

# ALERT

VOLUME 34, NUMBER 2 • JANUARY 18, 2008



## Business Groups Cite Issues in Health Care Tax Proposal

*Huge Risk for All; No Evidence Plan Will Deliver More Access*

California Assembly Speaker Fabian Núñez's health care bill, ABX1 1, will be considered January 23 by the Senate Health Committee.

California Chamber of Commerce-**opposed ABX1 1** creates a new expensive entitlement program and expanded Medi-Cal program by imposing a tax on employers and also depends on a declining revenue stream of increased tobacco taxes.

### Groups Opposing

The CalChamber has joined in opposition with the California Taxpayers' As-

sociation, California Business Properties Association, California Business Roundtable, California Hotel and Lodging Association, California Retailers Association, California Restaurant Association, California Manufacturing and Technology Association, Consulting Engineers and Land Surveyors of California, IBA West and the National Federation of Independent Business.

### Risks/Funding Issues

The CalChamber believes that the bill  
*See Senate: Page 4*

## CalChamber Legal Reform Bill Rejected



Asking the Senate Judiciary Committee to approve CalChamber-sponsored legislation to improve California's punitive damages law are (from left) the bill's author, Senator Tom Harman (R-Huntington Beach); Jason Weintraub, vice president and general counsel for DRI Companies, Irvine; and Kyla Christoffersen, CalChamber policy advocate. See story on Page 5.

## Assembly Committee OKs Stronger Law to Fight Counterfeiting



Assemblyman  
Paul Krekorian

A California Chamber of Commerce-**sponsored** bill to strengthen California's anti-counterfeiting laws passed the Assembly Public Safety Committee on January 15.

CalChamber-**sponsored AB 1394 (Krekorian;**

**D-Burbank)** improves protections of trademark owner rights and consumer health and safety by strengthening California laws against trafficking of fake products such as auto parts, prescription drugs and children's toys.

AB 1394 closes loopholes that undermine enforcement efforts and brings California law into greater conformity with federal law.

"Counterfeiting has far-reaching negative consequences, including taking from workers much-needed jobs in numerous California industries," said Kyla Christoffersen, CalChamber policy advocate. "Fake products also pose serious health or safety risks to consumers."

### Economic Costs

Counterfeiting and piracy drains the  
*See Assembly: Page 6*

### Inside

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## Labor Law Corner

# Earned Income Tax Credit Notice Must Be in Writing; Poster Not Enough



**Michelle Galbraith**  
Helpline Consultant

The new year has brought many new employment laws to California, along with many savvy marketing companies attempting to capitalize on those laws. In recent weeks, several California Chamber of Commerce members have received phone calls from HR poster companies

warning them that they risk penalties if they do not purchase and post notices pertaining to the federal Earned Income Tax Credit (EITC).

Employers are of course free to purchase these posters, but they will *not* satisfy the new notification requirements.

### Notification Requirement

Effective January 1, 2008, California employers who are required to provide unemployment insurance must notify all employees that they may be eligible for the EITC.

The EITC is a tax credit available to workers who do not exceed specific salary and investment income thresholds, who have valid Social Security numbers, and who meet certain other requirements. Employees may be eligible for the credit even if they do not have any income tax withheld from their salaries, or if they owe no tax for the year.

Naturally, not all employees will be eligible for the EITC, but California's new law requires that employers provide notice of possible EITC eligibility to every employee. The notification must be made in writing, either in person or via first class mail, within a week before or after the employer provides an annual wage summary (such as a Form W-2 or Form 1099).

Simply posting the notice in the company's offices or sending it through office mail or e-mail will not suffice.

### Content Options

As for the substance of the notification, employers have several choices.

- Employers may satisfy the EITC notice requirements by giving employees copies of IRS Notice 797, available for

download from the IRS website at [www.irs.gov](http://www.irs.gov).

- Employers also may download a notice form from the CalChamber's website at [www.hrcalifornia.com](http://www.hrcalifornia.com) (search for "EITC").

- Finally, employers may create their own notification form, using sample language found in Section 19854 of the California Revenue and Taxation Code.

After downloading or creating the EITC notice and mailing or giving it to their employees, employers should maintain records showing that they have complied with the notice requirements of this new law. It is not necessary to post any further information pertaining to the EITC; employers can politely decline when poster companies call to market this particular offering.

For further information on the latest poster requirements, including a list of posters and notices unique to specific California businesses, consult the "Business Resources" subtopic on [www.hrcalifornia.com](http://www.hrcalifornia.com).

