

# ALERT

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## CalChamber on Taxes: 'Enough Is Enough'



“Enough is enough,” says CalChamber President and Chief Executive Officer Allan Zarembeg in one of the videos prepared by the Californians Against Higher Taxes coalition.

The coalition of taxpayers, large employers and small businesses, chaired by Zarembeg, also is continuing the radio ad campaign launched last week to raise awareness of the harm more taxes will do to California families, jobs and the economic recovery.

### Taxes Already Increased

The CalChamber recognized in February the need for additional revenues as part of the solution to the state’s budget woes. By the end of the next fiscal year, Californians will have paid an estimated \$14 billion in increased taxes, of which business will pay a significant part.

*See CalChamber: Page 4*

A California Chamber of Commerce-led coalition turned to YouTube this week with its campaign to educate the public that additional taxes are being considered in the state Legislature and that adoption of those proposals will have adverse consequences for the economy and jobs.

“The Legislature of California already raised taxes on Californians for \$12.5

## Cal/OSHA to Turn Attention to Shade Rules

Shade requirements to prevent heat illness in outdoor workers are expected to be the focus of a new Cal/OSHA regulatory process in a few weeks.

The revised approach follows a June 18 hearing at which the Cal/OSHA Standards Board heard comments, but declined to adopt or even vote, on proposed emergency amendments to the state’s heat illness standard.

Both employers and labor representatives criticized the emergency rules, proposed as amendments to California’s first-in-the-nation heat illness prevention standard, which was adopted in July 2006.

### Current Heat Illness Standard

The existing standard applies to all companies with employees working in outdoor places of employment. Employers are required to provide training for employees and supervisors on heat illness prevention, symptoms and treatment.

In addition to the training requirements, employers must provide potable drinking water, access to shade and compile heat illness prevention procedures, including employee training, in writing.

*See Cal/OSHA: Page 4*

## CalChamber Urges State Court to Protect Businesses Against Shakedown Litigation



The California Chamber of Commerce recently petitioned the California Supreme Court to review a case seeking to overturn a lower court’s decision that directly conflicts

with a voter-approved measure to prevent frivolous lawsuits.

Proposition 64, overwhelmingly approved by California voters, required that plaintiffs in lawsuits filed under the state’s Unfair Competition Law (UCL) must actually have suffered harm. This reform was intended to provide companies doing business in California with significant relief from the numerous frivolous lawsuits clogging the court system.

In its letter asking the state high court to review the case of *Safeco Insurance Company v. The Superior Court of Los Angeles*, S173602, the CalChamber explained that the appellate court’s ruling directly conflicts with the objectives of Proposition 64, requiring that a plaintiff have been injured in fact and lost money or property as a result of the alleged unfair business practice.

*See Protect: Page 4*

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## Labor Law Corner

# Pay for Time on Jury Duty Differs for Non-Exempt, Exempt Employees



**Dale Louton**  
Senior Helpline  
Consultant

*Am I required to pay wages to employees who serve on jury duty?*

You are not required to pay wages to non-exempt employees who serve on jury duty. Exempt employees must be paid full salary for any week in which they perform any work.

There is a difference in that you must pay an exempt employee who works any part of a week and is on jury duty, versus a non-exempt employee who does

not have to be paid. This is just another reason it is so important to properly classify your employees.

### State, Federal Law Agree

The California Labor Commissioner has stated in the *Enforcement and Interpretations Manual* that federal law, with respect to jury duty, is compatible with state law and will be followed. Any exempt employee who works any part of a week and who serves on jury duty must be paid salary for the full week.

Both the U.S. Department of Labor and the state Labor Commissioner, however, will allow employers to offset any amounts received by an employee for jury fees for that particular week.

### Exempt Employees

Exempt employees are subject to certain compensation requirements in order to retain the exempt status. Code of Federal Regulations Section 29 CFR 541.602 provides that an exempt employee must be paid on a salary basis to be considered an exempt employee.

The general rule contained in paragraph (a) provides that if an exempt employee performs any work within a week, then that employee must be paid salary for the full week. Under paragraph (b), there are certain exceptions when the exempt employee is absent of his/her own volition. The exception does not apply to jury duty.

Paragraph (b)(4) requires that exempt

employees who work any part of a week be paid full salary for that week. If not, the exempt status will be lost. An exempt employee who misses a full week of work because of jury duty does not have to be paid salary for that week.

