

ALERT

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Unjust Litigation Bill Defeated in Assembly

Bill to Require Prescription for Common Cold Medicine Fails to Pass



OPPOSE

Committee on January 10.

AB 1207 (Furutani; D-South Los Angeles County) would have increased litigation exposure for property owners, developers, contractors, architects, engineers and other service providers by removing the statute of limitations for civil claims stemming from property damage caused by exposure to a pollutant or hazardous substance.

A California Chamber of Commerce-**opposed** bill that would have increased unjust litigation failed to pass the Assembly Judiciary

Statute of Limitations

The statute of limitations defines the period of time by which a potential plaintiff must file a claim after incurring harm. After the “statute has run,” or the time period has passed, no lawsuit may be brought. The statute of limitations provides certainty and notice to both plaintiffs and defendants about their obligations, duties and remedies under the law.

The Code of Civil Procedure sets a variety of time limits depending on the allegation. The code section this bill sought to amend sets an outside limit on property defect claims that are less easily discovered in order to provide certainty and encourage construction in the state.

See Unjust: Page 6



OPPOSE

Health Committee on January 11.

SB 315 (Wright; D-Inglewood) was **opposed** by the California Chamber of Commerce and other groups, who pointed out that it not only would create inconvenience for consumers, but also increase the cost of health care for Californians.

The products that are the subject of this bill are commonly used to treat sinus congestion and manage cold symptoms.

Legislation requiring individuals to get a prescription for pseudoephedrine (PSE) products that now are sold over-the-counter, failed to pass the Senate

Finance Director Explains Governor’s Budget



Finance Director Ana Matosantos explains the Governor’s proposal to balance the budget and reduce the structural deficit at the CalChamber Luncheon Forum on January 12. See story on Page 5.

Video Highlights Objections

The day of the Senate committee hearing, the CalChamber released a CalChamber News segment highlighting problems with SB 315.

In the piece, consumers complain that, if enacted, the requirements in this bill would be a major inconvenience and are ridiculous. The pharmacist discusses the fact that it could result in higher costs and reduced access.

CalChamber Policy Advocate Marti Fisher points out that the bill is likely to require more out-of-pocket expense for consumers.

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Labor Law Corner

Managing Vacation Use Key to Reducing Liability at Termination



Dale Louton
HR Adviser

We have several employees who have accumulated excessive vacation days over the past few years and this has created a huge potential liability for this firm. I know California Labor Code Section 227.3 requires all unused vacation be paid out at termination. What can be done to avoid cashing out unused vacation on termination?

The Labor Code does require unused vacation to be cashed out. You cannot avoid this, but managing your vacation program for all employees is the key to reducing liability at termination.

The beginning of a new year is an excellent time to start managing your vacation program. You as the employer have the right to determine when employees take vacation time off.

There are some exceptions when it comes to mandated leave programs, but almost always vacations can be scheduled at management's discretion. Starting now can help prevent large payouts at termination.

One way to bring down vacation balances is to send notice to all employees asking for their preferred dates for vacation time off. For example, you could ask employees to state their first and second choices for vacation.

In case of conflict, seniority or some other non-discriminatory factor could be used to resolve this issue. Also, be sure to add that company needs will be

considered when approving vacation.

Management also can simply assign vacation dates to both exempt and nonexempt employees. Exempt employees can be required only to take vacations in full week increments.

The State Labor Commissioner takes the position that exempt employees should be given at least 90 days notice of mandatory vacation. Although it is not clear what action might be taken by the Labor Commissioner if 90 days notice is not given, you should comply.

There may be situations, however, where due to business conditions, 90 days notice is not realistic. When faced with this problem, you should contact your own labor and employment attorney.

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.

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CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

Business Resources

Refocusing the Lens on Human Rights.
UL Responsible Sourcing. February 9,
Los Angeles. (310) 215-0554.

Farm-to-Table Tour in California.
Culinary One Investments Group.
February 12-18. (916) 799-8345.

REACH Workshop. Tetra Tech. March 27,
Los Angeles. (734) 213-5057.

International Trade

World Ag Expo. California State
Trade and Export Promotion
(STEP). February 14-16, Tulare.
(209) 384-5892.

