Legislature Weighing Strict Product Regulation

With just weeks remaining in the legislative session, twin job killer bills upending how consumer products are packaged and sold in California are being discussed by lawmakers and stakeholder groups, including the California Chamber of Commerce.

The bills, both opposed by CalChamber, are SB 54 (Allen; D-Santa Monica) and AB 1080 (Gonzalez; D-San Diego).

SB 54 and AB 1080 substantially increase the cost to manufacture and ship consumer products sold in California by providing the California Department of Resources Recycling and Recovery (CalRecycle) with broad authority to develop and impose costly and unrealistic new mandates on manufacturers of all single-use packaging and certain single-use plastic consumer products under an unrealistic compliance time frame that fails to address California’s lack of recycling and composting infrastructure.

The CalChamber and coalition of industry groups opposing the bills continue to urge legislators to delay moving the legislation this year to allow continued work on the unresolved fiscal and policy issues in this complex area.

The bills attempt to solve a global pollution problem that is decades in the making.

Broad Power for CalRecycle

The bills grant CalRecycle with substantial authority to:

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alert

Cal/OSHA Considers Making Wildfire Smoke Rule More Stringent

An emergency regulation requiring employers to protect workers from potential harm due to wildfire smoke may give way to a more stringent rule.

The emergency regulation adopted by the California Division of Occupational Safety and Health (Cal/OSHA) Standards Board last month and taking effect on July 29 requires California employers to take steps to protect workers from potential harm due to exposure from wildfire smoke.

Some of the steps required in the emergency rule (which kicks in when air quality erodes to specified levels) include relocating workers to other sites or providing respirators in the most severe circumstances.

Last week, the California Chamber of Commerce learned that Cal/OSHA is considering significant changes to the rule that would lower the threshold levels which trigger the need for employer action.

Discussion Draft

A discussion draft circulating from Cal/OSHA this week proposes lowering the Air Quality Index (AQI) threshold from 500 to 300 for mandatory respirators.

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Immigration Raids—What to Do: Page 3
Cal/OSHA Corner
Standards Board Has Multiple Regulatory Changes in Pipeline

As the owner of a small manufacturing business, I would like to know if there are any new regulations being considered by the Occupational Safety and Health Standards Board (OSHSB) that will affect my company.

Since the beginning of 2019, the Occupational Safety and Health Standards Board has presented seven rulemaking packages for public comment. To date only one of the seven has been completed—the emergency rulemaking for Protection from Wildfire Smoke.

Rules Pending

Pending regulations are listed below by the date of the public hearing.

• January 17. Fall Protection in Telecommunications. Section 8615(g) of the Telecommunications Safety Orders was revised as the result of a petition and federal rulemaking. The term “fall restraint system” was substituted for “travel restricting equipment,” an exception relating to inclement weather was deleted, and it is required the “system” meet the applicable requirements of section 1670 of the construction safety orders and 2940.6(c) of the electrical safety orders.

• March 18. Employee Access to Injury and Illness Prevention Program. New Section 3203(a)(8) is the result of a petition. The new section delineates the process by which an employee or his/her authorized representative may obtain a copy of the employer’s injury and illness prevention program, or by agreement, receive an electronic copy.

• April 18. Outdoor Agricultural Operations During Hours of Darkness. Revisions to Sections 3441(g) and 3449 were requested by Cal/OSHA. Section 3441(g) will require onsite trucks and farm equipment to have at least one light on the front and one light on the back of the vehicle. The front light will illuminate at least 50 feet in the line of travel. Section 3449 is a table of illumination levels for specified work tasks at the site.

• April 18. Single-User Toilet Facilities. Revisions to Construction Safety Orders Sections 1504, 1506, 1526, General Industry Safety Orders Sections 3361, 3364, 3437, 3457 and 5192 bring Title 8 into compliance with Health and Safety Code (HSC) Section 118600 concerning single-use toilet facilities. The proposal does so by making allowances for additional gender-neutral means of compliance with pre-existing Title 8 requirements while conforming to the single-user toilet facility of HSC Section 118600.