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*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).*

## Seminars/Trade Shows

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

### International Trade

Annual Meeting/Gala Dinner. Russian Federation Chamber of Commerce and Industry. January 29, San Francisco. (415) 278-0977.

### Labor Law

HR 101: Intro to HR Admin.

CalChamber. January 23 – Sacramento; January 30 – San Jose; February 12 – Sacramento. (800) 331-8877.

HR 201: Labor Law Update.

CalChamber. January 24 – Sacramento (sold out); January 29 – Emeryville; January 31 – San Jose; February 13 – Sacramento; February 26 – Online (2 hours). (800) 331-8877.

## CalChamber Calendar

*CalChamber Fundraising Committee:*

March 13, La Jolla

*Water Committee:*

March 13, La Jolla

*Board of Directors:*

March 13-14, La Jolla

*Climate Change Committee:*

March 14, La Jolla

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# Finance Director Details Governor's Plan to Control \$14 Billion State Deficit

Governor Arnold Schwarzenegger's 2008-09 budget plan calls for difficult but necessary steps to bring the state's chronic structural deficit under control, not only for this fiscal year but permanently, Director of Finance Michael Genest said at the California Chamber of Commerce Luncheon Forum.

Genest emphasized to the more than 110 persons attending the January 11 luncheon that the Governor's budget takes a two-step approach to controlling the deficit:

- Step one involves imposing strict spending restraints in the current budget year while protecting and preserving essential state services.

- The second step is proposing a constitutional amendment to reform the budget process so that state government has the tools needed to avoid spending more money than it has in the future.

## How Deficit Grew

The Budget Act of 2007 projected a reserve of \$4.1 billion, the largest planned reserve in the state's history, according to the introduction to the Governor's budget proposal. The 2007 act also showed that the deficit would re-emerge in the next fiscal year with spending exceeding revenues by \$6.1 billion. Since those projections were made, the budget situation has deteriorated.

"The biggest component of our proposal are across-the-board cuts and I realize that a lot of people are really upset that certain programs that they like are going to see cuts, but no one can say that they were singled out, because pretty much every program in state government we are proposing to cut by 10 percent because we don't see any other way out of this mess," said Genest.

To close the \$14.5 billion budget deficit, the Governor's proposed budget includes 10 percent across-the-board reductions to all General Fund departments, programs, boards, commissions and elected offices — including the legislative and judicial branches — except where such a reduction is in conflict with the state Constitution or impractical, Genest explained.



California Finance Director Michael Genest details the Governor's plan to control California's deficit during the January 11 CalChamber Luncheon Forum.

Commenting on the administration's approach to previous budgets, Genest said, "We have not made the mistake of adding to the size of government and think that we had lots of money to do that with. If we made a mistake, we didn't slow down the growth of government. All of those spending formulas, as the Governor likes to call them, all the entitlements were there and were placed there for the most part in the early part of the century and they really came home to roost during our administration."

## Size of Actual Cutback

In response to a question, Genest acknowledged that the actual amount of the proposed spending cuts is less than 10 percent. Comparing the spending levels in the last budget year with that proposed for the upcoming one, the total is several percent less, year over year, Genest said.

The 10 percent cutback figure arises from the state's practice of using as a base the projected amount to which programs are projected for the coming year, he explained.

He emphasized, however, the need for lawmakers to decide on a course of action more quickly than in a typical budget year because of the rate at which spending is exceeding revenue coming into state coffers.

## Reforming Budget Process

Genest said that California cannot tax

itself out of this problem and that what is really driving this budget are the fundamental cuts and reforming the budget process.

Speaking about the Governor's budget reform proposal, Genest said, "If we get this done — on paper — what needs to be done, including the Governor's budget reform, we will be OK. We won't have a cash crisis in March, or a cash crisis in July or August and there won't be a threat to our solvency in July and August. We will have a balanced budget, and with the Governor's budget reform, it will stay balanced out into the future."

To prevent the state from relying on unsustainably high revenue gains, the constitutional amendment proposed by the Governor, the Budget Stabilization Act, will require that excess revenues — revenues above a reasonable, long-term average rate of growth — be deposited in the Revenue Stabilization Fund.

In years when revenue grows at a rate below average, monies will be transferred from the Revenue Stabilization Fund back into the General Fund in an amount not to exceed the shortfall. To ensure that the state quickly reduces spending to sustainable levels, the Budget Stabilization Act will provide for automatic reductions. These reductions will be triggered whenever the Governor projects that the state will be in a deficit.

## Senate Committee to Consider Health Care Bill Taxing Employers

*From Page 1*

poses considerable risks to consumers, workers, employers and taxpayers, without any demonstrable evidence that its promise of increased health care access can be delivered over the long term.

