entrance in the agency business by some individuals who are not citizens. State laws governing professional licenses have historically required the applicant to provide a SSN to verify an applicant's or licensee's tax and/or child support compliance. Unfortunately, requiring applicants to provide a SSN excludes some individuals who would otherwise be eligible to become an insurance agent or broker. Allowing DOI to accept an ITIN addresses this situation.

Assembly Vote: 76-2

Senate Vote: 38-0

Status: This bill was signed by the Governor. Chapter 487, Statutes of 2017