



**2018 YEAR-END REPORT
FINAL ACTIVITIES OF THE
CALIFORNIA STATE LEGISLATURE**

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"16 years — and nearly 20,000 bills later, the desk is clear. #Eureka," Governor Jerry Brown's tweet upon finishing his work on almost 1,200 bills that were sent to him this legislative session - which is his final time after serving almost 4 full terms as California's governor.

Jerry's 'Last Dance'

When the Legislature finally adjourned August 31, it had approved about 900 bills to send to the governor (in total for the year, there were a little over 1,200). Then it was up to Brown to perform his 'swan song' to determine the fate of each of them. In the end for the entire year, the governor signed: 1,016 and vetoed: 201; meaning, that he acted on a total of 1,217 bills, for a veto rate of 16.5%.

While you may think this is a lot of bills, consider the fact that Jerry Brown has served as governor longer than anyone else in California's history. Here's where the numbers are really eye popping: He has decided the fates of more measures than any governor — 19,680, according to his office. **He signed 17,851 and vetoed 1,829, or 9.3% over the entire 16 period!**

Come next January, Governor Jerry Brown and wife Anne will 'head up the road' to Brown's family ranch in Colusa County to live out his days in the peace and quiet of a farm setting nestled in the West Coast mountain range.

The 2018 Legislative Session in Review

Jerry Brown's final year as governor was one of fits and starts in the California Legislature. Democrats lost their supermajority early in the year when three lawmakers stepped down facing sexual harassment accusations. Then in June, voters recalled Democratic state Sen. Josh Newman because he had supported a hike in the gas tax. The chaos made it a bad year for brokering big deals which Brown had hoped to accomplish.

It also 'drove home' the message to the Democrats, stay away from new taxes!!! Indeed, among the brokered failures, which was a direct result of its anticipated cost of over \$400 million - much of which would have resulted in new taxes, was a Senate-passed universal health care plan, which was blocked in the Assembly by Speaker Anthony Rendon, who cited its lack of a financing mechanism. Rendon was chastised by the uber-liberal wing of his party (not to mention the California Nurses Association and many other labor organizations), which considers universal health care its highest policy priority.

Ultimately, the Legislature created a blue-ribbon commission to study the issue for three years, which will remove immediate pressure on Rendon and other leaders, such as Governor-in-waiting Gavin Newsom, to act.

One of Brown's key priorities—a bill to link California's electrical grid with those in other states—stalled on the last night of session as well as a measure to levy a voluntary tax to clean up toxic tap water. Lawmakers shelved a bill that would have made California the first state to set a higher standard for when police can use deadly force. They killed a high-profile bill that would have compelled more housing development near transit corridors; and, even a proposal to regulate flamethrowers!

Not to say there were no meaningful actions this session. A special committee formed to attack the problem of wildfires in California produced a wide-ranging bill that included aggressive tree thinning and allowing utilities to raise customers' energy rates to help cover fire costs. Lawmakers passed a data privacy bill under threat of a similar measure landing on the ballot— one of three deals leveraged by initiatives. They responded to a wave of sexual harassment scandals by introducing over 20 bills. Working with Brown and California's Chief Justice, they passed a sweeping change to the criminal justice system by eliminating cash bail. The day after Brown signed the bail bill into law, the bail bond industry filed a referendum seeking to overturn it on the 2020 ballot.

Clearly, the governor's actions on this year's bills reflected his longtime governing approach "paddle left, paddle right." Brown pushed California to new frontiers of liberal policies and frustrated his Democratic allies by using his veto pen to 'pump the brakes.'

As one very-liberal Democratic Assemblywoman, Lorena Gonzalez Fletcher, reflected after the governor vetoed her workers' comp breast cancer impairment bill for the 4th-time, "He will only give so much, and then he's done."

Brown ended his last bill signing in characteristic form. In a statement attached to the last bill he'll ever sign, he quoted Exodus' exhortation against charging interest to the poor:

"From the time of Moses, usury has been condemned," he wrote. "Loans that exploit low income borrowers are especially abhorrent."

He then closed with a look ahead to retirement on his family's ranch north of Sacramento, where, as I previously mentioned, he and his wife have built a home: "PS: And now onto the Promised Land--Colusa County!"