**A note of caution here:** Very seldom will an exempt employee perform absolutely no work in a week—even answering e-mail, listening to voicemail, reporting to the office outside of jury duty hours will all constitute work during the week.

### No Discrimination

California Labor Code Section 230(a) provides that an employer may not discriminate against an employee for taking time off to serve as required by law in an inquest jury or trial jury, if the employee, prior to taking time off, gives reasonable notice to the employer that he/she is required to serve.

Labor Code Section 230(a) does not require the payment of wages for non-exempt employees nor the payment of salary for exempt employees who miss work because of jury duty. Both classes of employees, however, are protected from being discriminated against.

*The Labor Law Helpline is a service to California Chamber of Commerce 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 submit your question at [www.hrcalifornia.com](http://www.hrcalifornia.com).*

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## CalChamber-Sponsored Seminars/Trade Shows

More at [www.calchamber.com/events](http://www.calchamber.com/events).

### Business Resources

Hetch Hetchy Valley Tour. Water Education Foundation. July 22–24, San Mateo. (916) 444-6240.

Russian River Tour. Water Education Foundation. August 6–7, Santa Rosa. (916) 444-6240.

### International Trade

Innovation: Tri-Valley and the World Economy. Livermore Chamber and U.S. Chamber. June 30, Livermore. (925) 447-1606.

Growing Modesto in a Global Economy. Modesto Chamber. July 1, Modesto. (209) 571-6480.

IPO in Taiwan Seminar. Taiwan Trade Center, San Francisco. July 21, Santa Clara. (408) 988-5018.

Partnering for Compliance. Partnerships International Inc. August 12–14, San Jose. (321) 952-2978.

Trade Mission to Vancouver, B.C. Sacramento Metro Chamber and Northern California World Trade Center. August 18–19, Vancouver, B.C. (916) 321-9144.

**Next Alert: July 10**



# Hearings Set on ‘Job Killer’ Proposals



In the coming weeks, legislators are scheduled to consider a number of California Chamber of Commerce-opposed “job killer” proposals. Awaiting consideration

by the full Senate as **Alert** went to press was **AB 793 (Jones; D-Sacramento)**, which creates unreasonable new liability for employers. The bill imposes unfair and costly litigation burden on California employers by unreasonably expanding employer liability in workplace lawsuits far beyond the federal Lilly Ledbetter Fair Pay Act of 2009.

Awaiting consideration by the Senate Labor and Industrial Relations Committee was **AB 943 (Mendoza; D-Artesia)**, which hampers employment decisions (see Page 7).

## Committee Hearings Set

Scheduled to be considered in various legislative committees are the following:

● **SB 227 (Alquist; D-Santa Clara) New Health Care Tax.** Increases health care premiums by establishing a new targeted tax and government bureaucracy to change California’s major risk medical insurance program (MRMIP). *Assembly Health, June 30.*

● **SB 95 (Corbett; D-San Leandro) Vehicle Price Increase.** Imposes new surety costs on car dealers in an already-difficult economy by placing excessive restrictions on the sale of trade-in vehicles and unreasonably expanding dealer liability and damages. *Assembly Judiciary, June 30.*

● **AB 1405 (De León; D-Los Angeles) Climate Change Tax Increase.** Increases costs and discourages job growth by granting the Air Resources Board broad authority to implement unlimited fees and taxes with little or no oversight. *Senate Energy, June 30.*

● **AB 2 (De La Torre; D-South Gate) Health Insurance Litigation.** Drives up the cost of health care premiums and increases the number of uninsured by establishing litigation as the only meaningful approach to resolving disputes over rescinding coverage. *Senate Health, July 1.*

● **AB 479 (Chesbro; D-Arcata) Expanded Waste Bureaucracy.** Increases costs by giving the California Integrated Waste Management Board broad authority to impose any policy, program or incentive to reach a 75 percent solid waste diversion rate by 2020. *Senate Environmental Quality, July 6.*

● **AB 1404 (De León; D-Los Angeles) Discourages Emission Reductions.**

Significantly increases business costs and threatens state jobs and businesses by severely limiting the amount of offsets California industries can use to meet their greenhouse gas emission goals. *Senate Environmental Quality, July 6.*