Visit California Outlook Forum. Tourism
Board of California. February 21-23,
Sacramento. (916) 319-5422.

CeBIT. California STEP. March 6-10,
Hannover, Germany.

International Environment Expo.
California STEP. March 7-9,
Shanghai, China. (310) 973-3161.
COSMOPROF Worldwide. California
STEP. March 9-12, Bologna, Italy.

(562) 938-5018.
GLOBE. GLOBE. March 14-16,
Vancouver, Canada. (800) 274-6097.
WorldBEX. California STEP and
Northern California Regional Center
for International Trade Development.
March 14-18, Manila, Philippines and
Singapore. (916) 563-3222.
China Trade Mission and Import Expo.
California Asian Pacific Chamber
See: CalChamber-Sponsored: Page 4

CalChamber Calendar

Public Affairs Council Retreat:
February 2-3, Santa Monica
*Taking Your Chamber's PAC to the Next
Level:* March 16, Sacramento

Next Alert:
January 27



New Wage/Employment Notice Available

The California Chamber of Commerce has made available a new notice to help businesses comply with a law that took effect January 1 requiring employers to provide nonexempt employees with specific wage information at the time of hire.

AB 469, the Wage Theft Protection Act of 2011, amends the Labor Code to add Section 2810.5, which requires employers to provide a written notice to nonexempt employees at the time of hire. This law also increases penalties for wage violations.

Specified Information

The new notice contains specified information, including:

- Rates of pay, including overtime rates and basis on which wages are calculated.
- The designated regular pay day.
- Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.
- The name of the employer, including any “doing business as” names used.
- The physical address of the employer’s main office or principal place of business and, if different, a mailing address.

- The employer’s phone number.
- The name, address and phone number of the employer’s workers’ compensation carrier.
- Other information the Labor Commissioner deems material and necessary.

The Labor Commissioner prepared the form for use. The new notice is also available for download from *HRCalifornia*. A Spanish version is also available. The new form contains all required information.

Employers are required to provide the notice at the time of hire in the language the employer normally uses to communicate employment-related information.

The notice contains an acknowledgment of receipt for the employee to sign. According to the Labor Commissioner, the notice can be given electronically, but the employer must maintain a system where the worker can acknowledge the receipt of the notice and print out a copy of the notice.

The Labor Commissioner also has created a set of guidelines and FAQs, available at www.dir.ca.gov/dlse/FAQs-NoticeToEmployee.html.

Some Employees Not Covered

Some employees are not covered by the written notice requirement. These employees include:

- Employees exempt from the payment of overtime wages by statute or wage order;
- Employees of the state or any political subdivision;
- Employees covered by a collective bargaining agreement if the agreement expressly provides for the wages, hours of work and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30% more than the state minimum wage.

If, after hire, the employer changes any of the information required on the notice, the employer must provide the nonexempt employees with a new notice within seven days, either in the required form or in a wage statement that complies with California Labor Code Section 226.

Staff Contact: Gail Cecchettini Whaley

NLRA Poster Requirement Delayed Until April 30

The National Labor Relations Board (NLRB) has postponed the effective date of its employee rights notice-posting rule until April 30.

Most private-sector employers must post a new notice issued by the NLRB entitled, “Employee Rights Under the National Labor Relations Act.”

This poster requirement was scheduled to be implemented on January 31, 2012, but on December 23, 2011, the NLRB

delayed implementation in response to a request by a federal court judge hearing a legal challenge to the poster requirement.

The National Association of Manufacturers has challenged the National Labor Relations Act (NLRA) poster requirement on multiple grounds. This is the second time that the NLRB has delayed implementation. Because this issue remains in litigation, there is a chance that this posting deadline will be delayed one more time.

Q & A Sheet

A questions-and-answers sheet about the “Employee Rights under the NLRA” poster requirement is available at calchamber.com/requiredposting.

For more information about purchasing the poster as part of the CalChamber *Required Notices Kit*, visit the CalChamber Store.

Staff Contact: Gail Cecchettini Whaley

Visit www.calchamber.com for products and services to help you do business in California.

