

# ALERT

VOLUME 34, NUMBER 3 • FEBRUARY 1, 2008



## Fiscal Analysis Stops Health Care Tax Proposal



OPPOSE

Following the release of an in-depth analysis by the non-partisan Legislative Analyst's Office (LAO) outlining fiscal risks of the proposal, the Senate Health Committee

this week rejected the legislative component of the health care tax plan, ABX1 1 (Núñez; D-Los Angeles), in a bipartisan vote.

During the January 28 committee discussion preceding the vote, members repeatedly pointed to problems with the bill's funding mechanism and referenced the LAO report showing the plan was very likely structurally underfunded.

### Underfunded Proposal

The key risk the LAO identified was the assumption on the size of the insurance premium for the subsidized purchasing pool. After increasing the sponsors' extremely optimistic assumption of a

\$250 per person monthly premium by \$50, the LAO concluded the program could be underfunded by as much as \$1.5 billion a year by its fifth year.

The LAO analysis also cited other "fiscal risks and uncertainties which could negatively affect the fiscal solvency of the plan by more than an additional \$1.5 billion annually."

The issues raised by the LAO report were consistent with concerns outlined by the California Chamber of Commerce, along with other members of the business community, in a letter opposing ABX1 1 because it would have created a new expensive entitlement program and would have imposed a tax on employers that would have settled disproportionately on small and low-wage businesses. The financing scheme in ABX1 1 also depended on a declining revenue stream of new tobacco taxes.

In addition to citing the General Fund risks, Senate President Pro Tempore Don

*See Fiscal: Page 4*

## CalChamber Stops New Vehicle Surcharge Bill



OPPOSE

Bipartisan opposition in the Assembly has again stopped a California Chamber of Commerce-opposed bill that proposed a new tax on vehicles that businesses are most likely to need

in day-to-day operations.

**AB 493 (Ruskin; D-Redwood City)** would have assessed an unfair surcharge on new vehicles, which would have

increased costs for small businesses to transport their goods and services. The bill failed to move out of the Assembly this week.

Assemblyman Ira Ruskin told the Associated Press that he withdrew his bill this year because he "did not have the votes to pass it."

### Second Defeat

This was the author's second attempt

*See CalChamber: Page 6*

## Court Says Worker Use of Marijuana Not Protected



On January 24, the California Supreme Court ruled that employers are not required to retain workers who test positive for marijuana use even if the drug is recommended by a doctor for medical reasons.

The case involved an employee who tested positive for marijuana and was dismissed by his employer. The employer, RagingWire Telecommunications, Inc., believed the employee's drug use left the company vulnerable to issues that could generate lawsuits.

The employee claimed he was discriminated against and illegally fired because his drug use was recommended by his physician and he carried a medical marijuana card.

### Federal Law Prevails

His employer argued successfully — all the way to the California Supreme Court — that all marijuana use is illegal because the drug remains banned under federal law.

In 1996, voters passed the "Compassionate Use Act," making California the first state to legalize marijuana use for medicinal purposes. Enactment of the "Compassionate Use Act" instantly cre-

*See Court: Page 4*

### Inside

Anti-Counterfeiting Bill Moves: Page 3

## Labor Law Corner

# Employers Subject to Hefty Penalties for Missing Payday



**Dale Louton**  
Senior Helpline  
Consultant

*My company may not be able to make the payroll this coming payday because of economic conditions in the housing industry. The posted payday is every other Friday for both exempt and non-exempt employees and we have a total of 25*

*employees. What is the penalty for failure to pay wages on payday?*

The penalties are costly, and inability to pay is not considered a defense for failure to meet the payday.

### Civil Penalties

When an employer fails to pay wages as required by Labor Code Section 204 on a regular payday, the employer, under Labor Code Section 210, is subject to a civil penalty for each such missed payday.

The initial penalty for failure to pay wages is \$100 per employee per missed payday. In your case the potential civil penalty is \$2,500.

Civil penalties for subsequent missed paydays are much more severe. The penalty is \$250 per employee, plus 25 percent of the amount unlawfully withheld.

Most penalties required by the Labor Code and the Industrial Welfare Commission Wage Orders go to the employees; however, payday penalties go to the State of California. These penalties may be recovered by the Labor Commissioner through a hearing process outlined in Labor Code Section 98(a) or by going directly to the courts.