● **AB 656 (Torrico; D-Newark) Gas Price Increase.** Increases gas prices and dependence on foreign oil by targeting the oil industry for a tax on oil extracted only in California. *Assembly Higher Education, July 7.*

● **SB 602, SB 603 (Padilla; D-Pacoima) Retail Restrictions.** Severely restricts retailers from growing their businesses in California by limiting the sale of a legal product in a legal venue. *Assembly Governmental Organization, July 8.*

● **SB 145 (DeSaulnier; D-Concord) Workers’ Compensation Apportionment.** Erodes recent workers’ compensation reforms and leads to higher premiums for California employers by undercutting fair and reasonable provisions in current law that protect an employer from paying for disability that was not caused by a workplace accident. *Assembly Insurance, July 8.*

## Updates on Web

Updates on “job killer” bills and sample letters appear at [www.calchamber.com/jobkillers](http://www.calchamber.com/jobkillers).

## Need to Retrain Supervisors on Harassment Prevention This Year?

Harassment training updates are required for many employers in the fourth year of AB 1825. If you have 50 or more employees, you are required to provide harassment prevention training to supervisors within six months of hire or promotion and every two years thereafter. The California Chamber of Commerce, the trusted authority for California business compliance resources and training for 118 years, offers a thorough and affordable online course.

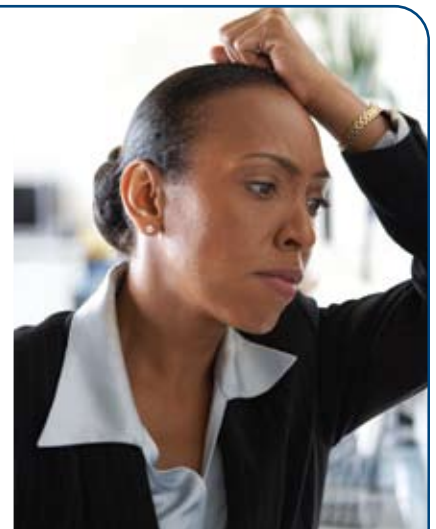
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## Protect Business Against Shakedown Litigation, CalChamber Urges Court

*From Page 1*

By allowing the plaintiff, who had neither an injury in fact, nor lost money or property to initiate and maintain a UCL claim, the Court of Appeal permitted what the voters had expressly rejected—a plaintiff-less UCL claim, the CalChamber pointed out in its letter.

### Case Background

The original lawsuit was filed against Safeco and First National in January 2002. Following the passage of Proposition 64, the Los Angeles County Superior Court permitted the original plaintiff (who had suffered no actual injury and therefore had no standing to file the lawsuit, according to Proposition

64) to name a new plaintiff in the class action lawsuit.

Even though the court found that the new plaintiff also had suffered no harm, the court granted the new plaintiff's request to begin the process of seeking information from Safeco for the purpose of identifying another potential plaintiff (making that person the third plaintiff) who had been harmed so that the lawsuit may proceed.

### CalChamber Argument

The CalChamber argued that if the decision is allowed to stand, it will have a devastating impact on the business community. Specifically, CalChamber said that by easing the requirement of

standing to bring suit, the Court of Appeal had opened up the floodgates for any party, whether or not they were injured by an alleged wrongdoing, to bring suit, and cause businesses to spend millions of dollars defending frivolous actions.

Permitting these meritless lawsuits to proceed, in addition to being contrary to the voters' intentions, will result in businesses being coerced into settlements from baseless discovery proceedings, CalChamber explained. The results will be disastrous for California businesses, leaving them vulnerable to shakedown litigation at a time when their economic stability is imperative to getting California back on track financially.

**Staff Contact: Erika Frank**

## Cal/OSHA to Turn Attention to Shade Rules

*From Page 1*

At the June 18 hearing, the Cal/OSHA staff noted that the portion of the current heat illness standard dealing with shade is the one for which citations are most often issued.

### Effective Enforcement Needed

The CalChamber pointed out in comments to the board that more

effective enforcement of existing California requirements to prevent heat illness in outdoor workers can do more to protect workers than adopting more prescriptive, burdensome rules.

Both labor and management representatives agree that enhanced enforcement efforts could effectively address a lack of compliance.

Business groups, as well as the public

safety managers association, agreed with the CalChamber's remarks.