LA Times Columnist George Skelton best summed up Jerry Brown recently:

"At 80, Brown is a poster boy for the folly of term limits. He has gotten steadily better with calming age and invaluable experience. Well, not entirely. As I've written before, Brown's legacy could be tarnished by his stumbling over some bullet-train tracks or being flushed down a monstrous water tunnel.

His \$77-billion high-speed rail project is grossly underfunded and way behind schedule. The \$17-billion twin-tunnel proposal for the California Delta — a supposed fix for his father Gov. Pat Brown's state water project — is embroiled in a bitter brawl.

So, when Brown tweeted earlier this month that "16 years — and nearly 20,000 bills later — the desk is clear. #Eureka," it wasn't quite correct. The bills are off his desk, but not all the clutter."

Workers' Comp on Back Burner this Session

Simply, the passage of SB 863 in 2012 was intended as the highlight of Jerry Brown's workers' compensation reform efforts. Yes, there have been a few other comp bills signed since then to help further enhance the reforms contained within SB 863, but the 2012 legislation has served as the 'beacon which has shined' with over \$10 billion in employer savings since 2013! It truly was a landmark piece of legislation which, (remembering that 3 AM meeting on the night before the end of the session in the governor's office alone with Brown and Christine Baker in which we were discussing how to get the Chamber of Commerce on board to support the bill – which they ultimately did that morning!) will always be one of my proudest legislative moments!!

The governor (and Christine Baker et. al.) all have said that, unless dire consequences resulted as SB 863 was being implemented, their 'appetite' to make other wholesale changes to the comp laws were unnecessary. Indeed, this philosophy (even now as Christine has moved on to 'greener pastures') has carried over since then and is reflected in what actions the governor took on this year's relatively few workers' comp bills. So too, his veto messages were telling as you will note. Please go to the Workers' Compensation Section of this report starting on **Page 12** which provides a brief description of each bill and its final status (you can also click on the [blue bill number](#) to read a complete copy of that particular bill).

ALL BILLS SIGNED BY THE GOVERNOR THAT IMPACT YOUR BUSINESS BY SUBJECT MATTER

Following are the highlights of bills signed by the governor that I tracked on your behalf this session, sorted according to subject matter. Again, to access the complete text of a bill, click on the [blue bill number](#). All Chaptered bills become law effective January 1, 2019 unless it states it is an urgency measure which means it became law immediately upon the governor's signature; OR lists another effective date.

AIMS FINAL BILL STATUS REPORT FOR 2018

Employer/Employee

[AB 1867](#) (Reyes) Vetoed by Governor. - Employment discrimination: sexual harassment: records. Would require an employer with 50 or more employees to maintain internal complaint records of employee complaints alleging sexual harassment for a minimum of 5 years after the last day of employment of the complainant or any alleged harasser named in the complaint, whichever is later. The bill would authorize the Department of Fair Employment and Housing to seek an order requiring an employer that violates this recordkeeping requirement to comply.

Governor's Message: To the Members of the California State Assembly: I am returning Assembly Bill 1867 without my signature. This bill requires an employer of 50 or more employees to maintain records of complaints alleging sexual harassment for at least five years after the last day of employment of the complainant or alleged harasser, whichever is later. This bill, under certain circumstances, could lead to the retention of records for decades. It would also require complaints alleging sexual harassment to be maintained for the same length of time regardless of the result of the investigative process, meaning even unfounded complaints would need to be maintained. For these reasons, and because current law already requires personnel records --including records of complaints-- be maintained for suitable periods of time, the time expansion of this bill is unwarranted. Sincerely, Edmund G. Brown Jr.

[AB 1870](#) (Reyes) Vetoed by Governor. - **Employment discrimination: limitation of actions.**

Current law, the California Fair Employment and Housing Act, makes specified employment and housing practices unlawful, including discrimination against or harassment of employees and tenants, among others. 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, unless otherwise specified. This bill would extend the above-described period to 3 years for complaints alleging employment discrimination, as specified.