• May 16. Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment. Electrical Safety Orders Sections 2300, 2305.2 and High Voltage Safety Orders Section 2940.2 and Appendix A to Article 36. The revisions to these sections are technical and editorial, correcting typographical and formatting errors to be consistent with the federal regulations.

• June 20. Operator Qualification for Cranes and Derricks in Construction. Construction Safety Orders Sections 1618.1 and 1618.4 have been revised to ensure that California’s qualifications for operators of cranes and derricks in construction remain at least as effective.
The Workplace

What to Do If Immigration Officials Come Knocking

In this week’s episode of The Workplace, CalChamber President Allan Zaremberg discusses with immigration expert Kevin Johnson, Dean of the UC Davis School of Law, what employers are required to do if Immigration and Customs Enforcement (ICE) officials raid a job site or ask to inspect records.

Under the Obama administration, ICE officials focused primarily on deporting undocumented immigrants who were in jail or prison, and more or less backed off of workplace enforcement. Now under the Trump administration, ICE has shifted more of its focus to the workplace, Johnson says.

Doing business in a state with high numbers of undocumented immigrants, employers in California need to know what to do in case of an ICE raid and how to be prepared.

“Roughly a quarter of [11 million undocumented immigrants nationwide] live in the state of California,” Johnson says. “They are residents of our communities, they attend our churches, they work often in agriculture, the service industries and some in construction. There are some industries that rely pretty heavily on undocumented labor and would have a hard time competing in the global marketplace without that labor.”

Although employers in all industry sectors should know what to do if ICE comes knocking, employers in the agricultural sector in particular, should be prepared. ICE is likely to focus heavily on this industry, Johnson says, due to the high number of workers located in one place, such as dairy farms and agricultural fields.

Johnson recommends employers have a human resources employee who knows how to be in accordance with federal law and can advise the employer on how to ensure compliance.

Workplace Raids—Warrant Required

Employers are required by law to allow ICE to conduct a raid if a court-ordered warrant has been issued.

“If ICE comes and wants to search a workplace, they have to have a warrant that is issued by a court,” Johnson explains. “That is where the rights… begin and end… If they do have a warrant, then they have to be allowed in the parts of the workplace covered by the warrant.”

Without a warrant, there is no requirement for employers to open the workplace to ICE authorities, he emphasizes. If ICE shows up on a worksite on a “tip”—without a warrant—then it’s up to the employer to decide whether to let ICE inspect the premises.

Johnson also recommends that employers carefully read any warrants issued since the warrant will detail what areas of the workplace are required to be open to ICE.

Although ICE cannot search a job site without a warrant, the agency can ask to inspect records, Johnson explains.

Notice of Inspection

ICE may ask employers to inspect, and verify the identity and employment eligibility documents of their employees. ICE may ask for Forms I-9, and other supporting documentation, such as a copy of the payroll, a list of current employees, articles of incorporation, and business licenses.

The Notice of Inspection requires advance notice, and will give employers a short period of time to gather the documents requested. Some people may refer to this practice as “paper raids,” Johnson says.

A notice to inspect employment records requires advance notice, and a physical raid requires a warrant, Johnson stresses.

Sanctuary Cities

Employers should know that even if their business is located in a sanctuary city or jurisdiction, federal laws govern immigration, not state or local authorities. All employers must comply with ICE requirements and warrants.

“In the end, even though the state has declared itself a sanctuary state… the federal immigration authorities are governed by the U.S. Constitution and U.S. immigration laws and the state can’t undermine that or interfere with that in any way,” Johnson tells Zaremberg.

When to Seek Legal Help

For employers struggling with how to prepare for a possible ICE raid, Johnson recommends meeting with a lawyer for assistance.

“If you get a notice from ICE, I would talk to a lawyer and find out the best way to present the material, collect the material and do all you can to comply with the law,” he says.

Reform Not in Near Future

Federal lawmakers are at a stalemate on comprehensive immigration reform, and a workable solution does not seem to be coming soon. The dialog, Zaremberg notes, is often driven by states that do not have a stake in whether a solution is passed.