CalChamber: Draft ‘Green Chemistry’ Rules Still Unworkable, Counter to Program Intent



The latest informal draft regulations that deal with chemicals in consumer products create an uncertain regulatory environment that makes investing, innovating and doing business in

California substantially riskier.

In comments to the state Department of Toxic Substances Control (DTSC), the California Chamber of Commerce acknowledged some improvements from previous drafts, but reiterated concerns with the broad-reaching impact of these regulations on businesses.

“A fundamental problem with the draft regulations is that DTSC retains so much discretionary power that it virtually eliminates any certainty that a business might have in terms of regulatory treatment,” the CalChamber noted.

‘Chemicals of Concern’

The informal draft for the “Safer Consumer Product Alternatives” regulations was released October 31, 2011.

The regulations call for an immediate list of “Chemicals of Concern,” which the department estimates will include approximately 3,000 chemicals.

The CalChamber pointed out that there is no objective process for prioritizing chemicals to be regulated. The DTSC can decide on a case-by-case basis whether a product exhibiting only trace levels of a chemical of concern still may be subject to regulation.

Moreover, the draft rule requires companies to establish, maintain and fund an end-of-life product stewardship program for a product identified as a hazardous waste in California.

Small Business Impact

Citing the integral role small businesses play in moving the state toward

economic recovery, the CalChamber noted that the department can mitigate the impact of the regulations on smaller operations. Examples include extending timelines or providing flexibility and other accommodations needed for smaller firms to compete with their larger counterparts.

The CalChamber also advised the department to proceed with caution and recognize the value of harmonizing the program with work previously done on chemical use regulation in the European Union and other states and countries.

The CalChamber urged the DTSC to work toward a process that is reasonable, workable and creates certainty for all businesses in the consumer product supply chain without jeopardizing health and environmental quality or creating greater burdens that will further delay the state’s economic recovery.

The DTSC is expected to release an updated draft later next month before issuing the final regulations later this year.

Staff Contact: Brenda M. Coleman

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

- and CalChamber. March 25–April 1, Kunshan, China. (916) 446-7883.
- Sri Lanka Expo 2012. Sri Lanka Consulate. March 28–30, Colombo, Sri Lanka. (213) 387-0214.
- Ag Trade Mission to Asia. California STEP and Fresno Center for International Trade Development. April 21–28, China and South Korea. (559) 324-6401.
- Aquatech India. California STEP and World Trade Center San Diego. April 25–29, Delhi, India. (619) 615-0868.
- Annual Investment Meeting. United Arab Emirates Ministry of Foreign Trade. May 1–3, Dubai, United Arab Emirates. (714) 214-9749.
- International Fair of Technologies Energy 2012. Chilean Ministry of Energy and CORFO. May 9–11, Santiago, Chile. (877) 492-7028.

Labor Law

- HR 101: Intro to HR Administration Seminar. CalChamber. Long Beach; January 18, San Jose; April 11, Sacramento. (800) 331-8877.
- HR 201: California Labor Law Update Seminar. CalChamber. January 20, Emeryville; January 26, Webinar; February 6, On Demand. (800) 331-8877.
- FMLA/CFRA: Beyond the Basics Seminar. CalChamber. January 19, San Jose; January 20, Emeryville. (800) 331-8877.
- Performance Evaluations. Discipline and Termination. CalChamber. April 12, Sacramento. (800) 331-8877.
- Hiring, Onboarding and Recordkeeping 101. CalChamber. April 12, Sacramento. (800) 331-8877.

Slavery Eradication Efforts Must Be Disclosed Now

Starting this year, every retail seller and manufacturer doing business in California with worldwide gross receipts that exceed \$100 million must disclose with a “conspicuous and easily understood link” on its website (with a link on the homepage) its efforts to eradicate slavery and human trafficking from its direct supply chain.

This disclosure requirement is part of the California Transparency in Supply Chains Act, which was enacted in 2010 and went into effect January 1, 2012.

An overview of requirements for the human trafficking/slavery eradication disclosure is available to California Chamber of Commerce members at calchamber.com/humantrafficking.

