

ALERT

CALIFORNIA CHAMBER OF COMMERCE

VOLUME 31, NUMBER 30 • OCTOBER 14, 2005

Governor's Actions on Bills Show Concern for Economy



As the final stop in the lawmaking process, Governor Arnold Schwarzenegger held the line against proposals harmful to the California economy, vetoing seven of the eight California Chamber of Commerce-**opposed** "job killer" bills that the Legislature passed.

"The Governor's vetoes prevented significant harm to the job climate in California," said Chamber President Allan Zaremborg. "It's unfortunate that none of the Chamber-supported bills that could help the state's job climate made it to the Governor's desk."

Stopping New Burdens

The vetoes stopped additional employment laws that would have created a competitive disadvantage for California companies, led to increased litigation or increased health care costs.

Chamber-**sponsored** proposals to improve state labor laws never moved out of legislative policy committees earlier this year due to strong opposition from labor groups.

The stalled legislation supported by the Chamber included proposals to stop frivolous shakedown lawsuits filed against California employers under the auspices of the Americans with Disabilities Act; allow greater flexibility in

See Governor's: Page 19

Report Confirms Decline in Workers' Comp Rates

Workers' compensation rates in California are continuing to drop, thanks to the California Chamber-**supported** workers' compensation reforms, the latest report from the Workers' Compensation Insurance Rating Bureau (WCIRB) shows.

The average statewide insurer rate per \$100 of payroll in the first half of this year had dropped to \$5.26 — 19 percent below the \$6.50 average charged for the second six months of 2003, according to a WCIRB summary released September 27.

Moreover, the frequency of claims for workplace injuries for the first half of this year was 14 percent lower than for 2004 and less than half of the all-time high in 1999, the WCIRB reports.

Lower Rates, More Competition

"Rates are dropping and competition is picking up with more insurers returning to the California workers' comp market. Both are solid indicators that the reforms signed into law are working to the benefit of employers and the state's

See Report: Page 8

Chamber Weighs in on Prop. 64 Case



After several conflicting appellate decisions, the California Supreme Court will review the issue of whether Proposition 64, the California Chamber-backed initiative to curb frivolous lawsuits, applies

to lawsuits filed before the initiative was approved.

The court granted review in two cases, *Branick v. Downey Savings and Loan Assn.* (S132433), and *Californians for Disability Rights v. Mervyn's LLC* (S131798).

The Chamber is weighing in on both cases as *amicus curiae* (friends of the

court), providing the court with a big-picture analysis of the likely consequences of these decisions on California's business climate.

Is Proposition 64 Retroactive?

Whether Proposition 64 is to be applied prospectively or retroactively continues to be an important issue for California businesses.

Before voters approved Proposition 64 in November 2004, California's unfair competition law (UCL) allowed individuals to file lawsuits against businesses even though the individual had suffered no harm or injury — indeed, the plaintiff did not even have to be a customer of or have any connection to the business.

See Chamber: Page 18

Inside

- Guest Commentaries: Yes on Props. 76, 77: Pages 3, 4
- Frequently Asked Questions on Props. 74, 75, 76, 77: Pages 5-7
- Final Status of Major Bills: Pages 9-13

Labor Law Corner

Employer's Policy Can Set Vacation Pay for Salespersons on Commission



Gary Hermann
Labor Law Advisor

Do outside sales staff members receive vacation pay when they leave? Our sales staff does not "accrue" vacation pay, but they are allowed to take up to three weeks vacation annually. They are not paid for the time, but they continue to earn any commissions. Would the answer be the

same if they received a base salary plus commission?

Because California law does not require an employer to have a vacation policy, it is clear that an employer is free to adopt whatever vacation policy it chooses.

Therefore, if an employer policy provides for certain periods of annual time off without pay, such policy would be perfectly valid.

Commission-Only Employees

In that same vein, it is not unusual for an employer with employees paid on a commission-only basis to allow those employees annual time off, with the remuneration for those periods being limited to the commissions accrued during the period.

The vacation accrual requirements under California Labor Code Section 227.3 do not apply to commission-only employees who receive only commissions while taking time off work because the employees do not receive paid vacation time.

Vacation Pay Calculations

In determining the amount of vacation pay for an employee on commission, the employer may limit the vacation pay to the amount of any draw, or various combinations of draw plus percentages of commissions.

To determine what a vacationing employee may be entitled to, the employer may choose to average commissions earned over a period of time.

See Employer's: Page 14

California Chamber Officers

Eugene J. Voiland
Chair

Donna F. Tuttle
First Vice Chair

Russell Gould
Second Vice Chair

To be elected
Third Vice Chair

John W. Koeberer
Immediate Past Chair

Allan Zaremborg
President

Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$199 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioka. Associate: Danielle Kando-Kaiser. Acting Associate: Trina Filan. Art Director: Andrew Larsen. Graphics Assistant: Jason Untalan. Capitol Correspondent: Christine Haddon.

Permission granted to reprint articles if credit is given to the California Chamber of Commerce Alert, and reprint is mailed to Alert at address above.

E-mail: alert@calchamber.com.

Home page: www.calchamber.com.

Statement of Ownership, Management and Circulation

Alert, Statement of Ownership, Management and Circulation. Publication Number 0981-900. Filing Date: September 16, 2005. **Alert** is published weekly during legislative session by California Chamber of Commerce. Number of issues published annually: 34. Annual subscription price: \$199.

Complete mailing address of known office of publication and the headquarters or general business office of publisher: 1215 K Street, 14th Floor, Sacramento, CA 95814.

Full names and complete mailing addresses of publisher, editor and managing editor: Allan Zaremborg, Publisher. Ann Amioka, Vice President, Communications. Danielle Kando-Kaiser, Associate Editor. 1215 K Street, 14th Floor, Sacramento, CA 95814.

Owner: California Chamber of Commerce (non-profit), 1215 K Street, 14th Floor, Sacramento, CA 95814.

Known bondholders, mortgagees and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages or other securities: None.

Average number copies each issue during preceding 12 months: Total number of copies: 20,744. Paid/requested outside-county mail subscriptions stated on Form 3541: 17,600. Free distribution by mail:

Outside-county as stated on Form 3541: 2,147. Total free distribution: 2,147. Total distribution: 19,747. Copies not distributed: 997. Total: 20,744. Percent paid and/or requested circulation: 89.13.

Number copies of single issue published nearest to filing date (September 2, 2005): Total number of copies: 20,500. Paid/requested outside-county mail subscriptions stated on Form 3541: 17,286. Free distribution by mail: Outside-county as stated on Form 3541: 2,129. Total free distribution: 2,129. Total distribution: 19,415. Copies not distributed: 1,085. Total: 20,500. Percent paid and/or requested circulation: 89.03.

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

Ann Amioka
Vice President, Communications
September 16, 2005



‘Yes’ on Live Within Our Means, Prop. 76



When the dot-com boom was upon us, the state was taking in huge amounts of income tax from capital gains on

stock options. When the dot-com bust hit, the spending had been locked into permanent formulas. Fixing this fundamental problem — one-time money going into permanent spending formulas — is at the heart of Proposition 76, the Live Within Our Means Act.

Because we haven’t been living within our means, we’ve spent more than we had for each of the last six years; we’ve tapped out our state credit card, raided funds intended for schools and roads and bumped along with the worst bond-rating of the 50 states, costing us hundreds of millions of dollars in extra interest every year.

The tired, defeatist answer is “just raise taxes.” But we’ve spent more than we received in taxes every one of the last six years. Why do we expect the Legislature wouldn’t do so again?

Choosing a Better Way

There is a better way. Proposition 76 requires that state expenditures grow more smoothly. Rather than allowing a one-time spike in revenues to add to permanent spending formulas, Proposition 76 specifies that the state can only increase its spending over the previous year by a percentage equal to the previous *three* years’ revenue growth.

We’re still paying for having put our spending into high gear based on one-time money at the end of the 1990s. Proposition 76 will stop that practice. If a year is exceptionally high in state revenue, the extra will go into a reserve,

to be available for use when a year of exceptionally low revenue occurs.

Proposition 76 walls off the special funds that have routinely been raided when the state spends more than it has. The sales tax we pay on gasoline, for instance, was intended for road building and maintenance; instead, it’s been regularly raided for the state’s general fund. That would stop.

Honest Fiscal Call

When the state’s revenues began to go south, we should have stepped in; instead,

Guest Commentary By Tom Campbell

we let the deficit worsen throughout the fiscal year. Proposition 76 requires an honest call on what the state’s revenues and expenditures actually are, made at least every quarter.