In a letter to the author, the CalChamber and business groups point out that the primary funding sources of the bill, which are used to leverage other matching federal and private individual revenues, include a tobacco tax, a hospital revenue tax and an employer tax.

- The tobacco tax will begin an immediate declining revenue trajectory the very year it is imposed.

- The hospital revenue tax is directed primarily to support increased Medi-Cal hospital rates, not improved access for the uninsured.

- The employer payroll tax will settle disproportionately on small and low-wage businesses.

The bill's provisions anticipate revenue that will likely be inadequate for the programs proposed.

If the California Director of Finance determines revenues are inadequate, some of the programs, most notably the subsidized pool coverage for low-wage

workers (though not the tax increases or many of the regulatory mandates), would be suspended.

This could result in an untenable situation where coverage would be terminated in the middle of an individual's medical treatment.

### Unpleasant Alternatives

The only conceivable alternatives to terminating treatment would be for the government to reduce reimbursement rates to program providers or arbitrarily reduce premiums.

Both scenarios would shift costs to employers and employees in the private and public sectors, union and non-union alike. Beyond these choices, the only other solution would be additional tax increases.

In addition, many Californians, including the self-employed, rely on affordable individual policies for their health care coverage. ABX1 1 would impose substantial premium increases on these individuals by inappropriately providing for guaranteed issue and community rating, while avoiding enforcement of the individual mandate.

New York and New Jersey have similar individual market provisions, and suffer the highest individual health insurance premiums in the country.

Moreover, the health care package undermines the intent and spirit of the federal Employee Retirement Income Security Act (ERISA), which is to allow multi-state employers to provide and administer uniform health care benefits to their employees.

Recent federal court rulings in Maryland and New York have emphatically held that state employer mandates violate ERISA.

### Action Needed

The CalChamber is encouraging businesses to contact their senators and members of Senate Health to urge them to **oppose ABX1 1**.

For a sample letter, visit [www.calchambervotes.com](http://www.calchambervotes.com).

**Staff Contact: Marti Fisher**

## Finance Director Details Governor's Budget Plan

*From Page 3*

"This may all seem like déjà vu, didn't we just deal with the deficit last year," quipped Genest. "We have a proposal to fix all that and I think the proposal will work if we can get it enacted."

### Legislative Analyst's Review

In an analysis of the Governor's budget proposal released on January 14, state Legislative Analyst Elizabeth Hill said the Legislature should "focus first on those areas where time is of the essence — where early decisions will allow state programs to achieve desired savings in the current year."

She also advised that the special session be used to lay the groundwork for achieving savings in this budget year, for example by developing program restructuring and taking any needed action on

the minimum guaranteed funding for schools as required by Proposition 98. The legislative analyst said she had identified a way to reduce education spending to the minimum guarantee "without affecting current school operations."

Instead of making across-the-board reductions as called for by the Governor, the legislative analyst said, the Legislature should eliminate or further reduce low-priority programs and look at additional revenue options.

"Making tough choices now will allow the state to move closer to bringing its long-term spending and revenues into alignment," the legislative analyst said.

The Governor's budget proposal, summaries and charts are available on the Department of Finance website at [www.ebudget.ca.gov](http://www.ebudget.ca.gov). The legislative analyst's review is at [www.lao.ca.gov](http://www.lao.ca.gov).

## Higher Minimum Wage in 2008

California's minimum wage increased to \$8 per hour starting January 1.

This change requires employers to increase exempt employees' minimum salary and modify compensation and benefits budgets.

If January 1 fell in the middle of a pay period, it may have resulted in two pay rates for employees affected by the new minimum wage.

The law requires employers to pay the increase only for time worked beginning on January 1, 2008. Any time worked before that can be paid at the 2007 rate.

Employers should make sure they have on display the MW-2007 California State Minimum Wage poster reflecting the minimum wages for 2007 and 2008 in order to be in compliance.

To check on other issues related to the minimum wage increase, including its impact on the wages of non-minimum wage workers, visit [www.hrcalifornia.com](http://www.hrcalifornia.com).

# CalChamber-Sponsored Reform Proposal to Limit Punitive Damages Fails to Move

A California Chamber of Commerce-sponsored bill to improve the clarity and objectivity of California's punitive damages law failed to pass a Senate committee on February 15.

CalChamber-sponsored **SB 423 (Harman; R-Huntington Beach)** would have helped improve California's rock-bottom legal climate by preventing out-of-control, extreme punitive damages awards with a cap that limits them to an amount no greater than three times the compensatory damages award.