Governor's Message: To the Members of the California State Assembly: I am returning Assembly Bill 1870 without my signature. This bill extends the deadline to file a complaint with the Department of Fair Employment and Housing from one year to three years for the employment provisions of the Fair Employment and Housing Act. Employees who have experienced harassment or discrimination in the workplace should have every opportunity to have their complaints investigated. I believe, however, that the current filing deadline-which has been in place since 1963--not only encourages prompt resolution while memories and evidence are fresh, but also ensures that unwelcome behavior is promptly reported and halted. Sincerely, Edmund G. Brown Jr.

AB 1976 (Limón) Chapter 940, Statutes of 2018. - Employment: lactation accommodation.

Current law requires every employer to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child and requires an employer to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private. Current law makes a violation of these provisions subject to a civil penalty and makes the Labor Commissioner responsible for enforcement. This bill would instead require an employer to make reasonable efforts to provide an employee with use of a room or other location, other than a bathroom, for these purposes.

AB 2548 (Friedman) Chapter 173, Statutes of 2018. - Commute benefit policies: Los Angeles County Metropolitan Transportation Authority.

Current law declares that the fostering, continuance, and development of public transportation systems are a matter of statewide concern. Current law creates the Los Angeles County Metropolitan Transportation Authority, with various powers and duties with respect to transportation planning, programming, construction, and operations. This bill would authorize the authority to adopt, and revise as necessary, a commute benefit ordinance that requires covered employers operating within the authority's area with 50 or more employees to offer certain employees commute benefits, as specified, except that the bill would prohibit the ordinance from affecting employers covered by certain South Coast Air Quality Management District rules or regulations.

AB 2587 (Levine) Chapter 80, Statutes of 2018. - Disability compensation: paid family leave.

Current law, before January 1, 2018, deemed an individual to be eligible for family temporary disability benefits if, among other things, the individual was unable to perform his or her regular or customary work for a 7-day waiting period during each disability benefit period, and prohibited payments for benefits during this waiting period. Current law, on and after January 1, 2018, removes the 7-day waiting period for these benefits. Current law authorizes an employer to require an employee to take up to 2 weeks of earned but unused vacation before, and as a condition of, the employee's initial receipt of these benefits during any 12-month period in which the employee is eligible for these benefits. Existing law specifies that if an employer so requires an employee to take vacation leave, that portion of the vacation leave that does not exceed one week is to be applied to the waiting period. This bill would delete that application of vacation leave to the waiting period, consistent with the removal of the 7-day waiting period for these benefits on and after January 1, 2018.

[AB 2770 \(Irwin\)](#) Chapter 82, Statutes of 2018. - Privileged communications: communications by former employer: sexual harassment.

Current law makes certain publications and communications privileged and therefore protected from civil action, including certain communications concerning the job performance or qualifications of an applicant for employment that are made without malice by a current or former employer to a prospective employer. This bill would include among those privileged communications complaints of sexual harassment by an employee, without malice, to an employer based on credible evidence and communications between the employer and interested persons regarding a complaint of sexual harassment and would authorize an employer to answer, without malice, whether the employer would rehire an employee and whether or not a decision to not rehire is based on the employer's determination that the former employee engaged in sexual harassment.

[AB 3080 \(Gonzalez Fletcher\)](#) Vetoed by Governor. - Employment discrimination: enforcement.

Would prohibit a person from, as a condition of employment, continued employment, the receipt of any employment-related benefit, or as a condition of entering into a contractual agreement, prohibiting an applicant for employment, 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, or otherwise opposing any lawful practice, or from exercising any right or obligation or participating in any investigation or proceeding with respect to unlawful harassment or discrimination.

Governor's Message: To the Members of the California State Assembly: I am returning Assembly Bill 3080 without my signature. This bill prohibits an applicant for employment or employee from being required to waive his or her right to a judicial forum as a condition of employment or continued employment. In my veto message of a similar bill in 2015, I referred to recent court decisions that invalidated state policies which unduly impeded arbitration. I also wanted to see how future United States Supreme Court decisions developed before endorsing a broad ban on mandatory arbitration agreements. The direction from the Supreme Court since my earlier veto has been clear - states must follow the Federal Arbitration Act and the Supreme Court's interpretation of the Act. *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 468 (2015). This bill is based on a theory that the Act only governs the enforcement and not the initial formation of arbitration agreements and therefore California is free to prevent mandatory arbitration agreements from being formed at the outset. The Supreme Court has made it explicit this approach is impermissible. In 2017 Justice Kagan, an appointee of President Obama, writing on behalf of a near-unanimous Supreme Court, clearly rejected the assertion that the Federal Arbitration Act has no application to contract formation issues: "By its terms, . . . the Act cares not only about the "enforce[ment]" of arbitration agreements, but also about their initial "valid[ity]"-that is, about what it takes to enter into them. Or said otherwise: A rule selectively finding arbitration contracts invalid because improperly formed fares no better under the Act than a rule selectively refusing to enforce those agreements once properly made. Precedent confirms that point." *Kindred Nursing Centers Ltd. Partnership v. Clark*, 137 S. Ct. 1421, 1428 (2017). Since this bill plainly violates federal law, I cannot sign this measure. Sincerely, Edmund G. Brown Jr.