If we’re off by a significant amount, the Legislature gets 45 days to fix it (by tax increases, if it wants, or by spending cuts). If they fail, then the Governor must act.

If the Legislature does not like some of the Governor’s cuts, they can put the money back in; but they’ve got to find an equal amount elsewhere to reduce. Smaller problems, fixed early, don’t become larger problems.

Proposition 76 requires an honest call on what the state’s revenues and expenditures actually are.

Reducing Budgetary Chaos

Proposition 76 makes one other important reform. Every year, the state ends the year without an on-time budget. School districts, vendors to the state, cities and counties, can’t plan as payments from the state are reduced or frozen. Instead of this chaotic situation, Proposition 76 continues the previous year’s budget until we get a new one. (Precisely this same

proposal is on the ballot in New York this November, supported by the Democratic leadership in their legislature.)

Who is opposing Proposition 76? As you might guess, those who benefit from the current formulas. Foremost among these are the state employee unions who benefited from what happened in the dot-com boom.

Smoothing Education Funding

You’ve probably seen the attack ads on TV saying Proposition 76 will cut education funding. They are false.

The non-partisan California Taxpayers’ Association has estimated that education funding will *increase* under Proposition 76, as compared with current law. The ads measure education funding as compared with what the unions wanted, not what the current law actually provides. Indeed, under existing law, no payment above the minimum is required for education unless per capita growth in revenue exceeds per capita growth in personal income, a situation that is unlikely to occur next year, and not guaranteed to occur in any given year.

Proposition 76 smoothes out education funding, so that in the low-revenue years, *more* money will go to education. That’s not in doubt, though you’ll never hear it on the attack ads. During high-revenue years, the Legislature can choose to add more to education, without making the increase automatically go into the base forevermore. For that very reason, it’s likely the

Legislature will add more than the minimum. But it should be the Legislature’s call, not a formula’s requirement, to go above the Proposition 98 minimums.

One-time money should go for one-time purposes, not

permanent spending formulas. That’s what Proposition 76 does, and it will improve every aspect of our state’s finances, especially those for education. Vote “yes” on Proposition 76.

Tom Campbell is on leave from his position as director of the California Department of Finance and is chair of the Yes on Proposition 76 campaign.

‘Yes’ on Prop. 77, Voter Empowerment



The political left alleges that Proposition 77 — the Voter Empowerment Act — is a vast right-wing

conspiracy. Meanwhile, the political right has claimed that Proposition 77 is part of a grand liberal scheme to oust conservative Republicans.

They are both dead wrong. The Voter Empowerment Act would stop the politicians from rigging their own district boundary lines and force them to compete for votes in districts in which they must be accountable to the voters if they expect to win.

Last fall, California had 80 Assembly, 20 state Senate and 53 congressional races. Not a single one of those contests ended with a seat changing party hands. Not a single incumbent politician lost.

Problem with Current System

Here’s why: in California, it’s the politicians who decide how their districts are drawn — not the voters. The two political parties got together in secret and divided up the state. To no one’s surprise, the politicians designed the map in such a way that any challenger, no matter how qualified, simply can’t compete and can’t win. And that’s not democracy.

Sadly, this leaves the Legislature free to behave its worst. Instead of tackling major issues like transportation, the environment and better preparing California for natural disasters, Sacramento politicians raise money and kowtow to special interests.

Meanwhile, back home in the districts, voters have lost faith with the political system. Why should voters care when they know elections are preordained and

their votes really don’t count?

This situation changes once voters approve Proposition 77. Politicians no longer will be able to choose their voters by rigging the redistricting process. Instead, a panel of three retired judges will draw districts. Those judges will be Democrats and Republicans, so neither party can claim that this is a partisan play. Once the judges come up with a design for new districts, that plan will have to be approved by a public vote.

Predictions for Positive Changes

What does this mean for the average Californian? Here are three predictions:

Guest Commentary By Steve Poizner

● First, we’ll have **more competitive races in California**. The Rose Institute at Claremont McKenna College has studied this issue more than any other academic institution in this state. The institute conducted a simulated redistricting using the rules spelled out in Proposition 77 and published the results.

The institute’s conclusion is that elections will be more contested, with as many as 25 highly competitive seats and an additional 25 potentially competitive seats, for a total of 50 contested seats.

A vote for Proposition 77 is the simplest way for voters to express their disenchantment with the partisan gridlock.

Competitive elections will force the two parties to listen to Californians and compete for votes. What a refreshing change.

● Second, we’ll have **political representation that more resembles California**, the world’s most diverse

society. Latinos, Asians and Pacific Islanders all were short-changed in the last redistricting process.

That ends under Proposition 77; politicians no longer can suppress minority representation by dividing the voting blocs of their districts.

The Rose Institute study found the likelihood of at least two more districts with a majority of Latinos. This is because the politicians in 2001 deliberately divided Latinos between districts in order to protect white incumbents from possible primary challenges from Latino candidates.

● Finally, because legislators will have to pay attention to the folks back home, we will see **a return to better government** in Sacramento. The last time California had court-ordered redistricting, which was in 1991, the Legislature ended up doing its job. It passed a budget compromise that pulled California out of a recession. Lawmakers approved needed reforms to education, welfare and the criminal justice system.

Do you honestly believe that any of that can happen in today’s Legislature? Not a chance.

First Step Toward Reform

This is why Proposition 77 is an all-important first step on the road to reform. California’s system of drawing election districts is rigged. There’s no other way to put it, when the voters batted a collective 0-153 in last fall’s election.

A vote for Proposition 77 is the simplest way for voters to express their disenchantment with the partisan gridlock. And it’s a convenient reminder to politicians: once you head off to Sacramento, you should not turn your back on your district.

Steve Poizner is chairman of Yes on Proposition 77, the Voter Empowerment Act.



Frequently Asked Questions About Special Election Reform Measures

Special Election

Why should the special election be important to the business community?

The Governor's reforms on the special election ballot are crucial to California's long-term economic health and vitality.

Chronic budget deficits lead to uncertainty for businesses regarding their tax obligations and call into question government's ability to fund programs crucial to economic growth, such as transportation,

infrastructure, public safety and education.

Because current law allows the California Legislature to guarantee that no incumbent party has to compete in an election, our representatives do not have to answer to the people. Special interest public employee unions can disproportionately influence the legislative process and members of the Legislature can be re-elected without having to answer to the

voters for hurting our economic recovery.

Of course, workforce development through our public schools is constantly at the top of every business' list for improving our ability to compete for quality jobs.

Proposition 76: Live Within Our Means

How does Proposition 76 fit into the Governor's reform plan for the state budget?

Proposition 76 helps prevent the unmanageable budget deficits that make businesses think twice about investing here. That's why it's called the "Live Within Our Means" act.

How does Proposition 76 help prevent budget deficits?

Proposition 76 helps stop the annual budget crisis by tackling California's spending problem two ways:

First, it stops the Legislature from spending one-time money on ongoing programs. That's the bad habit that led to our recent budget deficits in the first place.

Second, if the state experiences a sudden drop in revenue — such as we had earlier this decade and during the early 1990s — Proposition 76 allows the Legislature and the Governor, working together, to make mid-year spending cuts to bring expenses in line with the lower revenues.

How does Proposition 76 stop the Legislature from spending one-time money on continuing programs?

Proposition 76 limits annual expenditure growth to the average growth in revenue for the last three fiscal years. That way, even if there is a one-time spike in revenues, the Legislature can't spend all the money for ongoing programs.

Does Proposition 76 give the Governor and Legislature new powers to cut necessary state programs?

Actually, Proposition 76 clearly limits the ability of the Governor and the Legislature to make the mid-year adjustments to situations where there is a "fiscal crisis." The measure defines "fiscal crisis" as occurring only when there is a serious drop in revenues or the state's budget reserves.

If there is an opportunity to cut programs mid-year, won't education funding be at risk?

Just the opposite — Proposition 76 actually brings more stability to education funding in a number of ways:

First, it will provide the funding

source to create the budget reserves mandated by Proposition 58 — which are needed to guard against decreases in revenue. And we know the state will experience those economic downturns; it has before and it will again.

Whenever state revenues exceed the state spending limit as described above, Proposition 76 requires the additional revenues to go into areas other than ongoing programs:

- the first 25 percent will go toward state budget reserves;

- the next 50 percent will go toward retiring the existing debt;

- the final 25 percent will go to fund the infrastructure the state needs, such as roads, highways or school construction.