The CalChamber also recommended that Cal/OSHA reactivate the Heat Illness Prevention (HIP) Network launched two summers ago by the CalChamber and other business groups in cooperation with Cal/OSHA to warn employers about impending heat emergencies.

**Staff Contact: Marti Fisher**

## CalChamber on Taxes: 'Enough Is Enough'

*From Page 1*

Overall, employer tax payments during two budget years will be more than \$10 billion higher because of the budget agreements last fall and earlier this year (see June 12 *Alert*).

The increased tax hits include a retroactively applied strict liability penalty that punishes reasonable tax disputes (\$2.5 billion); limits on the state's research and development and enterprise zone tax credits (\$900 million); suspension of the net operating loss (\$1.6 billion); accelerated estimated tax payments (\$2.3 billion) and accelerated limited liability company fees (\$360 million). Employers also pay significant estimated shares of the sales and use tax rate increase (\$2.4 billion), vehicle license fee increase (\$425

million) and personal income tax rate increase (\$1 billion).

### Harm to Employers, Workers

The videos and radio ad underscore that adding to the tax burden of employers and consumers will exacerbate the horrible economic situation being experienced by employers and working families. Placing additional cost burdens on already-struggling businesses will result in job losses.

"History is a guide; when the state does well in the private sector, the state's government has plenty of revenues to fund essential programs like education, public safety, health and welfare," Zaremberg says in the video. "And when the economy does poorly, the state doesn't have the revenues to do that."

### Action Needed

The CalChamber has been encouraging employers to make sure their elected representatives understand that now is the time to reduce costs on business, not increase them. Tax increases have already been part of the budget solution and Californians cannot afford to pay any more. More taxes will kill more jobs and hurt working families of California. A strong economic recovery will add billions of dollars to the state treasury without increasing taxes.

### Web Link

More information on the coalition, plus links to the YouTube video series and the radio ad appear at [www.MoreJobsNotTaxes.com](http://www.MoreJobsNotTaxes.com).

# Japanese Business Leaders Discuss Trade at CalChamber-Hosted Luncheon Gathering

Two major associations of Japanese businesses that invest and employ people in California shared observations on the state of the world economy this week at a luncheon hosted by the California Chamber of Commerce on June 24.

Joining CalChamber representatives in exchanging perspectives on the global economic downturn while voicing optimism for the future of California-Japan trade relations were leaders of the Japanese Chamber of Commerce of Northern California (JCCNC) and the Japan Business Association of Southern California (JBA).

## Export Partner

Japan, the world's third largest economy, is California's third largest export market. The state's exports to Japan totalled \$13.1 billion in 2008, according to the U.S. Department of Commerce. Computers and electronic products accounted for 28 percent of total exports.

## Investment in California

Japan is the No. 1 source for overall foreign direct investment in California, driven somewhat by the high value of Japanese-owned commercial property, according to research by the Public Policy Institute of California.

Investment in California by 1,772 Japanese firms totals \$32.7 billion, a JCCNC/JBA report concluded.

In addition, activity by Japanese manufacturing plants, retail outlets, finance operations and other business operations employ more than 226,000 Californians throughout the state, generating billions of dollars in state and local tax revenue.

Japanese-affiliated companies contribute more than \$17 million a year to the communities that host their operations.

## CalChamber Web Portal

More information on California-Japan trade and U.S.-Japan trade and investment is available at the trading partner portal on the CalChamber website at [www.calchamber.com/japan](http://www.calchamber.com/japan).

## Photo

*Front Row (from left):* Hiroshi Haruki, president and chief financial officer, Fujitsu Management Services of America, Inc.; Yoshiaki Hata, vice president and regional manager, Western Region, Japan Airlines International; Masaaki Tanaka, president and chief executive officer, Union Bank of California and president, Japanese Chamber of Commerce of Northern California; Allan Zaremberg, CalChamber president and chief executive officer; Yasuyoshi Suzuki, vice president and regional manager, Japan Airlines International and president, Japan Business Association of Southern California; Carlos (Shozo) Kibata, chairman, Toyo Tire Holdings of Americas, Inc. and executive vice

president and secretary, JBA; Nobuhito Maki, vice president and general manager, Kaga (U.S.A.), Inc. and chairman, JBA Business and Administration Committee.