Governor's Budget Proposal Relies on Voter Approval of November Initiative

Legislative Analyst Says Revenue Estimates 'Bigger Question Mark Than Usual'



Governor Edmund G. Brown Jr. has proposed a \$137.3 billion budget for 2012–13 that aims to close a projected \$9.2 billion General Fund deficit by relying largely on tax increases from

a November ballot initiative.

Legislative Analyst Mac Taylor, in his review of the Governor's budget proposal, credits the plan with continuing the state's efforts to restore budgetary balance.

Taylor's report comments that the revenue estimates are a "bigger question mark than usual" due to uncertainty surrounding the economic recovery, and that his office's estimates of how much the tax increases will bring in are lower than the administration's.

Tax Initiative

The budget includes some targeted tax increases on business, but these are not critical to the Governor's budget-balancing strategy.

The major revenue increase proposals are in the Governor's tax initiative, including for 2011–12 and 2012–13, \$5.8 billion in new income taxes for high-income taxpayers, and \$1.2 billion from a half-cent increase in the state sales-and-use tax.

The only business tax proposal, requiring a two-thirds vote, is the extension of the tax on managed care plans, originally passed several years ago.

Business is not unaffected by the Governor's tax increase proposal, however. Businesses pay one-third of sales taxes, and net business and proprietors' incomes are a significant share of adjusted gross incomes for the personal income tax side.

Targeted Taxes

The Governor includes two additional targeted taxes on business to address other elements of his policy agenda.

The administration has proposed a "surcharge" on employers totaling

more than \$470 million to finance future interest payments for funds borrowed from the federal government to pay California's unemployment insurance benefits and repay the funds borrowed from the employee-financed disability fund. This proposal has not yet been formally released, and probably would require a two-thirds vote of the Legislature to pass.

The administration is also including in the budget up to \$1 billion in revenues from its new, controversial tax on cap-and-trade auction transactions in the Air Resources Board's greenhouse gas reduction program. The revenues would be used to "invest in clean energy, low carbon transportation, natural resources protection, and sustainable infrastructure." Although the administration claims this is a "fee," the intended uses of the proceeds leads many to believe that this levy will be a bona fide tax.

Although the budget is not dependent on targeted tax increases, the Governor maintains his prior positions on a mandatory single sales factor and enterprise zone reform, promising to sponsor legislation to make these changes in order to provide tax benefits to manufacturers and small businesses.

Also worth noting, the baseline revenue forecast is based on higher corporate profits and higher incomes from upper-income taxpayers, who are projected to be receiving higher wages and who may be advancing some of their capital gains incomes due to expiring lower federal income tax rates at the end of 2012.

Cuts/Tax Hikes

The Governor forecasts a \$9.2 billion deficit in June 2013 before his proposed cuts and tax increases. He resolves this deficit and projects a year-end \$1.1 billion reserve by increasing revenues, loans and transfers by \$8.5 billion, cutting non-education programs by \$3.8 billion, and increasing K-14 spending by \$2 billion more than the schools and community colleges would have otherwise received. The K-14 increase is a function of higher General Fund

revenues from the new taxes.

Put another way, the budget proposes \$6 billion in new General Fund spending next year (assuming taxes pass). Of this, \$4 billion is for K-12 education, \$2 billion repays an earlier loan to local government, and about \$900 million is for corrections, offset by reductions in health, welfare and child care.

The Governor said his proposal has reduced the structural budget deficit from \$20 billion to \$5 billion.

If the tax increases do not pass in November, the Governor has proposed a contingency plan to reduce spending by \$5.4 billion beginning in 2013. Major reductions will be to K-14 education (\$4.8 billion), higher education (\$400 million), courts (\$150 million), and various public safety programs, mostly in the Resources Agency (\$28 million).