SB 1300 (Jackson) Chapter 955, Statutes of 2018. - Unlawful employment practices: discrimination and harassment.

The California Fair Employment and Housing Act makes it an unlawful employment practice for an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to engage in harassment of an employee or other specified person. FEHA also makes harassment of those persons by an employee, other than an agent or supervisor, unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. This bill would specify that an employer may be responsible for the acts of nonemployees with respect to other harassment activity.

SB 1412 (Bradford) Chapter 987, Statutes of 2018. - Applicants for employment: criminal history.

Current law prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, from seeking from any source, or from utilizing as a factor in determining any condition of employment, information concerning participating in a pretrial or posttrial diversion program or concerning a conviction that has been judicially dismissed or ordered sealed, as provided. This bill would specify that these provisions do not prohibit an employer, including a public agency or private individual or corporation, from asking an applicant about, or seeking from any source information regarding, a particular conviction of the applicant if, pursuant to federal law, federal regulation, or state law, (1) the employer is required to obtain information regarding the particular conviction of the applicant, regardless of whether the conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation, (2) the applicant would be required to possess or use a firearm in the course of his or her employment, (3) an individual with that particular conviction is prohibited by law from holding the position sought, regardless of whether the conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation, or (4) the employer is prohibited by law from hiring an applicant who has that particular conviction, regardless of whether the conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

HEALTH CARE

AB 2423 (Holden) Chapter 761, Statutes of 2018. - Physical therapists: direct access to services: plan of care approval.

The Physical Therapy Practice Act authorizes a patient to access physical therapy treatment directly from a licensed physical therapist if the treatment is within the scope of practice of physical therapists and prescribed conditions are met, including a treatment limit prohibiting the physical therapist from continuing treatment beyond 45 calendar days or 12 visits, whichever occurs first, without receiving specified doctor approval of the physical therapist's plan of care. The act exempts from that plan of care approval condition for continuing treatment the provision of certain wellness physical therapy services to a patient. This bill would also exempt from that condition the provision of physical therapy services as part of an individualized family service plan or an individualized education plan pursuant to specified state statutes and the federal Individuals with Disabilities Education Act to an individual who does not have a medical diagnosis.

Legal

[AB 3109](#) (Stone, Mark) Chapter 949, Statutes of 2018. - Contracts: waiver of right of petition or free speech.

Would make a provision in a contract or settlement agreement void and unenforceable if it waives a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment.

Opioids

[AB 1751](#) (Low) Chapter 478, Statutes of 2018. - Controlled substances: CURES database.

This bill would require the Department of Justice, no later than July 1, 2020, to adopt regulations regarding the access and use of the information within CURES by consulting with stakeholders, and addressing certain processes, purposes, and conditions in the regulations. The bill would authorize the department, once final regulations have been issued, to enter into an agreement with any entity operating an interstate data sharing hub, or any agency operating a prescription drug monitoring program in another state, for purposes of interstate data sharing of prescription drug monitoring program information, as specified.

[AB 1753](#) (Low) Chapter 479, Statutes of 2018. - Controlled substances: CURES database.

Current law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by a health care practitioner authorized to prescribe, order, administer, furnish, or dispense a Schedule II, Schedule III, or Schedule IV controlled substance. Current law requires prescription forms for controlled substance prescriptions to be obtained from security printers approved by the department, as specified. Existing law requires a dispensing pharmacy, clinic, or other dispenser to report specified information to the department. This bill would authorize the department to reduce or limit the number of approved printers to 3, as specified. The bill would require prescription forms for controlled substance prescriptions to have a uniquely serialized number, in a manner prescribed by the department, and would require a printer to submit specified information to the department for all prescription forms delivered.