Johnson agrees: “This state has a large immigrant population, and it’s going to be very much affected by whether there is immigration reform or no immigration reform, whether there are raids or no raids. And our economy, which is quite vibrant, has benefited over time from immigrants and immigrant labor. We as a state really have moved to a better understanding of that economic reality.”

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To listen or subscribe, visit www.calchamber.com/theworkplace.

CalChamber Calendar

Environmental Policy Committee:
September 5, La Jolla

Water Committee:
September 5, La Jolla

Board of Directors:
September 5–6, La Jolla

International Trade Breakfast:
September 6, La Jolla

Public Affairs Conference:
October 15–16, Newport Beach
New Job Board from CalChamber Helps Reduce Recruiting Costs

A new service available from the California Chamber of Commerce helps members save on one of the most expensive steps in the hiring process—the cost of recruiting applicants.

The new HRCalifornia Job Board, presented by CalChamber, allows anyone to view job postings, but only CalChamber preferred or higher level members can post jobs for free.

There is no limit to how many listings members can post or how often they can post job openings.

In 2018, more than 27% of employees left their jobs voluntarily, according to a Work Institute report. If the trend continues, by 2023, the voluntary turnover rate will reach 35%.

A corresponding decline in unemployment has left employers in a fierce competition for workers. Employers typically pay an average of $300 per posting to post a job opening for 30 days.

**Easy to Use**

Qualifying CalChamber members can use the HRCalifornia Job Board to:

- Post job openings;
- Receive posting reports;
- Direct applicants to the member’s website; and
- Receive resumes via email.

More than 140,000 users visit CalChamber websites each month, with nearly 700,000 page views.

To post a job, visit hr california.com and click on the link in the navigation bar.

Legislature Weighing Strict Product Regulation

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- Determine the universe of packaging that will be considered “single-use”;
- Develop regulations requiring that all manufacturers and retailers of single-use packaging source reduce “to the maximum extent feasible”;
- Require that all manufacturers and retailers of single-use packaging be reusable, recyclable or compostable;
- Require that all manufacturers and retailers of the 10 single-use plastic products most littered in California (referred to in the bill as “priority single-use plastic products”) be reusable, recyclable or compostable;
- Require that all manufacturers of single-use plastic packaging, priority single-use plastic products or single-use poly lined paper or paperboard packaging offered for sale or sold in California demonstrate a source reduction, recycling or composting rate of not less than 75% by 2030, through a tiered approach.

The bills impose a fine of up to $50,000/day on manufacturers if recycling rates are not met.

**Other Concerns**

**Duplicates Existing Plastic Packaging Law**

SB 54 and AB 1080 would duplicate and supersed, but not repeal, the Rigid Plastic Packaging Container (RPPC) law currently administered by CalRecycle. Both bills will have an impact on manufacturers and packaging types currently covered under the RPPC program.

Funding compliance and enforcement of both programs does not make for an efficient use of state resources.

**Costs Millions in Fee Increases**

SB 54 and AB 1080 also direct CalRecycle to prepare a scoping plan that will require the department to include detailed information on packaging and products affected; calculate the quantity of packaging and products disposed of, generated, and used in the state; set a baseline amount for the bill’s reduction and recycling requirements and conduct a series of public workshops to solicit stakeholder input. It is unclear how CalRecycle will be able to accomplish this requirement in such a short time frame.

**Huge New Program**

A recent analysis by the California Department of Finance underscores the huge scope of the program SB 54 and AB 1080 seek to create and the potential pressure for fee hikes:

“CalRecycle estimates costs of approximately $6.4 million initially and $6.3 million ongoing from the Integrated Waste Management Account (IWMA) for 46.5 permanent positions. CalRecycle also estimates $16.8 million one-time IWMA costs, over a three-year period, for contracts to develop database systems that track and store product information and recycling rates and $1 million IWMA ongoing for database service and support.

“This bill creates significant cost pressures for CalRecycle to implement this bill’s provisions. The IWMA cannot support the cost pressures created by this bill without a major fee increase or redirection of existing resources from priority programs.”

**Lack of Infrastructure**

Both SB 54 and AB 1080 seek to mandate unprecedented recycling and compostable rates without addressing a critical component for achieving a 75% reduction of single-use packaging or products: the infrastructure needed to collect and process the materials.