*Middle Row:* Masayuki Togashi, regional officer and general manager, Mitsui & Co. (U.S.A.), Inc.; Hiroshi Tomita, president, Konica Minolta Systems Laboratory Inc.; Yuichi Kawakami, president and chief operating officer, NEC Electronics America, Inc.; June-ko Nakagawa, JCCNC executive director; Isao "Steve" Matsuura, chairman, MIK International and special advisor to the JCCNC president; Osamu Machida, manager, administration and accounting, Los Angeles office and the Americas, All Nippon Airways Co., Ltd. and vice chairman, JBA Business and Administration Committee; Akira Tasaki, president and chief executive officer, Mitsubishi Electric & Electronics USA, Inc.; Masafumi Yasukagawa, senior vice president and general manager, Toshiba America, Inc.; Masahiro Nakada, president, Salad Cosmo U.S.A. Corporation.

*Back Row:* Jon Nakamura, vice president and senior counsel, Union Bank of California; Steven Teraoka, managing partner, Teraoka & Partners LLP and co-chair JCCNC Governmental Affairs and Regulatory Compliance Committee; Susanne Stirling, CalChamber vice president, international affairs; Scott Keene, Keene & Associates, consultant to JCCNC/JBA; Masashi Ebara, executive director for general and external affairs, Japan External Trade Organization (JETRO) San Francisco; Yutaka Miyashita, senior vice president, Union Bank; Drew Savage, CalChamber vice president, corporate relations; Jeanne Cain, CalChamber executive vice president, policy; Ken Tsukahara, senior vice president, Colliers International – Silicon Valley and co-chair JCCNC Governmental Affairs and Regulatory Compliance Committee.

**Staff Contact: Susanne Stirling**



California Chamber of Commerce representatives meet with counterparts from the Japanese Chamber of Commerce of Northern California and the Japan Business Association of Southern California, as well as top Japanese business executives on June 24 at the CalChamber offices.

# Legislative Outlook

An update on the status of key legislation affecting businesses. Visit [www.calchambervotes.com](http://www.calchambervotes.com) for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

## Energy Conversion Could Boost Jobs, Investment



A California Chamber of Commerce-supported bill that would provide a pathway for new investment and job creation by allowing conversion at a biorefinery to count toward the state's renewable portfolio goal will be considered by a Senate committee next week.

The "job creator" bill, **AB 222 (Adams; R-Hesperia)**, encourages new investment and job creation by allowing conversion of solid waste to energy at a biorefinery to count toward meeting the state mandate that 20 percent of energy come from renewable sources by 2010.

While California is aggressively working to meet its ambitious environmental and energy goals, a number of issues are arising that are causing delays in building the

infrastructure and system the state needs. For this reason, it is even more important that the state looks for ways to develop a basket of tools to meet its goals.

AB 222 provides such a path by allowing local governments to count the conversion at biorefineries toward recycling diversion goals. Expanding the use of California's waste streams through conversion will increase investment in this key technology and would help lessen a number of environmental impacts associated with solid waste.

**Action Needed:** AB 222 is scheduled to be considered by the Senate Energy, Utilities and Communications Committee on June 30. Contact your representative in the Assembly and urge **support** for AB 222.

**Staff Contact: Amisha Patel**

## Higher Fuel Costs If 'Job Killer' Passes



A California Chamber of Commerce-opposed bill that will lead to gas price increases is expected to be considered again by an Assembly committee on July 7.

The "job killer" bill, **AB 656 (Torrico; D-Newark)**, increases gas prices and dependence on foreign oil by targeting the oil industry for a tax on oil extracted only in California.

California oil resources are already among the most heavily taxed in the country, and California motorists pay the highest taxes on gasoline in the country. This new oil severance tax would make California's combined taxes on petroleum the highest in the nation by far.

According to a report published by the Law and Economics Consulting Group (LECG), an oil severance tax would reduce the supply of oil produced in California between 54,000 and 80,000 barrels per day over the next 30 years. This would substantially increase California's dependence on foreign oil imports.

Moreover, according to LECG, a new oil tax would directly result in the loss of almost 10,000 California jobs.

The proposed oil tax has been considered numerous times by the Legislature and the voters of California. It has been defeated every time.

California voters have twice defeated initiatives to impose oil severance taxes. Most recently, voters soundly rejected Proposition 87 in 2006, recognizing that it would discourage investment in California crude oil production and would likely result in even higher prices for transportation fuels. A new oil tax also would discourage investment in California at the very time the state needs more companies to invest here.