Government Reorganization

The Governor proposes comprehensive reorganization of the executive branch, including:

- reducing the overall number of agencies and departments;
- further reorganizing economic development programs, in effect reassembling many of the components of the old Trade and Commerce Agency;
- creating a new Business and Consumer Services Agency that includes the various business regulatory agencies from the existing Business, Transportation and Housing Agency and the State and Consumer Services Agency;
- creating a new stand-alone Transportation Agency and including within it the departments of Transportation, Motor Vehicles, High-Speed Rail Authority, the Highway Patrol, the California Transportation Commission and the Board of Pilot Commissioners;
- creating a Department of Revenue that consolidates the tax collection functions of the Franchise Tax Board and Employment Development Department, but not including the Board of Equalization;

See Governor's: Page 6

Trans-Pacific Partnership Trade Agreement: CalChamber Backs Expressions of Interest

The California Chamber of Commerce recently sent a letter to U.S. Trade Representative Ron Kirk supporting participation by Canada, Japan and Mexico in the Trans-Pacific Partnership (TPP) Trade Agreement negotiations. CalChamber is urging businesses to send letters of support of their expression of interest to the trade representative by January 13.

Trans-Pacific Partnership

On November 12, 2011, the Leaders of the nine TPP countries—Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, and the United States—announced the achievement of the broad outlines of an ambitious, 21st-century TPP agreement that will enhance trade and

investment among the TPP partner countries, promote innovation, economic growth and development, and support the creation and retention of jobs. U.S. President Barack Obama, along with the other eight TPP leaders, agreed to seek to finalize an agreement in 2012.

Canada, Mexico and Japan have stated their intent to join the TPP negotiations.

Impact on the California Economy

California is one of the 10 largest economies in the world with a gross state product of approximately \$1.9 trillion. International-related commerce accounts for approximately one-quarter of the state's economy.

The Asia-Pacific region is a key driver of global economic growth, representing nearly 60% of global GDP and roughly

50% of international trade. Since 1990, Asia-Pacific goods trade has increased by 300%, while global investment in the region has increased by more than 400%. U.S. trade with Asian countries totals nearly \$1 trillion annually.

Even though U.S. exports to Asia continue to rise, the United States is gradually losing market share. Asian countries have negotiated more than 160 trade agreements among themselves, while the United States has signed only three (with Korea, Singapore and Australia).

California Benefits

Because of California's location covering the majority of the West Coast, the state has much to gain with the TPP agreement. In 2010, California exported almost \$12 billion to these select countries, roughly 14% of the United States' exports.

The TPP Trade Agreement will bring real benefits for U.S. workers and businesses and help maintain America's leadership position in an increasingly competitive global environment.

For more information, visit the CalChamber international trade page at calchamber.com/international.
Staff Contact: Susanne Stirling

Unjust Litigation Bill Defeated in Assembly

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AB 1207 would have removed this outside limitation and thereby expanded the statute of limitations on personal or real property lawsuits when there was an allegation of exposure to a hazardous material, even if it was in relation to remediation activities. As a result, AB 1207 would have unnecessarily exposed a large number of industries to increased unjustified liability that may even lead to possible bankruptcy.

Existing Law

Federal and state law already provides an extensive and interwoven framework to hold companies responsible and mitigate actions that result in pollution or hazardous waste. Current law allows enforcement actions through both governmental prosecutors and, in some cases, even through private citizen lawsuits.

In addition to the private citizen lawsuits that may be brought under the myriad of federal and state environmental laws, injured plaintiffs may sue under other existing theories, such as negligence, strict liability, nuisance or trespass. Significantly, the statute of limitations does not stop a lawsuit if the

pollution is willful or knowingly caused or if the defendant is found to have had control of the land.

Dangerous/Unnecessary

Injured plaintiffs in California have a wealth of legal options to use to seek redress for property damage. There is no need to further extend the statute of limitations for certain torts. AB 1207 was both dangerous and unnecessary.

At a time when California's economy is struggling to recover and the state needs jobs, such an unjustified increased liability on businesses and governments is ill-advised.

Key Vote

AB 1207 failed to pass Assembly Judiciary on January 10 on a vote of 5-5.

Ayes: Dickinson (D-Sacramento), Feuer (D-Los Angeles), Huffman (D-San Rafael), Monning (D-Carmel), Wieckowski (D-Fremont).

Noes: Atkins (D-South Park/Golden Hill), B. Gaines (R-Roseville), Huber (D-El Dorado Hills), Jones (R-Santee), Wagner (R-Irvine).

Staff Contact: Mira Guertin

Governor's Budget

From Page 5

- eliminating the departments of Mental Health and Alcohol and Drug Programs and folding their functions into the Department of Health Care Services; and
- eliminating the Unemployment Insurance Appeals Board.

