NORWOOD & ASSOCIATES
This Week in Sacramento

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California Links

State Senate

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Broad Perspective On State Of Pending Legislation

There are roughly 966 measures pending during the final three weeks of this year's legislative session. Based upon a rough count, there are 436 pending measures on the Assembly and Senate Floors (292 on Senate Floor and 144 on Assembly Floor). In addition, there are about 511 pending measures in the Senate and Assembly Appropriations Committees (347 in Senate and 164 in Assembly). These figures are for measures heard this week, followed by those on the Suspense Files. There are 19 measures pending in other committees (14 in Senate and 5 in Assembly). So, there are roughly 966 measures to be acted upon during the final three weeks of session.

In terms of bills acted upon by Governor Jerry Brown. The Governor has signed 181 bills and vetoed 11, for a total of 192 bills acted upon so far. This is a veto rate of 5.7%. Finally, there are several dozen bills that are pending in engrossing and enrolling, or that have been sent to the Governor under the 12-day window.

Labor Legislation Activity Update: Fiscal Committees Pass Job Killers Today

Today is the last day for the Assembly and Senate Appropriations Committees to meet and send bills to the respective full chambers. The following bills were passed and referred to the Assembly and Senate Floors, which is the last legislative step for these measures. No Republicans on the two fiscal committees voted for these bills.

AB 450 (Chiu, Dem-San Francisco) places employers in a no-win situation between federal immigration enforcement and state enforcement by punishing employers – rather than providing tools and resources for employees when federal immigration enforcement appears at their workplace regardless of whether a violation of law has been committed by the employer.

AB 569 (Gonzalez Fletcher, Dem-San Diego) creates a new mandate in the Labor Code, prohibiting employers from taking any adverse employment action against an employee due

to the employee's use of various medical options for reproductive health, even though the Fair Employment and Housing Act currently provides these protections to employees, thereby creating inconsistencies and confusion amongst employers with regard to interpretation and enforcement of these competing provisions.

AB 1008 (McCarty, Dem-Sacramento) prohibits obtaining job candidate prior criminal history until a conditional offer of employment is made. This is a bill which has been introduced in previous sessions, but a California Chamber of Commerce-led coalition is not relenting because of its significant risk to employees and customers.

AB 1209 (Gonzalez-Fletcher, Dem-San Diego) imposes a new data collection mandate on California employers to collect and report data to the Secretary of State regarding the mean and median salaries of men and women in the same job title and job description, determine which employees perform "substantially similar" work, and then have that report posted on a publicly accessible website, where such employers will receive undue scrutiny and criticism for wage disparity that is not unlawful and justified by a bona fide factor.

SB 63 (Jackson, Dem-Santa Barbara) unduly burdens and increases costs of small employers with as few as 20 employees by requiring 12 weeks of protected employee leave for child bonding and exposes them to the threat of costly litigation.

Beneficial Surplus Line Insurance Legislation Clears Important Legislative Panel

A positive legislative development is AB 1641 (Daly, Dem-Anaheim). This allows for new, innovative products for the non-admitted insurance market. This bill was suggested to the author and supported by Norwood Associates client, the Surplus Lines Association of California. This bill has not been opposed by any entity or legislator throughout the legislative process, however it was put on the Senate Appropriations Committee suspense file for September 1 consideration. Fortunately, it passed today unanimously and is now on to the Assembly Floor.

It was on suspense because the Department of Insurance (CDI) estimates costs of $104,000 in 2017-2018, $196,000 in 2018-2019, and $189,000 ongoing from the Insurance Fund. The ongoing resources are necessary for research conducted by staff to review potential insurance products that are not in the admitted market, which may be added to the export list, CDI claims. Ongoing resources also include costs associated with increased export list hearings, the Department argues. In response to CDI's effort to bring in revenue from the bill, Department of Finance noted that the Department may offset such costs through surplus line broker license fees.

Update On Legislation To Exempt Executives & Professional Corporation Principles From Workers Compensation

As reported last week, SB 189 (Bradford, Dem-Inglewood) is working its way through the final days of the Legislature. Of course, this is the bill to clean up AB 2883 (Insurance Committee) from last year which changed the rules for those owners of businesses that want to exempt themselves from workers' compensation insurance.

Producers would prefer AB 2883 just be repealed retroactively. That's not going to happen. The principal change from last year, requirement of a sign affidavit , is a legitimate fraud fighter and there is no support to change that part of the statute.

SB 189, as reported here last week, 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 professional corporations (PC) , where no ownership threshold applies but there is a requirement that the PC maintain health insurance on the owners.

The major question now is the effective date of the bill and how it will or will not apply to in-force policies. There is a split amongst insurers regarding the time insurers need to implement the SB 189 changes. Some prefer a January 1, 2017 effective date, while others support a July 1, 2017 effective date. The likelihood is that the lowest common denominator is the later date, July 2017.

Then there is the issue of whether the bill should apply to in-force policies. The big problem with the bill last year, AB 2883, was that it applied to in-force policies when that was not the intent of the sponsors or expected by anyone. However, in that circumstance, the change in law cost customers money due to added coverage for those previously exempt. SB 189, on the other hand, will save most clients' money from its expanded exemptions. However, there appears to be little support to apply SB 189 to in-force policies.

Whatever the final result relative of the application of the bill, SB 189 is going to add additional work for insurers and producers. For those businesses that have a renewal date before the effective date of the bill, it is possible that they may be best served by canceling their policy on July 1 and paying the short rate penalty to take advantage of the ability to increase the number of exemptions and save premium. Insurers will likely figure this out and take steps to respond to their insurers, whether or not the bill applies to in-force policies. If the bill does apply to in-force policies, producers would still have to collect new affidavits for those owners meeting the lower ownership threshold or where health insurance is required.