**Action Needed:** AB 656 is expected to be considered by the Assembly Higher Education Committee on July 7. Urge your representative in the Assembly to **oppose** AB 656.

**Staff Contact: Kyla Christoffersen**

# Bill Hampers Employment Decisions



As *Alert* went to press, a California Chamber of Commerce-opposed “job killer” bill that unduly restricts the ability of businesses and non-profit organizations to base employment decisions on the evaluation of all legally available information, including consumer credit reports, was scheduled to be considered by a Senate policy committee.

**AB 943 (Mendoza; D-Artesia)** prohibits employers from using consumer credit reports for employment purposes unless the information is “substantially job-related,” which is defined narrowly, and unless the position being sought is managerial, with a city or county, with law enforcement, or required by law to request a report.

## Employment Report

It is important to note the distinction between a consumer credit report used to evaluate creditworthiness for the purpose of granting credit and the employment report provided to an employer for employment purposes. The employment report does not include credit scores or account numbers.

The credit reports provided to employers include valuable information to help in evaluating candidates for employment. The employment report may be used to evaluate an applicant’s personal responsibility and organizational skills by his/her ability to pay bills on time. Customers trust a business or

non-profit organization that they deal with to reasonably use legally available information to identify potential risks for fraud or identity theft.

For example, customers of a cable TV company trust that the individual entering their home to install the cable is trustworthy and the company they are doing business with has exercised due diligence to research the employee’s background so the company is as confident as it can be in trusting the employee in the customer’s home.

In fact, in a constrained manner, the bill as amended recognizes that counties, cities and law enforcement agencies should have access to consumer credit reports for employment purposes.

## Applicant Rights

The California Civil Code and the federal Fair Credit Reporting Act (FCRA) provide Californians with extensive rights regarding the use of consumer credit reports. At any time, any person may request a copy of the credit report and dispute any information that they believe is incorrect.

In the employment context, the law recognizes the use of credit reports as legitimate and extends rights to protect those consumers as well. Before obtaining a credit report, the prospective employer must disclose in writing that a credit report may be obtained for employment purposes and obtain from the applicant the written authorization to order the credit report. Furthermore, in California, the employer also must offer the applicant a copy of the credit report free of charge.

Knowing full well that his/her credit information will be evaluated as it relates

to employment, an applicant may wish to provide an explanation of any potentially adverse credit information to the employer or to the consumer reporting agency. According to the FCRA, consumers at any time are allowed to include in their report up to a 100-word explanation of their credit situation.

## Confidential Information

Since credit scores are not used for employment screening, and the employer is not evaluating creditworthiness to grant credit, a thin credit file would not generally disadvantage a job applicant. An employer is fully aware of a recent graduate and the relationship to student loans. Well-qualified applicants are a premium; savvy employers are not likely to reject a candidate due to credit history that has no bearing on the job.

However, adverse credit situations that go unexplained could raise a red flag about the applicant’s suitability for some job responsibilities that involve access to employer or client assets or confidential information.

Supporters of the measure have also asserted that when an employer obtains a credit report, it raises the risk of identity theft for the applicant. The employer has already obtained sensitive personal information from the applicant as part of the application process. Expanding the file on the applicant should provide no more risk of the information falling into the wrong hands.

The responsible employer secures the files of all applicants and personnel as required by law so that no unauthorized access can occur.

**Staff Contact: Marti Fisher**

They won’t know unless you tell them. Write your legislator.

[calchambervotes.com](http://calchambervotes.com)



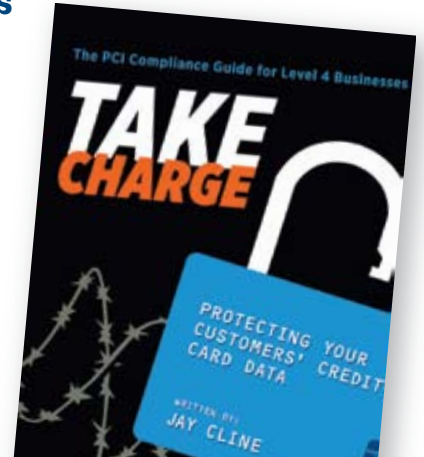
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