"The CalChamber believes that SB 423 is a necessary reform in California because the state has negatively distinguished itself as one of the highest risk legal forums in the nation," CalChamber policy advocate Kyla Christoffersen told the committee. "This bill strikes a reasonable balance by allowing punitive damages to still be awarded in egregious cases; however, juries must do so within a range of zero to three times compensatory damages."

## Limits in Other States

Many state legislatures have already adopted limits to prevent excessive punitive damages amounts. Five states prohibit punitive damages altogether in civil actions.

Of the 22 states imposing some form of cap or formula, 13 have a cap with a 3-to-1 or smaller ratio of punitive to compensatory damages that applies to some or all cases. For example, Nevada has a 3-to-1 cap in all cases with compensatory damages of \$100,000 or more, and a fixed limit of \$300,000 if less.

SB 423 would have helped improve California's legal climate reputation, which continues to register near bottom

nationally for fairness and reasonableness — 45th out of 50 in the 2007 U.S. Chamber/Harris legal climate survey of in-house counsel and senior attorneys across the nation representing businesses.

In the same survey, punitive damages reform was the top-requested state-level policy reform for the last two years. Moreover, in 2007, California's punitive damages system ranked third worst. Only Mississippi and West Virginia ranked worse.

## Small Business Impact

Also testifying before the committee was Jason Weintraub, a constituent of Senator Harman's and vice president and general counsel for DRI Companies. During his testimony, Weintraub addressed the impact that punitive damages can have on small businesses in California.

DRI Companies is a roofing, water-proofing and renewable energy contractor based in Irvine with a few hundred employees. DRI installs energy-efficient roof systems and, through its wholly owned subsidiary Lumeta, manufactures solar roofing products.

"General liability plus punitive damages issues face us every day," Weintraub said.

"It is almost impossible to predict when a punitive damage award will be issued and if so in what amount," Weintraub said. "The issue for me and my company is the arbitrariness of punitive damage awards, and that affects our ability to effectively operate and do business in California and provide the valuable services that we offer our customers."

Lawsuits that involve punitive dam-

ages have changed the way DRI Companies handles business.

"In many cases my company, and we're by no means alone, settles a lawsuit, where not only did we do nothing wrong, but where we had meritorious defenses, solely because of the risk of punitive damages," Weintraub said.

## Time for Change

The absence of any limits on punitive damages amounts, combined with California's growing reputation as a high-risk legal forum, has a detrimental impact on the state's economy. Economists have determined that a state's legal climate ranking bears a direct relationship to its gross product and worker productivity.

Court decisions and California's current law are not providing enough safeguards — illustrated by businesses in the United States ranking punitive damages reform as their No. 1 concern and the general perception of California's punitive damages system as one of the worst in the nation.

It has been 20 years since the California Legislature enacted reforms to California's punitive damages statute. The CalChamber believes the time is right for the California Legislature to act once again.

## Key Vote

SB 423 failed to pass the Senate Judiciary Committee on a vote of 2-3.

**Ayes: Harman (R-Huntington Beach), Ackerman (R-Tustin).**

**Noes: Corbett (D-San Leandro), Kuehl (D-Santa Monica), Steinberg (D-Sacramento).**

**Staff Contact: Kyla Christoffersen**

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## Assembly Committee OKs Stronger Law to Fight Counterfeiting

*From Page 1*

California economy of \$34 billion per year in revenues. In Los Angeles County alone in 2005, counterfeiting and piracy resulted in losses of 106,000 jobs, \$5.2 billion in business revenue and \$483 million in state and local government tax revenue.

Counterfeiting costs U.S. businesses \$200 billion to \$250 billion per year, according to the International Anti-Counterfeiting Coalition, an international non-profit organization devoted to protecting intellectual property.

In 2003, the Motor and Equipment Manufacturers Association reported several safety violations due to counterfeit auto parts, such as brake linings designed of compressed grass, sawdust or cardboard and transmission fluid made of cheap, dyed oil.

### State vs. Federal Law

“The bill will clarify California law to ensure certain forms of trafficking of counterfeit goods are prohibited in the same manner as federal law,” said Christoffersen. “A clearer law cuts down on government prosecution costs by reducing litigation over ambiguities.”

For example, although California’s anti-counterfeiting statute (Penal Code Section 350) already prohibits manufacturing, selling and possession of counterfeit products with intent to sell, state law is unclear, and conflicts with federal law in several areas.

Unlike federal law, state law does not clarify whether illegal sale or possession of counterfeit products includes intentional transport of the products, such as knowingly trucking a load of fake brake pads.