[AB 2086](#) (Gallagher) Chapter 274, Statutes of 2018. - Controlled substances: CURES database.

Current law classifies certain controlled substances into designated schedules. Current law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by a health care practitioner authorized to prescribe, order, administer, furnish, or dispense a Schedule II, Schedule III, or Schedule IV controlled substance. This bill would allow prescribers to access the CURES database for a list of patients for whom that prescriber is listed as a prescriber in the CURES database.

[AB 2256](#) (Santiago) Chapter 259, Statutes of 2018. - Law enforcement agencies: opioid antagonist.

Would authorize a pharmacy, wholesaler, or manufacturer to furnish naloxone hydrochloride or other opioid antagonists to a law enforcement agency, as provided.

[AB 2487](#) (McCarthy) Chapter 301, Statutes of 2018. - **Physicians and surgeons: continuing education: opiate-dependent patient treatment and management.**

Would authorize a physician and surgeon to complete a one-time continuing education course on opiate-dependent patient treatment and management, as specified, as an alternative to the mandatory continuing education course on pain management and the treatment of terminally ill and dying patients.

[AB 2760](#) (Wood) Chapter 324, Statutes of 2018. - **Prescription drugs: prescribers: naloxone hydrochloride and other FDA-approved drugs.**

Would require a prescriber, as defined, to offer a prescription for naloxone hydrochloride or another drug approved by the United States Food and Drug Administration for the complete or partial reversal of opioid depression to a patient when certain conditions are present and to provide education on overdose prevention and the use of naloxone hydrochloride or another drug to the patient and specified others, except as specified. The bill would subject a prescriber to referral to the Medical Board of California charged with regulating his or her license for the imposition of administrative sanctions, as that board deems appropriate, for violating those provisions.

[AB 2783](#) (O'Donnell) Chapter 589, Statutes of 2018. - **Controlled substances: hydrocodone combination products: schedules.**

Would reclassify specified hydrocodone combination products as Schedule II controlled substances. By expanding the scope of the existing crimes that apply to Schedule II controlled substances, this bill would impose a state-mandated local program.

[HR 83](#) (Caballero) Coauthors revised. Adopted and to Senate. - **Relative to Prescription Drug Abuse Awareness Month.**

This bill would resolve that the Assembly hereby declares March 2018 as Prescription Drug Abuse Awareness and encourages all citizens to actively participate in drug abuse prevention programs and activities, and to safely store and dispose of their medications on a continual basis.

[SB 1109](#) (Bates) Chapter 693, Statutes of 2018. - **Controlled substances: Schedule II drugs: opioids.**

Current law requires a physician and surgeon to complete a mandatory continuing education course in the subjects of pain management and the treatment of terminally ill and dying patients. this bill would require, for physicians and surgeons licensed on or after January 1, 2019, the mandatory continuing education course to also include the subject of the risks of addiction associated with the use of Schedule II drugs.

Personal Information

[AB 375](#) (Chau) Chapter 55, Statutes of 2018 - **Privacy: personal information: businesses.**

Would enact the California Consumer Privacy Act of 2018. Beginning January 1, 2020, the bill would grant a consumer a right to request a business to disclose the categories and specific pieces of personal information that it collects about the consumer, the categories of sources from which that information is collected, the business purposes for collecting or selling the information, and the categories of 3rd

parties with which the information is shared. The bill would require a business to make disclosures about the information and the purposes for which it is used.

[AB 2225](#) (Limón) Chapter 535, Statutes of 2018. - State government: storing and recording: public records.

Would require the Secretary of State, in consultation with the Department of Technology, to approve and adopt appropriate uniform statewide standards, as specified, for the purpose of storing and recording public records, described as permanent and nonpermanent documents, in electronic media or in a cloud computing storage system. The bill would require a cloud computing storage service that complies with specified requirements that provide administrative users with controls to prevent stored public records from being overwritten, deleted, or altered to be considered a trusted system, and would require all public records stored or recorded in electronic media or in a cloud computing service by a state agency to comply with a trusted system as defined in the uniform statewide standards and as otherwise specified.