We have added provisions to SB 189 that provide that if an owner signs an exemption affidavit there will be a conclusive presumption that he or she is not covered by workers' compensation insurance. Additionally we have added language that states that an agent or

broker is not required to investigate, verify or confirm the accuracy of the facts contained in the wavier to alleviate producers from having to track expiration dates of health insurance policies or confirm percentage of ownership. As such, business owners should be advised to carefully consider their actions with considering filing a wavier affidavit as they will be subject to a conclusive presumption that they are not insured.

Bottom line is that there will be no soft landing in terms of cleaning up AB 2883.

Insurance Agent Tax Identification Number Requirement Bill Passed Assembly Appropriations Committee; Last Legislative Phase Is Assembly Floor

This week, SB 788 (Lara, Dem-Bell Gardens) was approved by the Assembly Appropriations Committee unanimously. It mandates the Insurance Commissioner require either a social security number 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 (CDI) does not accept an individual taxpayer identification number, which can be used by those persons not eligible to obtain an 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. This bill has received no opposition votes or stakeholder opposition.

State laws governing professional licenses have historically required the applicant to provide an SSN to verify an applicant's or licensee's tax and / or child support compliance. A license will not be issued to an otherwise eligible applicant if unpaid taxes and / or child support are found. Unfortunately, requiring applicants to provide an SSN excludes some individuals who would otherwise be eligible to become an insurance agent or broker. Allowing CDI to accept an ITIN will remove barriers to access for insurance agent / broker licenses in California

An ITIN is a tax processing identification number issued by the Internal Revenue Service that is only available for taxpayers who are ineligible to receive an SSN. ITINs are used by undocumented immigrants, as well as people who are lawfully present in the United States, but do not qualify for an SSN. ITINs do not provide federal work authorization but facilitate compliance with tax laws.

Supporters of the measure include CDI, Association of California Insurance Companies, Association of California Life & Health Insurance Companies, American Insurance Association, California Association of Health Underwriters, National Association of Insurance & Financial Advisors, National Association of Mutual Insurance Companies, Pacific Association of Domestic Insurance Companies, and Personal Insurance Federation of California.

In Senate Testimony Insurance Commissioner Criticizes Insurer Amendments To Legislation Requiring Carrier Diversity Procurement & Board Of Directors Diversity Reporting; Bill Dead For This Year

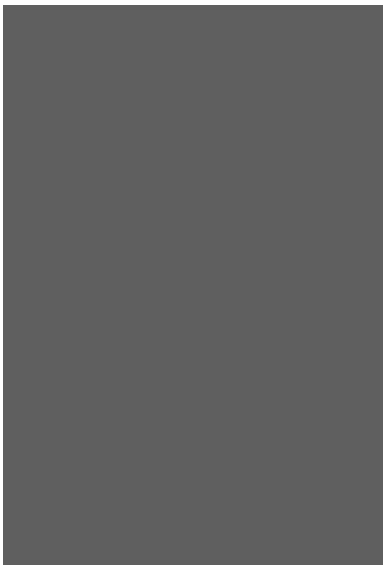
Current law requires each admitted insurer with premiums written equal to or in excess of $100 million to periodically submit to the Insurance Commissioner a report on its minority, women, and disabled veteran business enterprise procurement efforts and subjects an insurer to a civil penalty if the insurer fails to file the report. Current law also requires the Department of Insurance (CDI) website to have a link that provides public access to the contents of each report. SB 488 (Bradford, Dem-Gardena), currently in the Assembly Appropriations Committee, adds veteran and lesbian, gay, bisexual, and transgender business enterprises to the entities for which the reporting described above is required. Today, the Assembly Appropriations Committee held the bill, making it inactive for the rest of the year.

The measure also requires insurers to voluntarily report the sexual orientation of their board of directors. Making this reporting requirement voluntary, an amendment achieved by the Association of California Life & Health Insurance Companies and American Insurance Association, is strongly opposed by Insurance Commissioner Dave Jones. And, more importantly, these two insurance associations were successful in limiting data calls from CDI. The Commissioner was even more upset about this latter industry amendment.

At last Wednesday's Senate Women, Work and Families Select Committee – Corporate Board Membership hearing, Commissioner Jones called the insurer amendment "hostile" and Committee Chair Hannah-Beth Jackson (Dem-Santa Barbara) characterized insurer actions as "hijacking SB 488." Senator Steven Bradford, author of the measure, sat through the Commissioner's testimony, but did not comment. Senator Bradford departed the hearing immediately after the Insurance Commissioner's panel. CDI is the sponsor of the legislation.

Apportionment To Pre-Existing Disability Measure Passes Senate Appropriations Committee

AB 570 (Gonzalez-Fletcher, Dem-San Diego) passed the Senate Appropriations Committee today by a vote of 5-2, with the two panel Republicans voting against. This measure prohibits workers' compensation permanent disability apportionment because of pregnancy affects. The author argues current law prohibits the denial of claims based on age, gender, and other factors, but there are no protections in place that prevent women from being compensated for less because of pregnancy.



Assembly Member Lorena Gonzalez-Fletcher claims there are employers who invade the privacy of women who work for them, and are punished financially for becoming pregnant. This measure is a Women's Caucus priority, and has been endorsed by Republican Assembly Member Catherine Baker (Dublin) who carries fairly significant influence.

The Senate Appropriations Committee referred AB 570 to the suspense file, at which time the Department of Finance (DOF) advised that Governor Jerry Brown vetoed a similar bill in the past. DOF scores the bill as increasing employer costs from the $10 million status quo to $100 million with respect to implementing workers' compensation apportionment.

The bill passed the Senate Appropriations Committee today 5-2. Its last legislative phase is the full Senate.