### Final Pay

Frequently, when a payday is missed, terminations follow. This brings into play a whole new set of penalties for failure to pay in a timely fashion. Employees who are terminated by the employer must be paid immediately, and if not, Labor Code Sections 201 and 203 provide for up to 30

days waiting time penalties, which go to the employee.

Labor Code Section 202 provides that an employee who gives at least 72 hours notice of quitting must be paid on his/her last day of work, and if not, Labor Section 203 provides for up to 30 days waiting time penalties.

An employee who quits without giving at least 72 hours notice must wait 72 hours before returning to his/her place of employment and requesting wages.

Labor Code Section 202 gives the employee the option of receiving final wages by regular mail if he/she so requests and designates a mailing address. The employer then has 72 hours to mail final wages to the employee.

Labor Code Section 203 provides for up to 30 days waiting time penalties if Section 202 is not complied with. All Labor Code Section 203 waiting time penalties go to the employee.

*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).*

### California Chamber Officers

**Edwin A. Guiles**  
Chair

**Frederick R. Ruiz**  
First Vice Chair

**Larree M. Renda**  
Second Vice Chair

**S. Shariq Yosufzai**  
Third Vice Chair

**Russell Gould**  
Immediate Past Chair

**Allan Zarembeg**  
President and Chief Executive Officer

*Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.*

*POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zarembeg. Executive Editor: Ann Amioika. Associate: Blake Ellington. Art Director: Andrew Larsen. Graphics Assistant: Jason Untalan. Capitol Correspondent: Christine Haddon.*

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

*E-mail: [alert@calchamber.com](mailto:alert@calchamber.com).  
Home page: [www.calchamber.com](http://www.calchamber.com).*

## CalChamber Calendar

### International Luncheon Forum:

February 14, Sacramento (Hong Kong Commissioner Margaret Fong)

### 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

## Seminars/Trade Shows

For more information on the seminars listed below, visit [www.calchamber.com/events](http://www.calchamber.com/events).

### International Trade

European Union Ambassador to Visit State Capitol. Senate Select Committee on California-European Trade. February 13 - Sacramento. (916) 651-1512.

International Tax Update. U.S. Council Foundation, Inc. February 27 - East Palo Alto. (512) 457-7013.

### Labor Law

HR 101: Labor Law Update. CalChamber. February 12 - Sacramento. (800) 331-8877.

HR 201: Labor Law Update. CalChamber. February 13 - Sacramento; February 26 - Online (2 hours). (800) 331-8877.



# CalChamber-Sponsored Legislation to Fight Counterfeiting Wins Assembly Approval



SUPPORT

A California Chamber of Commerce **sponsored** bill to strengthen California's anti-counterfeiting laws passed the Assembly this week with no opposition.

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.

"Trademark owners and consumers will receive greater protection if California ensures its anti-counterfeiting standards are strong, effective and more closely match federal ones," said CalChamber Policy Advocate Kyla Christoffersen.

"Taking action and leading the way in the national effort to strengthen laws to fight counterfeiting also will help prevent significant revenue losses for California businesses, the state and local governments," she said.

## Far-Reaching Consequences

The CalChamber has pointed out that counterfeiting has far-reaching negative consequences, including taking from workers much-needed jobs in numerous industries.

In addition, fake products pose serious health or safety risks to consumers.

Counterfeiting and piracy drains \$34 billion per year in revenues from the state's economy.

In Los Angeles County alone in 2005, counterfeiting and piracy led to losses of 106,000 jobs, \$5.2 billion in business revenue and \$483 million in state and local government tax revenue.

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

## Intellectual Property Rights Working Group Providing Comments on Legislation

The California Chamber of Commerce has created a working group to follow legislative proposals and policy issues relating to intellectual property rights in California.

The new Intellectual Property Rights (IPR) Working Group consists of CalChamber members who are interested in being involved with CalChamber policy development and advocacy efforts in the area of IPR or who want to keep apprised of pending state legislation or policy issues having an impact on IPR.

The group is examining and providing feedback on the CalChamber-sponsored legislation to combat counterfeiting, AB 1394 (Krekorian; D-Burbank).

To join the CalChamber IPR Working Group, e-mail Kyla Christoffersen at [kyla.christoffersen@calchamber.com](mailto:kyla.christoffersen@calchamber.com).

The Motor and Equipment Manufacturers Association in 2003 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.

## Clarification

AB 1394 clarifies state law to ensure certain forms of trafficking of counterfeit goods are prohibited in the same manner as federal law, thereby cutting down on government prosecution costs by reducing litigation over ambiguities.