Safety

[AB 2334](#) (Thurmond) Chapter 538, Statutes of 2018. - Occupational injuries and illness: employer reporting requirements: electronic submission.

Would permit the Office of Self-Insurance Plans of the Department of Industrial Relations to use individually identifiable information as necessary to carry out its duties, as specified.

Workers Compensation

[AB 479](#) (Gonzalez Fletcher) Vetoed by Governor. - Workers' compensation: permanent disability apportionment.

Current law requires apportionment of permanent disability to be based on causation, and a physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury is required to address the issue of causation of the permanent disability. The physician is required to make an apportionment determination by finding the approximate percentage of permanent disability that was caused by the direct result of injury arising out of and occurring in the course of employment. This bill would require, if an employee sustains an injury arising out of and in the course of employment resulting in breast cancer, specified impairments to be considered, including the presence or absence of the organ, skin disfigurement, and pain, among other things.

Governor's Message: To the Members of the California State Assembly: I am returning Assembly Bill 479 without my signature. This bill would require physicians to consider a specific list of impairments when determining a worker's disability for the purposes of workers' compensation when that worker suffers from breast cancer. This proposal is similar to three previous measures that I have vetoed, Assembly Bill 570 in 2017, Assembly Bill 1643 in 2016 and Assembly 305 in 2015. This bill and its predecessors have repeatedly singled out specific conditions and proposed a special set of rules that apply to them. This would result in an even more complex workers' compensation system that would essentially be "disease by statute," which would ultimately burden injured workers seeking quick resolution to their claims. Policy questions about the adequacy of the State's workers' compensation system are best addressed through empirically based research and analysis. Therefore, I am directing the Division of Workers'

Compensation Administrative Director, in consultation with the Commission on Health and Safety and Workers' Compensation, to contract with an outside independent research organization to undertake an evidenced based evaluation of the issue. Specifically, the Administrative Director should review the following:

1. Do the standards for determining impairment due to occupational injury or illness accurately reflect the level of impairment caused by industrial cancer?
2. Study and compare the differences between the fifth and sixth editions of the American Medical Association Guides with respect to determining impairment resulting from industrial cancer.
3. Do the standards for determining impairment resulting from industrial cancer exhibit bias based on immutable characteristics such as gender, race or ethnicity?

Every stakeholder in the workers' compensation system, but specifically the injured workers directly affected, has a vested interest in a comprehensive response to the issues raised by this series of bills. I am directing the Administrative Director to report on these questions by March 1, 2020 in order to inform the Legislature and key stakeholders on how best to address the important issues raised by this bill. Sincerely, Edmund G. Brown Jr.

[AB 553](#) (Daly) Vetoed by Governor. - Workers' compensation: return-to-work program.

Current law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Under the workers' compensation system, existing law establishes a return-to-work program for the purpose of making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. This bill would require the director to have the program distribute, by April 1 of each year, commencing January 1, 2020, the \$120,000,000 annually to eligible workers on the basis of equal shares for each eligible worker.

Governor's Message: To the Members of the California State Assembly: I am returning Assembly Bill 553 without my signature. This bill requires the Department of Industrial Relations to completely disburse \$120 million annually from the Workers' Compensation Return to Work Fund to eligible injured workers. The Return-to-Work Program began in 2015 and is relatively new. I am concerned this measure proposes sweeping revisions to the Return-to-Work program that are premature. The Program's funds will likely be spent in full in the coming fiscal year. Let's see the progress of that effort before making additional changes to the Program. Sincerely, Edmund G. Brown Jr.

[AB 1697](#) (Committee on Insurance) Vetoed by Governor. - Workers' compensation.

Current law creates the Fraud Division, within the Department of Insurance, to administer provisions related to insurance fraud. Current law requires the Insurance Commissioner to ensure that the Fraud Division aggressively pursues all reported incidents of probable workers' compensation fraud. This bill would require the administrative director to establish an antifraud support unit within the Division of Workers' Compensation. The bill would set forth the duties of the unit, including coordinating and advancing antifraud activities for the division and serving as the point of contact between the division and other agencies and entities engaged in antifraud activities.