By allocating extra revenue this way, Proposition 76 gives the state the prudent reserves it needs to continue funding necessary programs (without raising taxes) — like education and public safety — when the economy slows down and we face the inevitable drop in state revenues. Much of these reserves will be available to continue funding education at the appropriate level in that year's budget, even if there is a decline in state revenues.

Second, under current law, schools must suffer an automatic reduction when



Proposition 76: Live Within Our Means (continued)

state revenues decline due to an economic downturn. Proposition 76 eliminates that automatic reduction, thereby stabilizing education funding.

Hasn't education funding been dramatically reduced in recent years already — and won't this make the problem worse for our schools?

Actually, that is not the case. Since taking office in 2003, Governor Schwarzenegger has increased education funding by more than \$3 billion — achieving the highest level of education funding in the history of California. California's current budget includes a massive commitment to education. In fact, more than 50 percent of all state spending goes to education.

Proposition 76 is critical because it will stabilize school funding to make sure public schools get the funding they need.

I've heard frequently that Proposition 76 will automatically lead to reduced financing for schools. Is that true?

Currently, any over-appropriation to public schools automatically becomes the base funding level for the next year, regardless of the state's financial standing. As a result, budget writers are reluctant to deliver more than the minimum to schools, knowing they cannot sustain the funding level without cuts in other areas like public safety or tax increases. Proposition 76 eliminates this harmful disincentive so over-appropriations to K-14 education will be more likely to occur.

Under Proposition 76, the Legislature is free to appropriate what it believes schools need and what taxpayers can afford. Moreover, the harmful government mandates that have caused California's budget deficits and call for new business taxes are eliminated. The bottom line is that Proposition 76 maximizes school funding each year and encourages state legislators to pour one-time revenues into education.

I've heard that Proposition 76 eliminates the maintenance factor that is used to repay the schools for any money that the state owes them when there has been a reduction in school spending. Why?

The maintenance factor is no longer needed because Proposition 76 eliminates the automatic reductions in current law. It is true that Proposition 98 could still be suspended by a two-thirds vote of the Legislature and the signature of the Governor. But with Proposition 76, the state is less likely to take such action because the state will have a budget reserve to fully fund the Proposition 98 guarantee. Proposition 76 doesn't change the Proposition 98 formula and, importantly, the measure requires the repayment of the existing Proposition 98 maintenance factor (about \$4 billion).

Proposition 77: Voter Empowerment Act

Why should my business be concerned about changing the redistricting process through Proposition 77?

Elected representatives in California aren't accountable to the people for decisions that hurt employers and the jobs climate because there's no competition for office. In the last general election, not one of 153 seats in Congress, the state Senate or state Assembly changed party hands. The districts are uncompetitive because the current system for drawing boundaries lets politicians choose their voters, rather than the voters choosing their legislators.

How will Proposition 77 improve redistricting?

Proposition 77 will put redistricting in the hands of a bipartisan, independent panel of retired judges operating under strict guidelines. This removes the conflict of

interest inherent when politicians can gerrymander their own districts. The districts the judges draw will then go to the people to approve or reject at the ballot box. Voters will have the final say on whether the districts are drawn fairly.

Won't the retired judges be political appointees who aren't accountable to the people of California?

Actually, the districts drawn by the bipartisan panel of retired judges will be subject to a vote of the people. Proposition 77 also outlines a process for choosing a redistricting panel to assure it will be bipartisan and fair. Among the requirements: the judges must not have held partisan political office and must promise in writing not to run for offices affected by the districts they draw for the next five years.

How can we be sure that the judges will draw fair districts?

When it comes to redistricting, judges have shown they can create competitive districts rather than districts that serve only the interests of elected officials. In fact, the last time political districts were fairly drawn and competitive was in the 1990s when the state Supreme Court appointed special masters to redraw the district lines after the Legislature and Governor couldn't come to an agreement. The court-appointed masters followed guidelines outlined in existing law and court decisions, focusing on making the districts equal in population, maintaining the integrity of geographical areas, counties, cities and communities of interest, and "nesting" two Assembly districts in each Senate district, as was the case during the 1990s.



Proposition 74: Put the Kids First Act

Why is Proposition 74, the teacher tenure initiative, important for business?

Proposition 74 is just the first step toward Governor Schwarzenegger's goal of improving California's education system. California relies on the public school system to prepare children for the workforce. Teachers are the backbone of this system, and the Governor wants to make sure that children have the best education possible by giving them the best teachers possible.

Teachers shouldn't have a guaranteed job before someone has the chance to

evaluate their performance. That's why Governor Schwarzenegger proposed extending the probationary period from two years to five years.

Simply stated, if teachers aren't doing the job for which they were hired, they shouldn't be teaching children. That's why Proposition 74 also makes it possible to dismiss a teacher who receives two unsatisfactory performance evaluations in a row even after they have served the five-year probationary period.

Won't Proposition 74 make it more difficult to attract quality teachers?

No. Potential teachers won't choose other fields because they will find more job security somewhere else. The fact of the matter is that no one has, or should have, a virtual job for life regardless of performance.

Proposition 75: Paycheck Protection

Why should business care about Proposition 75, the paycheck protection measure?

Public employee union leaders have used dollars raised from public employees to fund measures that would have hurt business and the economy.

For example, public employee unions spent millions supporting Proposition 56 on the March 2004 ballot in an unsuccessful attempt to give politicians a "blank check" to increase taxes by eliminating the requirement for taxes to be approved by a two-thirds vote.

In November 2004, public employee unions spent millions more supporting Proposition 72, which would have enacted costly new health care mandates on California businesses.

Earlier this year, public employee unions funded the drive for the "split roll" measure, which the proponents dropped before placing it on the ballot. The "split roll" initiative would have increased business property taxes by billions of dollars annually by requiring business properties to be reassessed annually, rather than when properties are sold or change ownership, as is the case now.

Proposition 75 simply requires public employee union leaders to get permission from their members before deducting political contributions from their paychecks. This ensures that hard-working public workers — like police, firefighters and other government workers — are making *voluntary* political contributions rather than being forced to contribute to misguided union efforts that hurt the economy and drive employers out of the state.

Help Reform California Government

How can I help put the Governor's reform plan into law?

Recent surveys show that when voters hear about the elements of Governor Schwarzenegger's reform plans, they

support change, not the status quo. The Governor needs your help to get his reform message to voters. You'll find more information on the many ways you can make change happen at the website www.joinarnold.com. A pdf file of this special

report and the California Chamber of Commerce analyses of the special election measures are available for you to download and share at www.calchamber.com.

Report Confirms Decline in Workers' Compensation Rates

From Page 1

economy,” said Charles Bacchi, Chamber legislative advocate. “There is more good news ahead, considering this report doesn’t reflect the WCIRB’s recommendation that insurers cut rates another 15.9 percent in January 2006.”

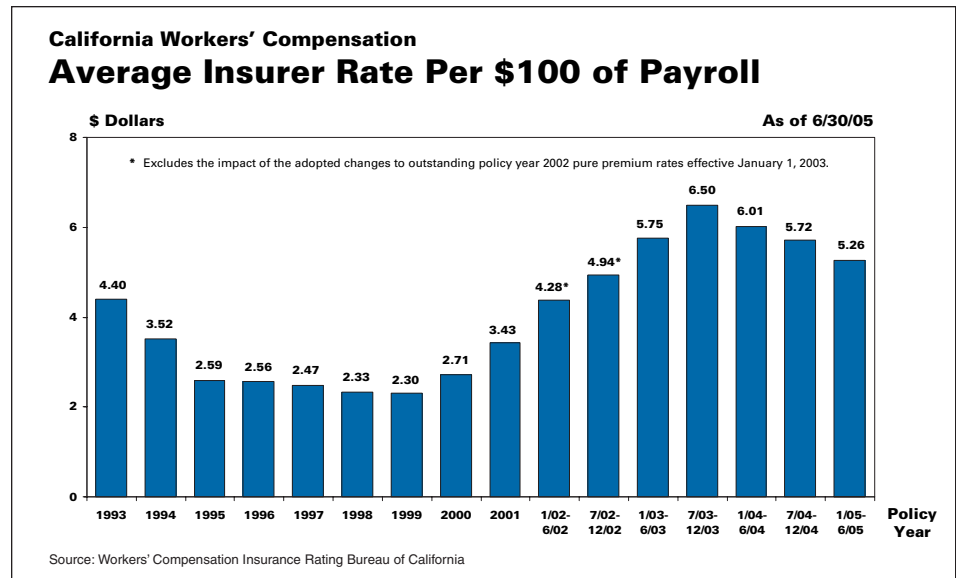
Governor Arnold Schwarzenegger guided negotiations leading to the development of SB 899 (Poochigian; D-Fresno) the 2004 Chamber-sponsored system reform that made fundamental changes in the way the workers’ compensation system determined the level of injury and the amount of disability assigned to an injury; and created a new medical network to provide quality, cost-effective care to workers.