California's anti-counterfeiting law (Penal Code Section 350) already prohibits manufacturing, selling and possession of counterfeit products with intent to sell.

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

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 separate fake 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 also will give courts greater flexibility to impose stiffer monetary penalties by increasing the cap on the punishment of the crime 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.

In addition to passing the seven-member Assembly Public Safety Committee on January 15 without opposition, AB 1394 passed the 16-member Assembly Appropriations Committee on January 24 with unanimous support.

## Action Needed

AB 1394 is awaiting assignment to a policy committee in the Senate. Contact your senator 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**



## Fiscal Analysis Stops Health Care Tax Proposal

*From Page 1*

Perata (D-Oakland) expressed concerns before the vote that the plan would create the third-largest program in state government in a year when California faces an estimated \$14.5 billion budget shortfall.

In a letter to Governor Arnold Schwarzenegger, Perata said, "We have the fiduciary responsibility to approve a health care coverage plan that is both self financing and fiscally sound and a moral responsibility to protect from harm those who already have health care coverage."

### Risks

In the opposition letter to the author, the CalChamber and business groups pointed out that ABX1 1 posed considerable risks to consumers, workers, employers and taxpayers, without any demonstrable evidence that the bill's promise of increased health care access could be delivered over the long term.

The letter noted that the bill's provisions anticipated revenue that would likely be inadequate for the programs proposed.

CalChamber Executive Vice President Jeanne Cain reiterated those concerns in testimony during the day-long Senate Health hearing on the bill on January 23.

ABX1 1 proposed that if the California director of finance determined revenues were inadequate, some of the programs, most notably the subsidized pool coverage for low-wage workers (although not the tax increases or many of the regulatory mandates), would be suspended. This could have resulted in an untenable situation where coverage would be terminated in the middle of an individual's medical treatment.

In addition, many Californians, including the self-employed, rely on affordable individual policies for their health care coverage. ABX1 1 would have imposed 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 undermined 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.

### Governor's Comments

In a statement issued after the Senate committee vote, Governor Schwarzenegger said, "Despite the Senate's rejection of our comprehensive health care reform bill, I want the people of California to know that I will not give up trying to fix our broken health care system. The issue is too important and the crisis is too serious to walk away after all the great progress we have made."

### Key Vote

The 1-7 Senate Health vote on ABX1 1 was as follows:

Ayes: Ridley-Thomas (D-Los Angeles).

Noes: **Kuehl (D-Santa Monica), Aanestad (R-Grass Valley), Cox (R-Fair Oaks), Maldonado (R-Santa Maria), Negrete McLeod (D-Chino), Wyland (R-Del Mar), Yee (D-San Francisco).**

Absent/abstaining/not voting: Alquist (D-San Jose), Cedillo (D-Los Angeles), Steinberg (D-Sacramento).

Staff Contact: Marti Fisher

## Court Says Worker Use of Marijuana Not Protected

*From Page 1*

ated controversy and uncertainty.

The January 24 Supreme Court decision was clear, however. The court said that the act has nothing to do with employment laws.

Justice Kathryn Werdegar wrote, "Under California law, an employer may require pre-employment drug tests and take illegal drug use into consideration in making employment decisions."

She further wrote, "Nothing in the text or history of the 'Compassionate Use Act' suggests the voters intended the measure to address the respective rights and obligations of employers and employees."

A 2005 U.S. Supreme Court decision also held that state laws legalizing the use of marijuana for medicinal purposes do not protect users from prosecution.

### Employers Join Case

Two other groups — the Santa Clara

Valley Transportation Authority and Western Electrical Contractors Association — joined Ragingwire's case and argued to the court that employers could lose out on government contracts and grants if employees were allowed to smoke marijuana.

The Sacramento-based Pacific Legal Foundation also supported the employer's position and offered this quote to the Associated Press: "This decision promotes employer efforts to make safe, drug-free workplaces."

### Training Materials

The California Chamber of Commerce has been actively engaged on this case for several months and plans to incorporate the decision in its upcoming employer and manager training materials. For more information on CalBizCentral's product offerings, visit [www.calbizcentral.com](http://www.calbizcentral.com).

Staff Contact: Erika Frank

**Make a difference on proposed laws**

**calchambervotes.com**

## *Small Business Advocate of Year Award*

# Woodland Hills Accountant Takes Business Message to Multiple Venues

Greg Lippe enjoys movies so much his home is equipped with a 92-inch-screen movie theatre with seating for eight and nine surround sound speakers.