Governor's Message: To the Members of the California State Assembly: I am returning Assembly Bill 1697 without my signature. This bill requires the Department of Industrial Relations to establish an anti-fraud unit within the Division of Workers' Compensation and requires the unit to develop data analytic processes to identify sources and the magnitude of fraudulent activity. The work required by this measure is already underway. Additionally, the bill would require the Department to reveal sensitive details about its enforcement practices. This will compromise the state's efforts to combat workers' compensation fraud, a result that nobody wants. Sincerely, Edmund G. Brown Jr.

[AB 1749](#) (Daly) Chapter 707, Statutes of 2018. - Workers' compensation: off-duty peace officer.

Would state that an employer, at its discretion or in accordance with specified policies, is not precluded from accepting liability for compensation for an injury sustained by a peace officer by reason of engaging in the apprehension or attempted apprehension of law violators or suspected law violators, or protection or preservation of life or property, or the preservation of the peace, outside the state of California, but who was not at the time acting under the immediate direction of his or her employer, including any claims for injuries sustained by peace officers during the October 1, 2017, mass shooting in Las Vegas, Nevada, if the employer determines providing compensation serves its public purposes.

[AB 2046](#) (Daly) Chapter 709, Statutes of 2018. - Workers' compensation insurance fraud reporting.

Current law requires that funds appropriated by the Legislature that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated to district attorneys, be applied to satisfy for the immediately following fiscal year the minimum total amount required. This bill would instead authorize, rather than require, funds appropriated by the Legislature that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated to the district attorneys, to be applied to satisfy for the immediately following fiscal year the minimum total amount required, or, subject to appropriation by the Legislature, to be used to augment funding in the immediately following fiscal year.

[AB 2221](#) (Bloom) Chapter 490, Statutes of 2018. - Occupational therapy.

The Occupational Therapy Practice Act provides for the licensure and regulation of the practice of occupational therapy by the California Board of Occupational Therapy. Current law defines the "practice of occupational therapy" and specifies that occupational therapy services encompass occupation therapy, assessment, treatment, education, and consultation with individuals referred for those services

after diagnosis of a disease or disorder. Current law prohibits a person from practicing occupational therapy without being licensed under the act and makes a violation of that prohibition a crime. This bill would instead define “occupational therapy” for purposes of the act, and would make conforming changes.

[SB 880](#) (Pan) Chapter 730, Statutes of 2018. - Workers’ compensation.

Would, until January 1, 2023, authorize an employer, with the written consent of the employee, to deposit disability indemnity payments for the employee in a prepaid card account that meets specified requirements, including, among other things, allowing the employee reasonable access to in-network automatic teller machines. The bill would require employers to provide all necessary aggregated data on their prepaid account programs to the Commission on Health and Safety and Workers’ Compensation upon request, and would require the commission to issue a report on or before December 1, 2022, to the Legislature regarding payments made to those prepaid card accounts, as specified.

[SB 899](#) (Pan) Vetoed by the Governor. In Senate. Consideration of Governor's veto pending. - Workers’ compensation.

Current law requires a physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address in that report the issue of causation of the permanent disability. This bill would prohibit a physician from using race, gender, or national origin in determining the percentage of permanent disability that was caused by other factors before and subsequent to the industrial injury.

Governor's Message: To the Members of the California State Senate: I am returning Senate Bill 899 without my signature. Consistent with current law, this measure seeks to preclude a physician from using race, gender, or national origin as a basis for apportionment. I am vetoing this bill for many of the same reasons that I returned a similar measure in 2011 - Assembly Bill 1155. This bill is unnecessary as it would not change existing law and may disturb settled court decisions, which already provide protection from the inappropriate application of the apportionment statutes. Additionally, the proposed wording of the amended statute may create ambiguities in the law, resulting in increased litigation, costs for employers and confusion for injured workers and their representatives. Sincerely, Edmund G. Brown Jr.

[SB 1086](#) (Atkins) Chapter 734, Statutes of 2018. - Workers’ compensation: firefighters and peace officers.