This package ensured that medical treatment follows nationally recognized guidelines and sets clear parameters for what is acceptable treatment for injured workers in the system, while also reducing excessive litigation.

In addition, legislation enacted in 2003, AB 227 (Vargas; D-Los Angeles) and SB 228 (Alarcón; D-San Fernando Valley) updated the Official Medical Fee Schedule for workers’ compensation, extended this fee schedule to currently unscheduled medical procedures, and eliminated vocational rehabilitation.

Losses Trending Down

Based on the estimated impact of these



three bills on unpaid losses, the WCIRB reports a downward trend in the estimated total loss per indemnity claim since 2002. The estimated ultimate total loss per indemnity claim will be \$45,557 for 2004, 4.5 percent less than for 2003 and 8.4 percent less than for 2002.

Although the statistics reported by WCIRB reflect a great improvement to the workers’ compensation system, some employers still may not see the full effect of the recommended rate reductions. California insurance rates vary

from company to company and many factors contribute to when businesses see a decrease in rates, including history of workplace injuries, changes to industry classifications for employees, projected liability for all policy holders, anticipated losses for policies, and the newly enacted reform laws and prospective regulations.

To ensure they are achieving the greatest savings possible, California companies would do well to shop around to find the best rates.

Staff Contact: Charles Bacchi

California Chamber Positions on November Ballot Measures

<i>Proposition</i>	<i>Subject</i>	<i>Position</i>
Proposition 73	Waiting period/parental notification before minor’s abortion	No Position
Proposition 74	Put the Kids First Act (teacher tenure)	Support
Proposition 75	Paycheck protection (public employee union dues)	Support
Proposition 76	Live Within Our Means Act (budget reform)	Support
Proposition 77	Voter Empowerment Act (redistricting reform)	Support
Proposition 78	Pharmacy assistance program (discount prescription drug program)	Support
Proposition 79	CalRx Plus (discount prescription drug mandate)	Oppose
Proposition 80	Limits on choices for electricity customers	Oppose

Final Status Report on Major Legislation

The following list summarizes the status of top priority bills for the California Chamber of Commerce that were sent to the Governor or acted upon in Congress.

Each fall, the Chamber also publishes a record of legislators' votes on key bills

affecting California's business climate.

Generally, the bills selected for the vote record have appeared in one of the status reports. This year's vote record will be published on November 4.

A bill listing a chapter number has

been signed and will become law on January 1, 2006, unless it is an urgency measure, which becomes law as soon as it is signed.

Federal bills are marked with an *.

Status of bills as of October 8, 2005.

Subject and Bill — Chamber Position	Status
Agriculture and Natural Resources	
Development Projects: Disclosure Requirements. AB 648 (Jones) creates new hurdles for development project applicants by requiring additional applicant information and includes changes in ownership as a reason for a supplemental environmental impact report. Oppose.	Vetoed
Local Law Enforcement. SB 453 (Poochigian) reduces thefts of crops, livestock and agricultural equipment by extending the sunset date of the Central Valley Rural Crime Prevention Program from July 1, 2005, to July 1, 2009. Support.	Chapter 497
Motor Vehicle Fee Increase. SB 658 (Kuehl) burdens vehicle fleet owners and businesses in coastal counties with the cost of dealing with a statewide issue by singling out vehicle owners in the coastal zone to pay a new vehicle registration tax to fund efforts to mitigate the impact of motor vehicles. Oppose.	Vetoed
Pest Control: Violations. SB 455 (Escutia) inappropriately imposes civil penalties for any pesticide violations that may pose a health or environmental hazard. Oppose.	Vetoed
Air and Waste Management	
Biomonitoring. SB 600 (Ortiz) When introduced, this former "job killer" could have led to the elimination or reduction of use of certain chemicals which have not been scientifically proven harmful, based on mere detection. As amended, the measure authorizes a more modest program consistent with the protocols established by the Centers for Disease Control for implementing a state biomonitoring program. Neutral/ Former Job Killer.	Vetoed
Air Quality: Alternative Fuels. AB 1007 (Pavley) This former job killer would have created the potential for a significant fuel cost increase and required the California Air Resources Board to develop and adopt a plan to transition away from petroleum-based products, abandoning the state's policy of fuel neutrality. As amended, the bill requires only that specified agencies develop plans on how to increase the use of alternative fuels while minimizing the economic costs to the state and decreasing the state's dependency on petroleum. Neutral/ Former Job Killer.	Chapter 371
Civil Litigation	
Health Care Cost Increase. SB 399 (Escutia) increases litigation costs on insurers and the self-insured by requiring medical payments in excess of Medi-Cal reimbursement rates and increasing non-economic damage awards. Oppose/ Job Killer.	Vetoed

Subject and Bill — Chamber Position	Status
Corporate Governance	
Investment Plans: Mandatory Defined Contribution and Other Mandatory Retirement Plans. AB 310 (Umbert) may discourage financial institutions from offering their products and services to public employees in mandatory defined contribution plans by imposing various fees and requirements on persons performing investment or management services, mandating a minimum rate of return on assets, limiting management and service fees, and liability insurance. Oppose.	Vetoed
Unbalanced Trial Cost Recovery. AB 153 (Assembly Budget Committee) gives Attorney General unfair settlement leverage in cases involving alleged violations of laws governing corporate securities, anti-trust and other laws relevant to corporate concerns by allowing the full recovery of all costs associated with the investigation and prosecution of such cases. Oppose.	Vetoed
Education	
Vocational Education: Requirements. AB 1609 (Liu) promotes workplace readiness by informing the public of how many career technical classes are offered, the industries involved in the program, the number of students enrolled in these courses, and the graduation rates of students. Support.	Chapter 354
California Career Resource Network. SB 665 (Migden) promotes workplace readiness by providing students with valuable information about career paths and opportunities by creating the California Career Resources Network. Support.	Chapter 208
School Facilities: Lease-Leaseback Contracts. AB 1097 (Mullin) eliminates competition by creating an inappropriate incentive for school districts to select union contractors over non-union contractors. Oppose.	Vetoed
Employee Relations	
Minimum Wage Increase. AB 48 (Lieber) provides significant disincentive for employers to create jobs in California by giving our state the highest minimum wage in the country. Increases the cost of doing business by billions annually by raising the state minimum wage to \$7.25 in 2006 and to \$7.75 in 2007, and indexing increases every year thereafter. Oppose/ Job Killer.	Vetoed
Excessive Litigation. AB 169 (Oropeza) negatively distinguishes California from the rest of the country by exposing every business to excessive litigation and increases the cost of doing business by mandating damage awards and new civil penalties for gender pay equity violations. Oppose/ Job Killer.	Vetoed
New “Sue Your Boss” Lawsuits. SB 174 (Dunn) increases employer liability by providing new incentives for plaintiffs and their attorneys to file lawsuits by establishing new types of “sue your boss” lawsuits. Oppose/ Job Killer.	Vetoed
Severance Offers; Increased Litigation. AB 1310 (Núñez) establishes new reasons to sue certain private sector employers by setting in statute a very detailed notice process that an employer must follow exactly in order to be able to utilize any severance agreement. Oppose/ Job Killer.	Vetoed
Government Agency Potential Harassment of Employers. AB 875 (Koretz) opens the door to potential harassment by government labor and taxing agencies by requiring the referral of an unspecified labor violation to taxing agencies for a tax audit, exposing employers to an expensive, time-consuming fishing expedition for possible employer tax code violations. Oppose/ Job Killer.	Vetoed
Employment: Wages. AB 1093 (Matthews) makes a number of sensible changes to current payroll practices benefiting both employers and employees. Support.	Chapter 149
Loss of Employer Rights: Wage and Hour Claims. AB 879 (Torrico) significantly reduces employer rights to appeal wage claims. Oppose.	Vetoed