When he's not watching films on his big screen though, Lippe is advocating on behalf of California's movie production industry to prevent "runaway film production."

This advocacy to keep film production within California's borders, along with his efforts on issues such as infrastructure bonds, manufacturers investment credits and redistricting reform, led to his selection as a 2007 Small Business Advocate of the Year Award recipient by the California Chamber of Commerce last May.

Lippe was nominated for the CalChamber award by Brendan Huffman, president of the Valley Industry & Commerce Association (VICA), a San Fernando Valley business advocacy group.

"Mr. Lippe is an effective and tireless advocate for the [San Fernando Valley's] small business community in many ways," Huffman said. "His leadership in the local business community is unmatched."

### **Film Advocacy**

Although Lippe has practiced public accounting for 37 years — he currently serves as managing partner for the 14-year-old certified public accounting firm Lippe, Hellie, Hoffer & Allison LLP out of Woodland Hills — he did not become interested in advocating for business policy until joining VICA in 2001.

He joined the advocacy group for a better understanding of business marketing, but after sitting in on a committee meeting that featured a discussion on the runaway film industry and how other states and countries were luring film productions away from California based on lower prices for doing business and other incentives, "it took on a life of its own," Lippe said.

"The problem in filming here is that the costs are tremendous compared to other states and countries," he said. "It's basically the costs of labor here."

He now serves as chairman of the board of directors of VICA.

Lippe is still pushing for state government to offer tax credits to filmmakers,

but has his hands in other endeavors as well.

### **Wage Mandates**

He recently spoke out against the Los Angeles City Council imposing wage mandates on hotels in the vicinity of the Los Angeles International Airport (LAX). Last year, the council voted to force the hotels to pay their employees \$9.39 per hour (the city's "living wage"), with benefits. The Hotel Association of Los Angeles and several other business organizations opposed the measure, arguing that it would make room rates higher and have a negative effect on the tourism industry.

Lippe lobbied alongside the business community, saying, "L.A., and the [city] council and the mayor decided it would be appropriate to include hotels in the area of LAX to treat them as though they were L.A.-owned and apply wage mandates that applied to city government contractors to hotels in the local area." An appeals court recently upheld the special wage mandate.

"If the hotels became unionized, they wouldn't have been affected by the mandate because the unions, through collective bargaining, could say the employees were already getting a fair wage," Lippe said.

### **Business-Oriented Candidates**

He is also on the on the board for the Valley Political Action Committee (ValPAC), which endorses candidates that support the retention and expansion of businesses in the San Fernando Valley. In ValPAC, board members discuss the decision to support a candidate, but each individual member may endorse whomever he or she pleases, Lippe said.

"When we interview these candidates, we do it from a business perspective. We don't tend to support candidates that are anti-business," he said.

ValPAC raises money for endorsed candidates and also offers them a limited number of "ValPAC-endorsed" additions for campaign signs, use of one chamber mailing list for campaign materials and a press release announcing ValPAC's endorsement, among other benefits.

### **Media Savvy**

Lippe also represents the business



**Greg Lippe testifies in support of the CalChamber-sponsored four-day workweek bill last April.**

community in the media on many crucial issues. His monthly column, "Capitol Punishment," appears in the *San Fernando Valley Business Journal*. He began writing for the *Journal* after speaking to the editor-in-chief about runaway film production.

"He asked if I would like to write an article on it," Lippe said.

So Lippe did, and then "they started asking me to write guest columns." Two years later, he approached the newspaper with the idea for "Capitol Punishment," a monthly scorecard for San Fernando Valley legislators and "job killer" bills. The *Journal* liked it and the column now also discusses other topics that are affecting California, such as the additional costs of doing business and health care.

Lippe enjoys the response he gets from readers.

"I run into people that I don't know, but they know me because of the column," he said. "Most people say that they really enjoy reading the column, and they agree with me 90 percent of the time, or 50 percent of the time, but still enjoy reading it regardless."

The CalChamber award has motivated him even further. "Receiving the award made me want to do more," he said.

## CalChamber-Supported Bill Provides Tax Credit for Health Insurance



### SUPPORT

The Senate Revenue and Taxation Committee will be considering a California Chamber of Commerce-supported bill that will reduce the tax inequity resulting from individuals buying their own health care insurance or coverage.