For decades, California sent most of its recyclable material to China because that was less expensive than investing in the infrastructure needed to process the materials domestically.

China’s policy restricting foreign imports of recyclable materials has substantially disrupted global markets, including how California manages its waste stream. The collapse of the market and closure of recycling centers across the country means more products and packaging are ending up in landfills due to lack of collection and processing capabilities.

**What’s Next**

SB 54 was placed on the Assembly Appropriations Committee Suspense File on August 21, but still may be considered by August 30. AB 1080 is set for consideration by the Senate Appropriations Committee on August 26. If sent to the committee’s suspense file, it too may be considered by the end of the week.

**Staff Contact:** Adam Regele
Split Roll Property Tax Increases: Several Proposals Pending for 2020

Proponents of an $11 billion split roll property tax increase refiled their ballot initiative last week, claiming “notable improvements to implementation dates, expansive new small business tax relief, clarified education financing and stronger zoning language to ensure large corporations cannot avoid reassessment.”

Breaking down the changes, one can’t help but conclude that proponents would not have thrown away $3.5 million in donors’ money spent to qualify the original measure to add a very minor change in the definition of business property or—even more laughably—to give a handful of property owners a pass on the tax increase.

Sloppy Drafting

The most likely reason for this expensive do-over is sloppy drafting of the original measure. Some school districts that rely primarily on local property taxes would have been left out of the money under the original measure’s tax distribution formula. That was a nonstarter for the education backers.

Also, the original measure may have required the tax increase to take effect before the vote on the initiative. This slapdash drafting threatened to undermine support and place the measure in legal peril.

While fixing those potentially fatal flaws, proponents carved out a relative handful of small property owners from the effect of the tax increase. Since most small businesses lease their space from commercial landlords and would pay the full cost of a split roll property tax increase, the measure’s proponents should not expect thank you notes from small business.

Costly Signature Drive

Split roll proponents raised and spent millions on their “oops” initiative, including $1.5 million from government unions and millions from foundations and social justice organizations, not to mention contributions from dozens of small donors. Now it’s back to square one to gather the even higher number of signatures to re-qualify the measure.

The government unions have deep pockets, so if they have the will, there is a way to collect the signatures. But it is also fair to ask if the proponents will actually drop the original, discredited—but qualified—measure in case they fail in round two. Is a lousy but lucrative measure better than none at all?

Rival Proposal

Another complication is a rival tax measure also angling for the 2020 ballot. An erstwhile ally, the California School Boards Association, is marketing a similarly massive tax increase for voter consideration in 2020, an $11 billion hike in personal and corporate income taxes.

Can voters’ appetite for tax increases be that voracious, or will tax proponents gather in a smoke-free room to hammer out a compromise?

New Taxes Needed?

For voters, the question is whether massive new taxes are called for in the first place.

Governor Gavin Newsom just signed a state budget with a surplus north of $20 billion. And it’s still growing!

School funding per pupil has increased 70% since the depths of the recession. Governor Newsom has even thrown in extra funds this year to staunch the vexatious cost of pensions.

With money raining down on government treasuries, can voters be convinced to tax themselves even more?

Voter Resistance

Early indications are problematic for split roll proponents.

Some polls show a bare majority of Californians supportive; others reveal the measure unable to reach majority support. This is hardly encouraging with the prospect of a well-funded opposition campaign in the wings.

More daunting is the dry run in Los Angeles last June. A mini-split roll property tax proposal by the Los Angeles Unified School District could not even muster a simple majority support from a famously liberal electorate. The omens are not propitious!

This article first appeared as a Capitol Insider blog post.

Contact: Loren Kaye

Standards Board Has Multiple Regulatory Changes in Pipeline

From Page 1 as the counterpart federal regulations. Under the Horcher process, the revisions will go into effect the same day they are submitted to the Secretary of State.

Wildfire Smoke

July 18. New Section 5141.1. Emergency adoption to address protection from wildfire smoke. See the June 7 Cal/OSHA Corner in Alert and July 31 CalChamber podcast for more information and background. More work is to be done to fine tune the requirements on August 27 at a division advisory committee meeting.