Subject and Bill — Chamber Position	Status
Severance Pay Mandate. AB 985 (Torrico) is an anti-outsourcing measure that essentially creates an unreasonable severance pay mandate if jobs are outsourced while an employee is on military leave. Oppose.	Vetoed
Civil Rights Act of 2005. AB 1400 (Laird) originally exposed California businesses to nearly unlimited liability by providing the list of protected classes were only suggestions and could be expanded. Bill subsequently amended to eliminate unlimited liability provisions in order to remove Chamber opposition. Neutral.	Chapter 420
Paystubs: Social Security Numbers. SB 101 (Battin) is technical cleanup of law enacted in 2004 requiring employers to mask all but the last four digits of Social Security numbers on paychecks and paystubs. Support.	Chapter 103
Government Procurement	
Public Contracts: Bidding Requirements. AB 524 (Chan) discourages businesses from bidding on state contracts, thereby reducing competition and increasing the costs of state contracts, by requiring businesses to provide information on work that would be conducted outside of the United States. Oppose.	Vetoed
Health	
Health Care: Employer List of Shame. AB 89 (J. Horton) inappropriately places employers on a list of shame if any of their employees applies for public health care, even if the employer provides health care but the employee decides to apply for a government program. Oppose.	Vetoed
Increased Litigation. AB 73 (Frommer) undermines California's biotech industry, puts California residents' health and safety at risk, and makes the state vulnerable to costly lawsuits by facilitating importation of drugs from Canada, England and Ireland. Oppose.	Vetoed
Pharmacy Benefits Management. AB 78 (Pavley) inappropriately interferes in privately negotiated contracts and results in higher prescription drug costs by requiring pharmacy benefit managers (PBMs) to make various disclosures to purchasers and the public and requiring PBM contracts to include specified provisions. Oppose.	Vetoed
Mandated Benefit. SB 576 (Ortiz) increases health care premiums by mandating health care service plans to cover tobacco cessation services. Oppose.	Vetoed
Mandated Benefits. AB 1698 (Núñez) increases cost to employers purchasing dependent health care coverage for their employees by extending the age at which dependents are covered by as much as seven years. Oppose.	Vetoed
Increased Health Care Costs. SB 363 (Perata) increases the costs of health care by mandating that hospitals implement a "zero lift" policy. Oppose.	Vetoed
Housing and Land Use	
Affordable Housing. AB 712 (Canciamilla) increases affordable housing availability by setting guidelines that must be followed by local agencies before they move to halt the construction of high-density developments. Support.	Vetoed
Affordable Housing. AB 1460 (Umberg) reduces the costs for developing new homes by establishing a time frame for the release of improvement or performance bonds provided by developers to local governments to ensure that infrastructure is properly built and turned over to the public. Support.	Chapter 411

Subject and Bill — Chamber Position	Status
Industrial Safety and Health	
New Customer Reporting Mandate: Chemicals and Commercial Products. AB 816 (Lieber) is unreasonable mandate that orders all businesses to turn over names and addresses of customers who purchase certain chemical or commercial products containing certain chemicals. Oppose.	Vetoed
Insurance	
Insurance Affordability. SB 2 (Speier) would have driven up the cost of homeowner's insurance, contributing to the problem of unaffordable housing by mandating excessive claims payments to a small group of policyholders. Amended to address Chamber concerns. Neutral/ Former Job Killer.	Chapter 447
Additional Insurance Requirements; Cost Increase. SB 150 (Escutia) increases the cost of insurance for business and individuals by adding new burdensome and unnecessary requirements on insurance carriers. Oppose/ Former Job Killer.	Chapter 436
Insurance Affordability. SB 518 (Kehoe) would have driven up the cost of homeowner's insurance, contributing to the problem of unaffordable housing by mandating excessive claims payments to a small group of policyholders. Amended to address Chamber concerns. Neutral/ Former Job Killer.	Chapter 448
International Trade	
*U.S.-Dominican Republic/Central American Free Trade Agreement (DR-CAFTA). H.R. 3045 (DeLay) is a regional free trade agreement that will reduce trade barriers and encourage business development and investment among the United States, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic. Support.	Passed U.S. Senate 6/30/05; Passed U.S. House 7/28/05; signed by President 8/2/05
*U.S.-Bahrain Free Trade Agreement. A bilateral free trade agreement that will foster increased trade and investment between both countries. This agreement is an important step in President Bush's plan to create a Middle East Free Trade Area by 2013. Support.	Pending Congressional Action
International Trade Agreements. SB 348 (Figueroa) provides the state Legislature with the authority to control provisions of a proposed international trade agreement by requiring Legislature to enact a statute before any state official, including the Governor, can make such an agreement. Oppose.	Vetoed
Other	
Duplicate Regulations. SB 484 (Migden) places unnecessary economic burdens and duplicative data regulations on cosmetics and personal care product manufacturers which result in no further public benefit. Oppose.	Chapter 729
Additional Restrictions. SB 12 (Escutia) unnecessarily limits the sale of certain beverages and food items at schools, as well as placing portion size restrictions. Oppose.	Chapter 235
Additional Restrictions. SB 965 (Escutia) further restricts the use of certain products by banning the sale of soda and other beverages not meeting specific standards in high schools. Oppose.	Chapter 237
Limits on Protected Speech. AB 1179 (Yee) ignores protected speech under the First Amendment as ruled by the courts by prohibiting the sale and rental of certain video games to individuals under the age of 18. Oppose.	Chapter 638

Subject and Bill — Chamber Position	Status
Privacy and Confidentiality	
Onerous Fax Communication Restrictions. SB 833 (Bowen) increases costs by placing onerous administrative and economic burdens on businesses by in effect requiring written consent from their own customers and clients prior to sending certain fax communications. Oppose/ Job Killer.	Chapter 667
Small Business	
Reduces Regulatory Red Tape. AB 348 (Arambula) helps California small business reduce red tape burden by permitting state agencies to accept same local government small business contractor certification in lieu of state certification. Support.	Chapter 185
Transportation	
Ports and Harbors: Fee Increase. AB 1406 (Karnette) When introduced, this former job killer would have increased cost of goods movement by adding a \$10 fee on all containers moving through the ports. As amended, the measure no longer has fee authority and simply requires the Office of Homeland Security to establish a grant program to enhance security at the ports. Neutral/ Former Job Killer.	Vetoed
Unemployment and Disability Insurance	
UI Benefit Expansion. AB 391 (Koretz) increases the cost of doing business in California by forcing California employers to subsidize a strike against their own company by providing unemployment insurance benefits to workers unemployed due to a strike. Oppose/ Job Killer.	Vetoed
Water Supply and Quality	
New Reporting Requirements. SB 820 (Kuehl) burdens landowners by imposing new groundwater use reporting requirements; levies penalties for failure to report water usage; and requires small water districts to develop ag management plans. Oppose.	Vetoed
Workers' Compensation	
Workers' Compensation: Unnecessary Penalty Structure. SB 1023 (Dunn) increases workers' compensation rates by encouraging litigation in the workers' compensation system. Oppose.	Vetoed

Associations Seek Nominees for Workplace Awards

Business and Aging Award

The American Society on Aging (ASA) and the Business Forum on Aging are accepting nominations for the 2006 ASA Business and Aging Awards.

The awards recognize for-profit companies for meeting the needs of older people and their families, expanding awareness of the private sector's involvement with older adults and creating performance models for other companies to use.

The award will be presented at the 2006 Joint Conference of the National Council on the Aging and the American Society on Aging in Anaheim, March 2006. The application deadline is October 17.

For more information, visit www.asaging.org/awards or contact Linda Jones at (415) 974-9638, ljones@asaging.org.

Psychologically Healthy

The California Psychological Association (CPA) is accepting applications for the 2006 Psychologically Healthy Workplace Award (PHWA).

The PHWA recognizes employers and organizations that demonstrate a commitment to workplace programs and policies that enhance the quality of the work environment for employees and their families.

Criteria for the PHWA include how the employer addresses concerns such as job

stress, family issues, and other prevention and educational promotions designed to have a positive impact on performance and safety and, ultimately, the company's bottom line.

The PHWA is a statewide initiative and will be widely publicized.

The award will be presented at the CPA conference in San Francisco, March 2006. The application deadline is December 1.

Employers interested in applying can review criteria and obtain an application at www.calpsychlink.org or can contact the PHWA chair: Dr. Beverly J. Ford, c/o California State University, Chico, 25 Main Street, Suite 202, Chico, CA 95929-0111, (530) 898-4645, bjford@csuchico.edu.