**SBX1 23 (Ashburn; R-Bakersfield)** provides a small tax credit to employers to establish Section 125 cafeteria plans that allow employees to purchase health insurance with pre-tax income.

Section 125 plans under federal tax law may include a provision for employees to purchase health care coverage with pre-tax income, thus lowering their taxable income and tax liability.

Under current tax law, employers may deduct the cost of purchasing health care coverage for their employees, but employees purchasing their own health care coverage must do so with after-tax income, unless they participate in a Section 125 Premium Plan.

SBX1 23 provides an incentive for employers to offer these valuable plans as a benefit to employees by offsetting employers' costs of administration through a small tax credit.

### Key Vote

The bill passed the Senate Health Committee on January 17 by a vote of 6-2:

**Ayes: Aanstad (R-Grass Valley), Alquist (D-San Jose), Cox (R-Fair**

**Oaks), Maldonado (R-Santa Maria), Negrete McLeod (D-Chino), Yee (D-San Francisco).**

Noes: Kuehl (D-Santa Monica), Steinberg (D-Sacramento).

Absent/abstaining/not voting: Cedillo (D-Los Angeles), Ridley-Thomas (D-Los Angeles), Wyland (R-Del Mar).

### Action Needed

A Senate Revenue and Taxation hearing date on SBX1 23 has not yet been scheduled. The CalChamber is encouraging employers to contact their senators and committee members to urge them to **support SBX1 23**.

A sample letter is available at [www.calchambervotes.com](http://www.calchambervotes.com).  
Staff Contact: Marti Fisher

## 2008 CalChamber Issues Guide Available on Web, in Print for Members

The 2008 edition of the California Chamber of Commerce *Business Issues and Legislative Guide* is available now on the CalChamber website.

A hard copy of the *Guide* has been mailed to CalChamber preferred and executive members receiving print copies of *Alert*.

The premier sponsor of this year's *Guide* is Wells Fargo Bank. Premium sponsors are Goddard Claussen Strategic Advocacy, Enterprise Rent-a-Car

and Bridgestone Firestone. The *Guide* also acknowledges CalChamber Cornerstone Members AT&T, Bank of America, BP, Chevron, Citibank and Pacific Gas and Electric Company.

In this second year of the legislative session, issue articles again focus on "Keeping California Competitive in a Global Economy." Highlighted state issues include climate change, education,



health care reform and infrastructure — transportation, housing and education. Federal issues covered include immigration and international trade.

Preferred and executive members who did not receive a printed copy of the *Guide*, but would like one may e-mail the request to [alert@calchamber.com](mailto:alert@calchamber.com).

To view the issue articles on the website, visit [www.calchamber.com/businessissues](http://www.calchamber.com/businessissues).

## CalChamber Stops New Vehicle Surcharge Legislation

From Page 1

to win Assembly approval of his proposal to tax new vehicles classified as high emitters of greenhouse gases. In 2007, members of both parties opposed the bill, which failed to pass the Assembly on a vote of 35-35, with 10 members absent, abstaining or not voting.

AB 32 (Núñez; D-Los Angeles), the groundbreaking 2006 climate change bill, established a process for reducing greenhouse gas emissions and required the development of a comprehensive plan in a balanced and expeditious manner, including encouraging the use of alternative fuels.

The CalChamber appreciates the need to work to comply with AB 32, but believes placing the burden on mobile emission sources is not the answer. AB 493 failed to recognize that such vehicles are used by businesses of all sizes and industries to transport goods and equipment, unfairly punishing businesses and consumers by taxing them for purchasing the vehicles that they need.

The California Air Resources Board has been assigned the duty of exploring and developing regulations to achieve the reductions required under AB 32. This process is underway. AB 493, however,

ignored this planning and prejudged the outcome of AB 32 and the Governor's Low Carbon Fuel Standard as created in his executive order from 2007.

### CalChamber Position

The CalChamber believes that to tackle global emissions, businesses and consumers will have to play a role in assessing their individual carbon footprints. The Legislature, however, must ensure that the method in which they do so does not give businesses incentive to move elsewhere or add to the existing leakage problem.

Staff Contact: Amisha Patel



*CalChamber in Court*

# CalChamber Asks State Supreme Court to Limit Abusive Lawsuits Against Business

The California Chamber of Commerce and other business groups have filed a “friend of the court” brief with the California Supreme Court to protect California businesses from non-class representative actions brought by unions under the “sue your boss” law and unfair competition law.