Information about the advisory committee meeting is available in the OSHB section of the Department of Industrial Relations website at dir.ca.gov.

Column based on questions asked by callers on the Labor Law Helpline, 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.
Cal/OSHA Considers Making Wildfire Smoke Rule More Stringent

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tor use and 150 to 100 AQI for voluntary respirator use.

In addition, there is a new consideration in the discussion draft that proposes requiring all structures and vehicles to contain minimum MERV (Minimum Efficiency Reporting Value) filter levels in buildings and structures in order to be exempt from the regulation—which would greatly broaden the application of the regulation.

The CalChamber and a coalition of employer groups have been closely following developments on this rule at every stage of the process. The CalChamber is continuing to evaluate this new discussion text and will provide formal comments as part of the regulatory process, but, at this point, it is clear the coalition will be communicating its concerns regarding the drastic lowering of all trigger thresholds from the levels approved by the Standards Board just last month.

Threshold Change

The CalChamber is concerned that lowering the mandatory respirator use threshold to 300 could effectively shut down urban areas in the event of a wildfire.

For example, during the 2018 wildfires, Sacramento’s downtown center occasionally exceeded an AQI for airborne particulate matter (PM) 2.5 of 300—meaning that if the draft regulation had been in effect, it would have forced businesses to either fit test and medically evaluate all employees who might be outside for more than an hour, or to shut down.

Given the cost and burden of ongoing fit testing and medical evaluation for all employees, and the rarity of such AQI levels, most businesses will simply shut down at the proposed 300 AQI standard. This won’t help either employees or businesses as employees will be sent home, where they may have no access to respiratory protection.

In contrast, the 500 AQI standard in effect under the emergency regulation provides mandatory protection for those truly extreme circumstances, when the AQI exceeds 500, but also allows businesses to continue functioning (and providing respiratory protection) in the event of a wildfire.

MERV Filtration

Regarding MERV filtration, the CalChamber is concerned that setting this standard transforms the regulation from focusing on outdoor workers to an all-encompassing regulation on air quality. This regulation began based on a petition for a standard to protect outdoor occupations such as agriculture—and the Standards Board’s adopted decision echoed that goal.

The CalChamber believes that if Cal/OSHA intends to expand this regulation into regulating the air filtration of every business and vehicle in California, there will be potentially massive costs that must be shouldered by California’s business community.

More Information

For more information about the emergency rule and resources for compliance, see the August 2 Alert story.

A compliance “to do” list was outlined in Episode 22 of The Workplace podcast, “What Employers Need to Know: Emergency Wildfire Smoke Regulation.”

Staff Contact: Robert Moutrie

CalChamber-Sponsored Seminars/Trade Shows

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(202) 466-0222.

Think Asia, Think Hong Kong. Hong Kong Trade Development Council. September 20, Los Angeles. (213) 622-3194.


Hong Kong International Wine and Spirits Fair 2019. Hong Kong Trade Development Council. November 7–9, Hong Kong.


Exporting Mechanics Webinar Series II: ECCN Classification Numbers.


Effort to Make Property Tax Increases Easier to Pass Falls Short in Assembly

A proposed constitutional amendment to make it easier for local governments to increase property taxes failed to secure enough votes to pass the Assembly this week.

The California Chamber of Commerce opposed ACA 1 (Aguiar-Curry; D-Winters), which would have asked voters to decide whether property tax increases for affordable housing and infrastructure could be approved by just a 55% vote instead of two-thirds.

In opposing ACA 1, the CalChamber pointed out that the proposal is overbroad because it provides the increased tax authority for every government agency in California, not just cities and counties.

If ACA 1 were approved, potentially thousands of overlapping special districts would gain the ability to increase property taxes.

Moreover, ACA 1 undermines the protections of Proposition 13 and permits discrimination against certain classes of taxpayers.

Two-Thirds Vote Appropriate

For more than a century, two-thirds voter approval has been required for general obligation bonds. The debt obligations backed by the increased property tax ACA 1 seeks to allow often would be in place for as long as 30 years.

The stronger consensus among voters implicit in a two-thirds vote margin is appropriate given that taxpayers would be obligated to an increased tax rate for such a long period.