Current law specifies the time period within which various proceedings may be commenced under provisions of law relating to workers’ compensation. With certain exceptions, a proceeding to collect death benefits is required to be commenced within one year from several circumstances, including, but not limited to, from the date of death if it occurs within one year from the date of injury. Current law, for specified deceased members, including peace officers and active firefighting members, extends until January 1, 2019, the time period to commence proceedings to collect death benefits, if the proceedings are brought by, or on behalf of, a person who was a dependent on the date of death, from 240 weeks from the date of injury to no later than 420 weeks from the date of injury, not to exceed one year after the date of death for certain injuries, as specified. This bill would delete the January 1, 2019, date of repeal operation of the above-referenced extension indefinitely.

What Next Year Holds with Gavin Newsom as Governor

Absent some startling revelation about Gavin Newsom's past, the 'political tea leaves' show that Newsom will likely be the next governor of California. While both Newsom and Brown are San Francisco natives (by the way, so am I - I'm a 4th generation San Franciscan who actually grew up with Gavin's cousin!), Gavin is considerably more liberal than Jerry Brown. While both have strong labor ties, Gavin is even far more closely aligned with labor. I expect to see labor's political agenda, and its ability to pass more draconian laws in their favor, increasing significantly over the next four years.

In terms of workers' compensation, I expect an exponential growth in new workers' compensation legislation, targeting areas that labor has not been happy with, such as potentially major changes in utilization review, to name one area that I've been hearing 'gripes about' since SB 863 was enacted. Other areas that we may see legislation (there are discussions ongoing) include: Return to Work Fund, Opportunities for More Integrated Care and Independent Medical Care. As I previously mentioned, Jerry Brown believed that SB 863, with a few 'dinks around the edges' was all that was needed to reform the system. Labor (and most certainly the applicant attorneys) will want to 'push the envelope' as far as they can take it 'while the getting is good,' namely Newsom being in power.

Because there are so many possible legislative issues that could be proposed come next January when the legislature resumes, I plan to start working with both the chief consultants for the Senate Industrial Relations Committee and the Assembly Insurance Committee, along with my colleagues from both labor and management very soon after the election on November 6th. Both legislative consultants, whom I have worked closely with for many years, are a bell weather indicator of what will be coming 'down the pike' in terms of legislation early-on after the November election.

Labor's agenda will also be the '500-pound gorilla' on virtually every other piece of business, or anti-business legislation. In other words, at least the next 4 -years and possibly 8 will be significantly more challenging for this 'little' Dutch Boy!

Gavin Newsom's Stance on Issues

In terms of Newsom's campaign and what he is promising, read on for a brief synopsis. If you are interested in learning even more details about his views on each of these topics and more, go to:

https://gavinnewsom.com/california_values

In a thumbnail sketch Gavin says:

"Our values are under attack by an Administration that's moving our country backwards. California must step up and not only defend our communities, but push forward on the values that truly make us great."

"We believe in:

- Celebrating our diversity
- Advancing LGBTQ equality
- Protecting immigrant families and defending our sanctuary status
- Expanding healthcare for all
- Closing the pay gap and defending reproductive rights

- Ending the War on Drugs
- Eliminating cash bail
- And stopping the NRA from buying our laws.”

“California’s values aren’t just a point of pride - they are the very fabric of the state’s history, identity, and future. At a time when actions by the Trump Administration are further disenfranchising the poor, women, and people of color, California must step up and defend its residents – advancing policies grounded in both compassion and innovation.

California is the fifth largest economy in the world, and continues to show the world that an economy can thrive when it protects workers’ rights, environmental protections, civil rights, and vulnerable communities. Gavin understands that California remains an engine of economic growth when we stick up for our values.

Gavin has boldly led the charge for major social change campaigns his whole life. He has fought for what’s right and won results that are making a real difference in people’s lives. He believes that the state government ought to reflect the values of its people, not the other way around. More than ever, America needs California’s example, to prove that old fears and prejudices need not be the new normal, and to match resistance with results.”

My Observation

The first thing everyone should ask themselves is, while promises are great, where’s the money going to come from to deliver everything that Newsom has promised? Hold on to your hats and wallets over these next 4 years! The money can only come from one place – you!! I expect the next 4 years to be very challenging at the Capitol. Indeed, from universal health care to solving the homeless issue and everything else in between (along with labor pushing for their ‘piece of the pie,’), 2019 is going to be very challenging! Stay tuned!!!

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Thank you for allowing me to serve as your legislative advocate. It is truly an honor and a privilege!