In the case of *Amalgamated Transit Union Local 1756 v. Superior Court of Los Angeles* (First Transit, Inc.), the issues presented before the court relate to whether the right to bring a representative action under the Labor Code Private Attorneys General Act of 2004 (PAGA) and California’s unfair competition law (UCL) may be assigned to a third party, such as a union, which was neither impacted by nor directly involved with the alleged violations.

Also joining in filing the “friend of the court” brief were the Employers Group, the California Employment Law Council and the U.S. Chamber of Commerce.

## Decision Impact

The court’s decision will determine whether unions may sue in a non-class representative action under the PAGA without receiving permission from all representative members in the case. Similarly, the decision will confirm that claims brought under the UCL must not only meet specific standing requirements, but also cannot be assigned to a third party, such as a union.

The court’s decision will have an impact on California businesses, which



continue to be hit with representative and class action lawsuits, particularly in the area of wage and hour law. Narrowing the scope of who may bring the lawsuits will curtail the swift progression and trend

of representative actions, the defense of which are extremely costly to businesses, particularly those actions that lack merit.

## Lack of Standing

In the brief, the CalChamber urged the court to hold that the unions bringing the claims lack standing to pursue any claim under PAGA — whether on behalf of an individual union member who purported to assign his or her PAGA claim, or on behalf of other union members who did not — because PAGA claims are not assignable as a matter of law.

The CalChamber believes that the Court of Appeal correctly held that because PAGA claims are for statutory penalties, such claims are not assignable.

If an employee could seek all of the benefits of proceeding with a representative action under PAGA without even attempting to show either an ascertainable class or a community of interest, the opportunity for abuse would be rampant, the CalChamber argued in its brief.

On top of the burden on trial courts in attempting to preside over representative PAGA claims that could not be certified as class actions, the CalChamber urged the court to also consider the potential for employees to use representative, non-class action under PAGA to blackmail employ-

Unlike class actions, which contain procedural safeguards to protect the interests of the class, nothing would prevent a plaintiff from compromising a representative PAGA claim for his or her own benefit. In light of the impossibility of defending representative PAGA claims with respect to which individual issues predominate (and which, therefore, could not be certified as class actions), the employer would have little choice but to pay plaintiffs’ settlement demands — however unreasonable.

## Counter to Voter Intent

In its brief, the CalChamber also argues that the right to represent others under the UCL is not and should not be assignable and may only proceed as certified class actions. The attempt to “buy” the right to sue under the UCL is a clear end-run around the will of the California voters who passed Proposition 64 in 2004, seeking to limit abusive UCL suits by limiting them to plaintiffs who suffered an injury in fact and lost money or property as a result.

A lawsuit on behalf of an unnamed third party under the UCL should be maintainable only by an injured person with similar interest — not merely an assignee of such person — and should be maintainable only as a certified class action, the CalChamber argued.

The case has been fully briefed and the California Supreme Court may set the case for oral arguments at any time.

To read the brief, see the story in the Legal Affairs section under Government Relations at [www.calchamber.com](http://www.calchamber.com).

Staff Contact: Erika Frank

Mark Your  
Calendars



California Business  
Legislative Summit  
May 20-21, 2008

## Last chance to find out what's new for 2008. Attend HR 201: Labor Law Update Live Web Seminar

In 90 minutes, you will learn the top key laws, regulations and case studies of 2008 that affect how you and your company do business in California. And because it is conducted live over the Internet, you will avoid the hassle of traveling and enjoy learning all you need to know for 2008 from the comfort of your own office. Topics covered include:

- Meal and Rest Breaks
- Sexual Harassment Supervisor Training Regulations
- Military Spouse Leave
- Discrimination, Retaliation and Supervisor Liability
- Calculating Expense Reimbursements
- Hiring Practices and Employment Eligibility
- Cases to Watch for in 2008
- And more

HR 201: Labor Law Update Live Web Seminar

Tuesday, February 26  
10 a.m.  
90 minutes



\$150 online/non-member  
\$136 preferred/  
executive member

To register, visit [www.calbizcentral.com/HR201](http://www.calbizcentral.com/HR201) or call (800) 331-8877.



ADDRESS SERVICE REQUESTED

Helping California Business Do Business<sup>SM</sup>

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

CALIFORNIA CHAMBER OF COMMERCE

**ALERT**

Periodicals  
Postage  
PAID  
Sacramento, CA