Increased Housing Costs

Although supporters of ACA 1 argued the measure is needed to support affordable housing in California, it actually will increase housing costs for millions of people.

The result of the increased tax authority for numerous special districts could be a single taxpayer being burdened with uncoordinated and ill-advised layering of new taxes from multiple special districts.

Thus ACA 1 could reduce even further the percentage of California households that can afford to buy an existing, median-priced home. A recent report from the California Association of Realtors puts that figure at 30%.

Key Vote

ACA 1 failed to pass on a vote of 44-20 on August 19. As a proposed constitutional amendment, ACA 1 needed approval by two-thirds of the Assembly.

Ayes: Aguiar-Curry (D-Winters), Berman (D-Palo Alto), Bloom (D-Santa Monica), Bonta (D-Oakland), Burke (D-Ingleswood), Calderon (D-Whittier), Carrillo (D-Los Angeles), Chau (D-Monterey Park), Chiu (D-San Francisco), Cooper (D-Elk Grove), Eggman (D-Stockton), Frazier (D-Discovery Bay), Friedman (D-Glendale), Garcia (D-Coachella), Gipson (D-Carson), Gloria (D-San Diego), Gloria (D-San Diego), Gray (D-Merced), Grayson (D-Concord), Holden (D-Pasadena), Jones-Sawyer (D-South Los Angeles), Kalra (D-San Jose), Levine (D-San Rafael), Limon (D-Santa Barbara), Low (D-Campbell), McCarty (D-Sacramento), Medina (D-Riverside), Mullin (D-South San Francisco), Nazarian (D-Van Nuys), Quirk (D-Hayward), Rendon (D-Lakewood), Reyes (D-San Bernardino), Luz Rivas (D-Arleta), Robert Rivas (D-Hollister), Rodriguez (D-Pomona), Blanca Rubio (D-Baldwin Park), Santiago (D-Los Angeles), Mark Stone (D-Scotts Valley), Ting (D-San Francisco), Weber (D-San Diego), Wicks (D-Oakland), Wood (D-Santa Rosa).

Noes: Bigelow (R-O’Neals), Boerner Horvath (D-Encinitas), Brough (R-Dana Point), Cervantes (D-Corona), Chen (R-Yorba Linda), Choi (R-Irvine), Cooley (D-Rancho Cordova), Cunningham (R-San Luis Obispo), Diep (R-Westminster), Fong (R-Bakersfield), Gallagher (R-Nicolaus), Kiley (R-Roseville), Lackey (R-Palmdale), Mathis (R-Visalia), Melendez (R-Lake Elsinore), Obernolte (R-Big Bear Lake), Patterson (R-Fresno), Petrie-Norris (D-Laguna Beach), Quirk-Silva (D-Fullerton), Voepel (R-Santee).

No vote recorded: Arambula (D-Fresno), Bauer-Kahan (D-Orinda), Daly (D-Anaheim), Flora (R-Ripon), Cristina Garcia (D-Bell Gardens), Irwin (D-Thousand Oaks), Kamlager-Dove (D-Los Angeles), Maienschein (D-San Diego), Mayes (R-Yuca Valley), Muratsuchi (D-Torrance), O’Donnell (D-Long Beach), Ramos (D-Highland), Salas (D-Bakersfield), Smith (D-Santa Clarita), Waldron (R-Escondido).

Staff Contact: Sarah Boot
California-Specific Compliance Expertise Is Within Reach in Huntington Beach

Join top experts as they hone in on relevant workplace challenges for California employers, including hiring in a competitive market and emerging issues/investigations related to the #MeToo movement—plus keynote Julie A. Su, Secretary of the California Labor and Workforce Development Agency.

2019 CalChamber HR Symposium
Hyatt Regency Huntington Beach
Friday, November 8, 2019, 7:30 a.m. – 5:00 p.m.

The cost of admission is $499 ($399.20 for Preferred/Executive members), and the event is approved for HRCI California recertification credits, SHRM PDCs, and MCLE credits.

PURCHASE online at calchamber.com/hrsym2019 or call (800) 331-8877.