Employer's Policy Can Set Vacation Pay for Salespersons on Commission

From Page 2

In the case of a draw, salary or wage of some kind in addition to the commissions, the employee generally will be entitled to the proportionate amount of draw, salary or wage provided by the

vacation policy.

Making that proportionate payment is obviously important to comply with the requirement in the law that an employee be paid all vested vacation pay at her/his final rate at the time of termination.

The Labor Law Helpline is a service to California Chamber preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or e-mail: helpline@calchamber.com.

Annual Meeting

In compliance with Article VII of the bylaws, notice is hereby given that the annual meeting of the members of the California Chamber of Commerce, a non-profit corporation operating under the laws of the State of California, will be held on Friday, December 2, 2005, at 9 a.m. in Salon I at the Ritz Carlton Hotel, 600 Stockton at California Street, San Francisco, California, for the transaction of whatever business may be necessary.

Seminars/Trade Shows

For more information on the seminars listed below, visit www.calchamber.com/events.

Business Resources

Southern California Coalition Technology Conference and Vendor Showcase. Southern California Quality Assurance Association, Association of Information Technology Professionals and Project Management Institute. October 22, Long Beach. (562) 983-3400.

6th Annual Workplace Excellence Awards. San Diego Society for Human Resource Management. November 2, San Diego. (619) 589-0111.

Government Relations

GovLink Conference 2005. Federal Technology Center. October 17-19, McClellan. (916) 334-9388.

International

Contemporary Issues in African Development. Center for African Peace and Conflict Resolution,

California State University, Sacramento. October 18, Sacramento. (916) 278-6282.

Succeeding in China. UCSD Graduate School of International Relations and Pacific Studies. October 19-20, La Jolla. (858) 822-3933.

Succeeding in Mexico. UCSD Graduate School of International Relations and Pacific Studies. November 16-17, La Jolla. (858) 822-3933.

Labor Law

Sexual Harassment Training for Supervisors. California Chamber of Commerce. November 15, Web Seminar. (800) 331-8877.

Chamber Calendar

Advocacy Council Fall Retreat:
November 10-11, Newport Beach

Next Alert:
November 4

Chamber Member Donations Help Boost Aid for Victims of Hurricane Katrina

As donations to help the victims of Hurricane Katrina approach the \$2 billion mark, members of the California Chamber of Commerce are part of a reported record pace of giving.

Earlier this month, total giving topped \$1.7 billion, according to *The Chronicle of Philanthropy*, the newspaper of the non-profit world.

The *Chronicle* reports that the pace of giving is slowing, compared to immediately after Hurricane Katrina, but still is a record. It took more than a month for non-profit groups to raise \$1 billion after the September 11 terrorist attacks; more than \$2.2 billion eventually was raised in response.

Californians, familiar with the sudden damage that can be caused by disasters such as earthquakes and fast-moving fires, have been among the most generous donors to relief for Hurricane Katrina victims, according to news reports.

Following is a sampling of what Chamber member companies have donated, compiled from news stories and e-mail responses to the *Alert* story inviting members to report on their efforts.

- **Acme Awning Company** (San Leandro): Four of the company's eight employees contributed to the Salvation Army and the company matched their \$1,000.

- **American Institute of Certified Public Accountants (AICPA)** (New York) and state **CPA Society**: Professional associations for CPAs have joined forces to provide information and other resources, including a volunteer center to allow CPA firms to provide office space and other resources to displaced CPAs. More information at www.aicpa.org.

- **Amgen** (Thousand Oaks): Donated \$2.5 million to relief efforts, focusing on dialysis and cancer patients.

- **Bank of America** (North Carolina): Donated \$1 million to relief efforts, with \$500,000 going to the Red Cross and \$100,000 to the Houston Food Bank via the Houston United Way to help feed hurricane refugees at the Houston Astrodome. It also matched employee donations and collected contributions for the Red Cross at 5,800 bank branches across the nation.

Small Business Disaster Relief Fund

Readers wishing to help provide grants to help small businesses damaged by Hurricane Katrina get back into business as soon as possible can send a donation to the Small Business Disaster Relief Fund set up by the Louisiana Association of Business and Industry with the assistance of the Baton Rouge Area Foundation.

The grants will serve as "gap funding" to cover expenses not covered by insurance in order to bring as many enterprises as possible back on line quickly.

Contributions to the Small Business Disaster Relief Fund are tax deductible, can be made by check and mailed to:

Small Business Disaster Relief Fund/BRAF

402 N. 4th Street

Baton Rouge, LA 70802

Contributions also can be made through LABI's website, www.labi.org. The website also includes the application for the grant and links to other sources of information to help the hurricane victims.

- **California Non-Profit Center for Living and Learning** (Van Nuys): Contributed \$10,000 to the Red Cross, \$5,000 to Habitat for Humanity and \$2,000 to SPCALA.

- **Casa Herrera, Inc.** (Pomona): Matched employee donations of \$700, sending a check for \$1,400 to the Red Cross Katrina Relief project.

- **Chevron** (San Ramon): Gave \$3 million to the Red Cross for aid in Mississippi and Louisiana and \$2 million to different charities in the affected area.

- **Citigroup** (New York): Pledged to donate up to \$3 million to the Red Cross, making a \$1 million donation immediately after the hurricane. Its foundation also matched employee donations to the Red Cross.

- **Comcast** (Pennsylvania): Donated \$50,000 in cash and \$10 million worth of advertising to the Red Cross.

- **Georgia Pacific** (Georgia): Donated 65 truckloads of consumer goods, including toilet paper, paper towels, paper plates and cutlery.

- **General Electric** (Connecticut): Donated more than \$18 million, including \$8 million in cash and matching employee donations to the Red Cross and at least \$10 million in medical devices, power generation equipment, water puri-

fication and other goods and services.

- **Graphic Orb Inc.** (North Hollywood) matched employee donations, dollar for dollar. Everyone who donated had a vote on where the money should go. The choice was to donate a little more than \$5,000 to Habitat for Humanity and \$5,000 to Best Friends Foundation.

- **Hatch Mott MacDonald Group Inc.** (Pleasanton and Millburn): Contributed \$10,000 to the Red Cross.

- **Hendry Lindman Feltman & Associates** (Irvine): Employees voted to scale down their annual fun day/team building event and donate \$5,000 of the budget to the Red Cross for Hurricane Katrina relief. The company donated \$2,500 and matched employee personal donations of \$525 to Operation Orange County in Santa Ana, which is helping 100 families relocated to Orange County from the disaster area.

- **Intel** (Santa Clara): Donated \$1 million, which was matched by more than \$2 million from employees and the Intel Foundation. The company continues to pay its 200 employees who are volunteering and will provide 1,500 laptop computers and other services for distribution to shelters.

- **Kaiser Permanente** (Oakland):

See Chamber: Page 16

Chamber Member Donations Help Boost Aid for Victims of Katrina

From Page 15

Donated \$2 million to the Centers for Disease Control for its public health response and pledged \$1 million for long-term recovery support.

● **Kramer-Wilson Co., Inc. (owner of Century-National Insurance Company)** (North Hollywood): Held a casual week for employees, the week of September 19. To be eligible to dress casual the entire week, employees were asked to contribute a minimum of \$25. For a \$10 donation, the employee could dress casual on Thursday, September 22. Employees could choose from the American Red Cross, the Salvation Army or the majority winner of any other charity. Oprah's Angel Network and Habitat for Humanity tied in that contest. The company promised to contribute double what was collected from employees. More than half the employees contributed \$5,305; the company will add \$10,610 and send to the four charities. The next event will be a bake sale.

● **Ledyard Company** (Santa Cruz): This food service distributor donated \$7,005 to the Bush-Clinton Katrina Fund with the help of employees' generosity and employer match and owner match. Also donated \$50,000 worth of product to the Second Harvest Food Bank and \$8,000 to chefs within the Bay Area who traveled to the Gulf region to prepare food for the victims.

● **Mattel** (El Segundo): The toy company donated \$100,000 to the Red Cross and \$1 million in toys to be distributed by the Red Cross and Gifts in Kind International.

● **Maloo Sports and Entertainment** (Sacramento): Sacramento Kings and Monarchs basketball teams matched the \$135,000 in donations that fans raised through online and silent auctions and direct donations for a total of \$270,000 in donations to the Red Cross.

