

What's Happening at the Capitol October 3, 2006

This year the Governor signed a number of bills that will have a direct effect on workers' compensation law. The signed bills below will become law on January 1, 2007. The most contentious of those bills that actually roll back certain provisions of the 2004 workers' comp reform (SB 899), were AB 2068 and AB 1368, which are detailed below. Interestingly, the political game that was played towards the end of session this year to get these two bills signed resembled watching an intense baseball game.

Sometimes the intent behind introducing a bill is not to get that bill passed, but to push along another bill through the legislative process. A prime example of when a bill isn't necessarily a bill, but rather a sacrifice fly to advance the runner was seen when AB 3026 was set in motion to push along AB 1368 and AB 2068. As you read through this example, imagine a tied baseball game – bottom of the ninth, bases loaded, with only one out. Imagine now, Brian Giles of the San Diego Padres up to bat against the Giants pitcher, Matt Morris (who, by the way, is a little tired by this point). Giles hits it deep left to bring Woody Williams, who was on third, home to win the game.

AB 3026 by Assembly Member Lieber was amended towards the tail end of Session and would have essentially exempted law enforcement officers from the workings of SB 899. The author and sponsors of the bill had no intention of actually getting AB 3026 passed, in fact, it was a "sacrifice fly" for the other workers compensation bills that found themselves on the Governor's desk. The Governor had some interesting conversations with labor representatives during the tail end of the Session, who wanted some drastic changes to the workers compensation system, namely those same labor reps who were of the position that the 2004 law was too restrictive and problematic for injured workers. They already had three bills on the Governor's desk by the time. Those bills were:

SB 815 (Perata), as amended August 24, 2006

This bill was a play by Senate President Don Perata to deal with an issue which has been very important to injured workers, labor groups and applicant attorneys – permanent disability. Essentially, the bill looks to double the number of weeks a permanently

disabled worker receives benefits by changing the computation formulas. This bill was vetoed by the Governor.

AB 2068 (Nava), as amended August 28, 2006

This bill turns the clock back on SB 899 when it comes to pre-designation of personal physicians for treatment of an injury and broadens the definition of what a "personal physician" can be. Under SB 899, if the employer's insurer has established a medical provider network, the injured worker has limitations as to when she can pre-designate. She has to give written notice prior to the date of injury. The bill was opposed by many public and private employer groups but signed into law by the Governor.

AB 1368 (Karnette), as amended August 23, 2006

This bill abandons the medical apportionment provisions of SB 899 dealing with a broad definition of public safety officers, including investigators, various security officers and probation officers. It was signed by the Governor on the last day.

The Governor and his staff sat on these bills for awhile – and even considered signing AB 2068, but waited to see how the rest of the legislative Session panned out. That's when labor groups got antsy. They wanted answers – is the Governor going to sign any of these bills?!? So, they launched a sacrifice fly to advance the runner. And AB 3026 flew deep to center field. It was amended at the end of August to completely take out law enforcement employees from SB 899. Nobody wanted to have to vote on this, including Democratic legislators who thought that it was too soon after the reforms to make such sweeping changes. They didn't want to have to explain their reasoning for voting to exempt law enforcement and no one else. AB 3026 was amended to essentially politely nudge (think strong elbow in the side) the Governor to take action, or at least give some indication as to what he was going to do with those other bills sitting on his desk. Why?

The Governor would be hard pressed to veto every workers' compensation bill on his desk, especially one that helped public safety. AB 3026 was the poison pill, or bill in this case. The tea leaves were clear in AB 3026 – it read, "if we do not receive word that you are going to sign one of these bills, you will find AB 3026 on your desk." Sure enough, as with any sacrifice fly, the Governor was encouraged to make a decision.

Hence, AB 3026 was caught by center field, and the third baseman, AB 1368 and AB 2068 ran home.

Other bills that were signed:

AB 881 (Emmerson) Workers' compensation: roofers. Existing law requires the Contractors State License Board to require that a license applicant or current licensee have on file at all times a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, unless the applicant or licensee meets specified conditions for exemption. Existing law provides that a failure to comply with this requirement shall result in the automatic suspension of the license, as specified. This bill would require, until January 1, 2011, that, as of January 1, 2007, the registrar of contractors remove the C-39 roofing classification from a license if the contractor fails to comply with the above requirement. This bill contains other related provisions and other existing laws.

AB 1368 (Karnette) Workers' compensation: apportionment: presumptions. Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. This bill would exempt the above medical conditions for certain public safety members and employees from the application of this requirement. This bill contains other existing laws.

AB 2068 (Nava) Workers' compensation: designation of physician. Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. This bill, until December 31, 2009, would provide that a personal physician includes a medical group that meets specified requirements. This bill would also delete the April 30, 2007, repeal date and the limit on the maximum percentage of employees that may be pre-designated. This bill contains other related provisions and other existing laws.

AB 2087 (Benoit) Workers' compensation: claimant information.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires that all employers secure incurred liabilities by making a deposit based upon estimated future liability for compensation, and provides that, in determining the amount of the deposit, the administrative director shall offset estimated future liabilities for the same claims covered by a self-insured plan under the Longshore and Harbor Workers' Compensation Act, as specified. Existing law requires that all self-insured employers file a self-insurer's annual report in a form prescribed by the administrative director. This bill would require the administrative director to additionally prepare an aggregated summary of all self-insured employers' liability to pay compensation reported on those self-insured employers' annual reports, including a separate summary for public and private employer self-insurers. The bill would require that the summaries be made available to the public on the self-insurance section of the Department of Industrial Relations' Internet Web site. The bill would also authorize the administrative director to release a copy, or make available an electronic version, of specified data, excluding certain individually identifiable claimant information, contained in any public sector employer's self-insurer's annual reports received from an individual public entity self-insurer or from a joint powers authority employer and its membership.

AB 2125 (Vargas) Insurance.

Existing law regulates the business of insurance, including worker's compensation insurance. This bill would make numerous changes in the law regulating insurance including workers' compensation insurance. This bill contains other related provisions and other existing laws.

AB 2292 (Montanez) Workers' compensation: death benefits.

Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law prescribes statutory death benefits required to be paid to the dependents, or, if there are no dependents, to the personal representative of the deceased employee, heirs, or other persons entitled to a deceased employee's

accrued and unpaid compensation under specified workers' compensation laws. This bill would specify that those death benefits shall be paid to a surviving dependent, personal representative, heir, or other person entitled to compensation under specified workers' compensation laws, notwithstanding any amount of the deceased employee's accrued and unpaid compensation that is paid or owing to a surviving dependent, personal representative, heir, or other person entitled to a deceased employee's accrued and unpaid compensation. This bill contains other related provisions and other existing laws