Assemblyman Paul Krekorian (D-Burbank) (left) discusses his CalChamber-sponsored bill to strengthen California’s anti-counterfeiting laws, AB 1394, with (from left) Lieutenant R.J. Costa, Los Angeles County Sheriff’s Department; Kris Buckner, president of Investigative Consultants, a Southern California firm specializing in counterfeit goods cases; CalChamber Policy Advocate Kyla Christoffersen; and Matthew Hale, Office of Assemblyman Krekorian.

AB 1394 spells out in statute that such activities inherently related to the manufacture and sale of counterfeit products also are illegal.

State law is fuzzy on whether unassembled separate components, such as fake computer parts and fake brand name labels, are considered illegal counterfeit goods. AB 1394 clarifies that point.

### Tougher Penalties

AB 1394 will give courts greater flexibility to impose stiffer monetary penalties when counterfeiting operations are especially large and profitable.

Doing so will bring California law more in line with federal penalties, which are more than double the maximum penalties currently allowed under state law. In addition, tougher monetary penalties can help deter counterfeiting crimes.

“California could be a leader in the national effort to strengthen anti-counterfeiting laws at the state level with the passage of AB 1394,” said Christoffersen. “Ensuring that California’s current anti-counterfeiting standards are strong and effective and in closer conformity with federal standards will provide greater protections for trademark owners and consumers, and will help prevent significant revenue losses sustained by California businesses, our state and our local governments.”

### Action Needed

AB 1394 will be considered next by the Assembly Appropriations Committee. Contact committee members and your Assembly representative to voice **support** for **AB 1394**.

For more information on the bill or a sample letter of support, visit [www.calchambervotes.com](http://www.calchambervotes.com).  
Staff Contact: Kyla Christoffersen

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# CalChamber Supports Pending Colombia, Panama, Korea U.S. Free Trade Agreements



The California Chamber of Commerce is urging members to send letters to the California congressional delegation supporting the three free trade agreements (FTA) pending before the U.S. Congress.

Congressional leaders of both parties have indicated their intent to bring these agreements with Colombia, Panama and Korea to a vote in the months ahead, and it is critical to companies, workers, farmers and ranchers in the state that the delegation support these job-creating trade agreements.

California is one of the 10 largest economies in the world with a gross state product of approximately \$1.7 trillion. As one of the largest exporting states, with exports to 225 countries around the world, international-related commerce accounts for approximately one-quarter of California's economy.

## Colombia and Panama

The Latin American agreements will be on the congressional agenda first. Colombia and Panama are dynamic economies with pro-U.S. governments, and U.S. trade with these countries has nearly doubled over the last four years.

More than 19,500 U.S. companies export their products to Colombia and Panama, and more than 80 percent of these are small and medium-sized companies. U.S. farmers and ranchers sell more than a billion dollars worth of agricultural products to these markets. U.S. manufacturers are enjoying double-digit sales growth, and that growth will only continue when the tariffs are removed.

A U.S.-Colombia FTA will increase momentum toward lowering trade barriers and set a positive example for other small economies in the Western Hemisphere. In 2006, California exported more than \$200 million to Colombia, making it the state's 43rd largest export market.

The U.S.-Colombia FTA was presented to the Colombian national congress in December 2006.

Panama has the highest gross domestic product (GDP) per capita in Central America. Its economy is based largely on the services sector, which accounts for nearly 80 percent of the GDP.

Services include the Panama Canal, banking, insurance, container ports, and medical and health. Panama has been hailed for the strong growth in its economy and its commitment to fighting corruption, combating narco-trafficking and promoting democracy.

In 2006, the United States had a trade surplus with Panama, with exports totaling \$2.7 billion and imports slightly under \$400 million. California exports to

Panama totaled \$221 million, making it California's 42nd largest export market.

## Korea

The trade agreement with Korea is another big win for the California and U.S. economies. Korea is the seventh largest U.S. export market in the world and California's sixth largest market for farm exports. In 2006, U.S. exports to Korea reached \$43 billion, with U.S. small and medium-sized companies accounting for a third of this total.

By giving U.S. exporters a leg up in the world's 10th largest economy, the agreement with Korea will enhance the ability of U.S. companies to compete in the dynamic Asian economy. Korea is California's fifth largest exporting partner. In 2006, California exported goods worth \$7 billion to Korea.

## Action Needed

The CalChamber, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

Sample letters in support of the free trade agreements are available at [www.calchambervotes.com](http://www.calchambervotes.com).

**Staff Contact: Susanne Stirling**

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