Legislative Analyst Review

The Legislative Analyst notes that the state budget already depends on "volatile income tax payments by the state's wealthiest individuals" and that the Governor proposes high-income individuals pay more for the next few years. If the analyst's revenue estimates are closer to target than the administration's, the analyst's review notes, "the Legislature will have to pursue billions of dollars more in budget-balancing solutions."

Court Temporarily Halts Enforcement of Low Carbon Fuel Rules

Last month, a Fresno-based U.S. District Court judge temporarily halted enforcement of California's low carbon fuel standard (LCFS).

The LCFS requires producers, refiners and importers of gasoline and diesel to reduce the carbon-intensity of their fuel by a minimum of 10% over the next decade, as part of California's global warming law, AB 32.

A final decision has not yet been reached in the lawsuit filed by a coalition

that included the Consumer Energy Alliance and the National Petrochemical & Refiners Association. In granting the request for an injunction, however, the judge wrote that the LCFS violates the U.S. Constitution's commerce clause because it discriminates against out-of-state oil and fuel producers.

The coalition applauded the decision, saying the program would raise fuel costs for California consumers.

The ruling does not invalidate the

California Air Resources Board (ARB) program or its reporting requirements. The injunction, however, does remove ARB's ability to punish fuel wholesalers and refiners that sell gasoline or biofuels whose carbon footprint exceeds state guidelines.

Although the ruling temporarily blocks the regulations, the ARB is expected to appeal the decision.

Staff Contact: Brenda Coleman

Bill to Require Prescription for Common Cold Medicine Fails to Pass

From Page 1

"A lot of doctors are reluctant to provide a prescription to a patient without seeing them first," said Fisher. "And there's generally a co-pay associated with going to your doctor, as well as a co-pay for a prescription product."

Comments in the video were similar to the objections raised by opponents of SB 315 at the Senate committee hearing.

While acknowledging that methamphetamine is a real problem in California, the CalChamber believes SB

315 is not the best solution. According to Fisher, a better alternative is an electronic tracking system already in use by 19 other states to monitor sales.

Current law already requires retailers to restrict the quantity sold and to record information about purchasers of PSE in order to prevent illegal diversion to methamphetamine production.

Key Vote

The vote on SB 315 was 2-2:
Ayes: De León (D-Los Angeles),

DeSaulnier (D-Concord).

Noes: Blakeslee (R-San Luis Obispo), Hernandez (D-West Covina).

Absent/abstaining/not voting: Alquist (D-Santa Clara), Anderson (R-El Cajon), Rubio (D-East Bakersfield), Strickland (R-Thousand Oaks), Wolk (D-Davis).

The bill was granted reconsideration.

Staff Contact: Marti Fisher



How do new 2012 employment laws affect you?

This FREE white paper helps you stay in compliance.



CalChamber just published an overview of more than 20 new laws that are now in effect, including:

AB 22	Credit Check	SB 126	Agricultural Labor Relations
SB 299	Pregnancy Disability Leave	AB 335	Workers' Compensation
AB 551	Wage Penalties	SB 459	Willful Misclassification of Independent Contractors
AB 887	Gender Expression		
AB 1236	E-Verify		

TWO EASY WAYS TO GET THE FREE WHITE PAPER

1

Sign in to HRCalifornia and download the new laws PDF.

2

Call (800) 649-4921.



Your 2011 California and federal employment notices poster is out of compliance.

CalChamber's 2012 Required Notices Kit has what you're required to post and distribute. You get a two-poster set with mandatory updates to California and federal employment notices for 2012, including the new 11"x17" NLRA poster that's mandatory for most private-sector employers on 4/30/12.* The kit also contains 20 copies of each of the five pamphlets employees must receive.



Get a certificate for a FREE 1-lb. box of See's Candies® when you order \$199 or more in CalChamber products (after any discount and before shipping and tax) by 1/27/12. Good on new orders only. Use priority code APSA.

*The NLRA posting date may change due to pending litigation. Visit calchamber.com/2012updates for more information.

ORDER online at calchamberstore.com/kit or call (800) 331-8877.

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