● **Pfizer** (New York): This pharmaceutical company has donated \$2 million, plus sent drugs to affected areas and has collaborated with government agencies and hospitals to store and distribute drugs to evacuees. It also invited academic researchers whose labs were destroyed to conduct their research in company labs.

● **Professional Community Management (PCM)** (Lake Forest): Donated to the Orange County United Way Katrina

Relief Fund to respond to human care needs and to Habitat for Humanity to aid in its work of building homes.

● **SBC Communications** (Texas): Provided communication services at the Houston Astrodome to relocated victims of Hurricane Katrina. It also made available up to 1,000 telephones with free local and long distance calling, free wireless service in conjunction with Cingular Wireless and SBC Yahoo DSL service and computers to provide high-speed Internet access, as well as Wi-Fi hot spots for use by public service personnel and the media.

● **Spectrum Solid Surfacing, Inc.** (North Highlands), donated \$250 to the United Way.

● **Verizon/Verizon Wireless** (New Jersey): Has donated more than \$12 million to the Red Cross, the National Association for the Advancement of Colored People (NAACP) and the Salvation Army, has dispatched 110 technicians to help restore phone networks, and distributed calling cards, cellular phones and air time.

● **Vision Service Plan** (Sacramento): Pledged \$15 million in monetary support and sight-related services, including: distributing eyecare vouchers entitling recipients to receive a free eye exam and glasses from a local optometrist; providing mobile eye exams to hurricane victims; for VSP members, replacing at no charge glasses destroyed as a result of Hurricane Katrina; providing financial assistance as needed to VSP-affiliated doctors living and/or working in the area affected by the hurricane.

● **Unilever United States** (New Jersey): Donated more than \$2.6 million in personal care and food supplies — including 100,000 bars of soap, 470,000 bottles of shampoo, 120,000 jars

of peanut butter and 720,000 meal and snack bars — and \$1 million in cash to relief and rebuilding efforts.

● **UPS** (Georgia): Pledged, through its foundation, \$1.25 million, including \$500,000 cash and \$750,000 in medical- and health-related supplies. The company also assigned logistics specialists to help direct people and supplies.

● **Wachovia** (North Carolina): Contributed \$250,000 to the Red Cross and matched employee donations up to \$1,000 to any eligible charity.

● **Wal-Mart** (Arkansas): Donated \$17 million in cash and \$3 million in merchandise, has collected \$6 million from customers for distribution to charities, has posted pictures of missing friends and loved ones on its website and through its Photo Centers, and has donated the use of 18 vacant facilities for

use as shelters, supply depots, food pantries and clinics.

● **Washington Mutual** (Washington): Donated up to \$1 million through corporate and employee and other matching donations. The company also expedited approvals of personal lines of credit, instituted penalty-free CD withdrawals and offered

alternate and extended loan payment plans.

● **Wells Fargo** (San Francisco): Contributed \$1 million, including \$500,000 directly to the Red Cross and matching employee contributions up to \$250,000.

● **Western Canvas Products Association**: This industry trade association covering the western 12 states is collecting money for the Red Cross relief effort with members of the Board of Directors matching contributions.



This is just a sampling of California Chamber members' contributions to Hurricane Katrina relief. To have your name and contribution listed on the Chamber's website, e-mail information to alert@calchamber.com.

Chamber Urges Employers to Comply with Looming Harassment Training Deadline



The California Chamber of Commerce is encouraging employers throughout the state to comply with the new California law that requires all organizations with 50 or more employees, including

contract personnel, to have put all supervisory employees through sexual harassment training by December 31, 2005.

"California employers with 50 or more employees have just three months left to comply with this new law," said Chamber President Allan Zaremberg. "Further, the California Chamber encourages employers of all sizes in California to train their employees to help prevent sexual harassment. These training tools were designed to fit any business' needs."

AB 1825 (Reyes; D-Fresno), signed in 2004, requires organizations to meet an initial deadline by January 1, 2006. By this date, each supervisory employee needs to have done at least two hours of training unless they had received some sexual harassment training during 2003 or 2004. Thereafter, companies will have to provide two hours of training every two years.

Currently, the Chamber is providing businesses with a cost-effective, online training program to meet this requirement. Since the program was rolled out in May, more than 30,000 managers have been successfully trained.

But with the new online version available through the California Chamber, training can cost as little as \$7 per person with no limits and can be completed any time."

The new law requires at least two hours of training that must include information regarding federal and state sexual harassment laws, harassment prevention and correction, and remedies available to victims. The law applies to all organizations — businesses, government and non-profits — with 50 or more employees. Failing to comply with this law opens up employers to potential lawsuits.

More information on AB 1825, including a fact sheet and frequently asked questions about the law and the sexual harassment prevention training program are available at www.calchamber.com.

Staff Contact: Sara Lee

Chamber Encourages Employers to Sign Up for Fit Business Tips

The California Chamber of Commerce is encouraging companies to get involved in a statewide effort by the California Department of Health Services (DHS) to promote healthy eating and physical activity in the workplace.

"The engine that drives California's economy is its employees," said Chamber President Allan Zaremberg. "If the engine is not running on all cylinders, our economy isn't running efficiently."

Employer Fit Business Tips

Through its California 5 a Day — Be Active! Worksite Program, DHS has launched a campaign to provide employers with Fit Business Tips each month to distribute to employees. The goal of the program is to encourage adults to eat the recommended amounts of fruits and vegetables and enjoy 60 minutes of physical activity every day.

Program tips will feature a fruit and vegetable, healthy recipes highlighting the fruit and vegetable of the month and suggestions for incorporating more fruits and vegetables into meals.

Heavy Price of Poor Health

According to DHS, physical inactivity, overweight and obesity are projected to cost employers \$28 billion this year in lost productivity, workers' compensation and direct and indirect medical costs, making it increasingly important for employees to have healthy eating and physical activity opportunities on the job.

Encouraging healthy habits in the workplace not only will reduce absenteeism and lost productivity, but can help improve an organization's bottom line. The program encourages both employers and employees to improve their efforts to ensure healthy lifestyles for all of California's working adults.

Promoting Workplace Wellness

Here are some recommendations to promote workplace wellness:

- Provide food choices in vending machines that meet healthy nutritional standards.
- Offer safe and secure bike storage for employees who ride a bike to work.

● Take advantage of existing tax law deductions to provide healthy foods for employees on a pre-tax basis and collect for it through payroll deductions.

● Replace doughnuts, coffee and sodas with 100 percent fruit or vegetable juice, fruits, vegetables and whole grain bagels.

Many More Fitness Tools

The Fit Business Tips are just one part of the Fit Business Kit available from the California 5 a Day — Be Active! Worksite Program. The kit was unveiled at the California Fit Business Award ceremony this summer, where the California Task Force on Youth and Workplace Wellness and the California 5 a Day — Be Active! Worksite Program recognized six California employers — including Chamber member USAA — for their workplace wellness practices.

Information on making a workplace healthy is available through the California 5 a Day program website at www.ca5aday.com.

Staff Contact: Sara Lee

Chamber Weighs in as Supreme Court Reviews Prop. 64 Retroactivity

From Page 1

Such is the case in *Branick*, where plaintiffs are suing Downey Savings and Loan Association, although they do not allege any actual injury and, in fact, are not even customers of the savings and loan association.

Proposition 64 cured this defect in law, but there was a rush of lawsuits filed before its enactment. Now several important questions remain:

- First, does Proposition 64 apply to those lawsuits filed before its enactment?
- If so, are plaintiffs able to amend their complaint to add plaintiffs who can allege actual injury (for example, actual customers), and should the amended complaint relate back to the original complaint to get around statute of limitations problems?

In a very recent victory for California businesses, the 1st Appellate District, Division Two held that Proposition 64 applies to pending actions.

In *Schwartz v. Visa International Service Association* (2005 Cal. App. LEXIS 1521), the court held that the plaintiffs have no basis to bring their suit. The court reasoned that the UCL's grant of standing to uninjured plaintiffs was purely a creature of statute since at common law

standing requires actual injury.

In addition, Proposition 64 does not contain a savings clause to preserve pending actions. Because the ability of uninjured plaintiffs to sue under the UCL was entirely based on statute, with no roots in common law, and because Proposition 64 does not preserve pending actions, the court held that plaintiffs have no basis to bring their suit.

The court ruling in the *Schwartz* case is in agreement with another Proposition 64 court ruling, *Thornton v. Career Training Center, Inc.* (128 Cal. App. 4th 116 (2005)), but squarely conflicts with the *Mervyn's* decision, decided by Division Four of the 1st Appellate District.

Can Plaintiffs Be Added Later?

The Supreme Court also will be considering the equally important issue of whether uninjured UCL plaintiffs may amend their complaint to add allegedly injured plaintiffs. The courts have favored permitting the substitution of plaintiffs when the named plaintiff is found to not have standing or, in a class action, is not qualified to represent the class. (See, for example, *Klopstock v. Superior Court*, 17 Cal.2d 13 (1941).)

Businesses will be in a position of significant disadvantage if plaintiffs are allowed to amend their complaints by substituting in plaintiffs who allege actual injuries. Once plaintiffs amend their complaint, they can assert that the complaint "relates back" to the original complaint and is therefore not barred by the statute of limitations.

Essentially, this would allow UCL plaintiffs and their attorneys to contravene the intent of California voters and California law by inserting a new lawsuit into the shell of the old lawsuit.

If the court allows this practice, it will cost businesses — including many small businesses — a significant amount of time and money to defend themselves against these shakedown lawsuits.

It is important to note that in both *Branick* and *Schwartz*, which held Proposition 64 retroactive, both appellate courts sent the cases back to the trial court to determine whether the complaints should be amended, and if so, whether the amended complaints relate back to the original. This "relation-back" issue is one the Supreme Court will be reviewing in *Branick*.

Staff Contact: Autumn HajMohammad

ChamberPAC Effort to Elect Pro-Jobs Candidates Offers Online Form

ChamberPAC, the California Chamber of Commerce bipartisan political action committee, now has an online contribution form.

The form, available at www.calchamber.com/chamberpac, makes contributing easy for California business leaders and others interested in helping the Chamber effort to build a business-friendly majority in the state Legislature.

To help elect pro-jobs candidates, the Chamber is conducting an aggressive, bipartisan candidate recruitment program for the 2006 election cycle.

Contributions to ChamberPAC will help pro-jobs candidates campaign and win in competitive races throughout the state.

For more information, visit the Government Relations section at www.calchamber.com or call (916) 444-6670, extension 275.

Join the campaign to elect pro-jobs candidates

* Name _____

* Mailing Address _____

* Mailing City _____

* Mailing State _____ *Mailing Zip Code _____

* Phone _____ Work Phone _____

Fax _____ E-mail _____

* Occupation _____

* Employer _____

Contribution _____ Payment Method ☐ Check ☐ Credit Card

Credit Card Account # _____ Exp. Date _____

Signature _____

NOT DEDUCTIBLE AS A CHARITABLE EXPENSE

Make check payable to: ChamberPAC, ID #950352, c/o California Chamber of Commerce,
1215 K Street, Suite 1400, Sacramento, CA 95814

*Required by law

U.S. Concludes Negotiations for Free Trade Agreement with Oman

The Office of the U.S. Trade Representative and the Minister of Commerce of Oman successfully concluded negotiations for a U.S.-Oman Free Trade Agreement (FTA) on October 3.

Under the agreement, all bilateral trade in consumer goods and industrial products will become duty-free. The agreement will need to be approved by the U.S. Congress under the process known as Trade Promotion Authority.

Benefits to California

The U.S.-Oman FTA will have benefits for California and the United States as a whole. Last year, California exports to Oman totaled more than \$14 million, making it one of the nation's top exporters to Oman, with consistent growth in exports of computers,



electronic products and machinery.

The agreement will continue to increase California's exports in these areas, as well as in its agricultural and manufacturing industries.

California is one of the 10 largest economies in the world, with a gross state product of approximately \$1.4 trillion. International-related commerce accounts for approximately one-quarter of the state's economy.

Benefits to Country

The U.S.-Oman FTA also will benefit U.S. exports of goods and services. Oman is a potential market for U.S. oil equipment and services, transportation equipment, water and environmental technology, medical equipment, electrical and mechanical equipment, power

generation and transmission equipment and services, telecommunications equipment and services, financial services, franchising and U.S. poultry and beef.

Bilateral trade between the United States and Oman totaled nearly \$748 million in 2004. U.S. goods exports to Oman rose to \$329.7 million last year, with significant growth in sales of machinery and vehicles. The new FTA with Oman will add to this success.

When approved, The U.S.-Oman FTA will be the fourth U.S. agreement with an Arab country, following the U.S.-Jordan FTA, signed in 2000, the U.S.-Morocco FTA, signed in 2004, and the U.S.-Bahrain FTA, currently awaiting approval by Congress. The U.S.-Oman FTA is an integral part of the Bush administration strategy to create a Middle East free trade initiative by 2013.

For further information on international trade issues, please visit www.calchamber.com/international.
Staff Contact: Susanne Stirling

Governor's Actions on Bills Show Concern for Economy

From Page 1

individual worker schedules; make labor law postings easier to understand; and modernize pay practices in the state by permitting the use of paycheck cards.

The Governor vetoed the following:

● **AB 48 (Lieber; D-Mountain View)**
Minimum wage increase. Would have provided significant disincentive for employers to create jobs in California by giving our state the highest minimum wage in the country. Also would have increased the cost of doing business by billions annually by raising the state minimum wage to \$7.25 in 2006 and to \$7.75 in 2007, and indexing increases every year thereafter.

● **AB 169 (Oropeza; D-Long Beach)**
Excessive litigation. Would have negatively distinguished California from the rest of the country by exposing every business to excessive litigation and would have increased the cost of doing business by mandating damage awards and new civil penalties for gender pay equity violations.

● **AB 391 (Koretz; D-West Hol-**

lywood) UI benefit expansion. Would have increased the cost of doing business in California by forcing California employers to subsidize a strike against their own company by providing unemployment insurance benefits to workers unemployed due to a strike.

● **AB 875 (Koretz; D-West Hollywood) Government agency potential harassment of employers.** Would have opened the door to potential harassment by government labor and taxing agencies by requiring the referral of an unspecified labor violation to taxing agencies for a tax audit, exposing employers to an expensive, time-consuming fishing expedition for possible employer tax code violations.

● **AB 1310 (Núñez; D-Los Angeles)**
Severance offers; increased litigation. Would have established new reasons to sue certain private sector employers by setting in statute a very detailed notice process that an employer must follow exactly in order to be able to utilize any severance agreement.

● **SB 174 (Dunn; D-Garden Grove)**

New "sue your boss" lawsuits. Would have increased employer liability by providing new incentives for plaintiffs and their attorneys to file lawsuits by establishing new types of "sue your boss" lawsuits.

● **SB 399 (Escutia; D-Norwalk)**
Health care cost increase. Would have increased litigation costs on insurers and the self-insured by requiring medical payments in excess of Medi-Cal reimbursement rates and increasing non-economic damage awards.

Fax Bill

Not vetoed was the bill enacting state restrictions on certain fax communications, **SB 833 (Bowen; D-Redondo Beach).** The Chamber is concerned the new state law will lead to increased litigation, especially against small businesses. To counter this unintended consequence, the Chamber will be developing compliance information for a future issue of *Alert*.

Staff Contact: Dominic DiMare

Deadline Approaching Quickly to Complete Sexual Harassment Training

California law, AB 1825, mandates two hours of sexual harassment training for supervisors before January 1, 2006 for employers of 50 or more. We offer two easy, cost-effective ways to train your supervisors and protect your company.

Preventing Harassment in the Workplace online training helps you meet the mandatory requirements the easy way:



CALIFORNIA
CHAMBER of
COMMERCESM

- Significant savings over in-person training
- Supervisors can train at their own pace
- Questions go directly to the course instructor, a legal expert
- Record-keeping tools track who has taken the course and automatically e-mail reminders to those who haven't completed it

In addition to our online training, we also offer **two live web seminar courses for supervisors.**

Register each of your supervisors now for one or both of these valuable one-hour interactive web seminars. This interactive forum has all the benefits of a live presentation — including answers to questions — without the cost of an on-site expert.

Intro SH Supervisors Web Seminar - 11/15/05

Advanced SH Supervisors Web Seminar - 12/1/05

To order, visit **www.calchamberstore.com** or call (800) 649-4921.

Periodicals
Postage
PAID
Sacramento, CA

ADDRESS SERVICE REQUESTED

Helping California Business Do BusinessSM
P.O. BOX 1736 SACRAMENTO, CA 95812-1736
(916) 444-6670 FACSIMILE (916) 444-6685
www.calchamber.com



CALIFORNIA CHAMBER OF COMMERCE

ALERT