

CALIFORNIA LEGISLATIVE UPDATE FOR PROPERTY & CASUALTY BILLS

The 2013 California legislative session has ended. The following bills were passed by the legislature and presented to Governor Brown for signature earlier this year. Bills labeled “signed” are effective as of January 1, 2014, unless otherwise noted.

BULLYING

AB 256—Pupils: Grounds for Suspension and Expulsion - SIGNED

This bill is a further clarification of recently-enacted laws governing student discipline for bullying by an electronic act. Existing law prohibits a pupil from being suspended or expelled unless the act is related to a school activity or school attendance. AB 256 authorizes a pupil to be suspended or expelled if the superintendent or principal of the pupil's school determines that the pupil has intentionally engaged in bullying by means of an electronic act directed against school district personnel or pupils, whether or not the act originated on school grounds. In support of the bill, its author noted, “While it is arguable that existing law in California already allows school discipline for cyber-bullying originating from off-campus (so long as it is school related), the Education Code could be clearer to ensure this policy. This bill would simply clarify that students may be suspended or expelled for acts of cyber-bullying that are not limited by where the acts originate.”

CIVIL LITIGATION

SB 131—Damages: Childhood Sexual Abuse: Statute of Limitations - VETOED

Click the link below to see our Keenan *Briefing* on an earlier version of this bill.

http://www.keenan.com/news/brief/2013/BRF_20130604_SB131_Update.pdf

SB 131 would have provided that the time limits for commencement of an action for recovery of damages suffered as a result of childhood sexual abuse be applied retroactively to any claim that has not been adjudicated to finality on the merits as of January 1, 2014. It would also have revived, for a period of one year, cause of action for childhood sexual abuse that would otherwise be barred by the statute of limitations as of January 1, 2014, provided the plaintiff's 26th birthday was before January 1, 2003, and the plaintiff discovered the cause of his or her injury on or after January 1, 2004. This bill would have allowed both plaintiffs and defendants in sexual molestation cases to conduct certain discovery prior to a motion to dismiss. Governor Brown wrote a lengthy veto message for this bill citing to the history of limitation periods and noting the difference between statutes of limitation for criminal and civil cases. He noted with disfavor the differential treatment this bill gave to private versus public institutions and, in vetoing the bill, called it “simply too open-ended and unfair.” The Governor's veto message can be found at the link below:

http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0101-0150/sb_131_vt_20131012.html

DATA PRIVACY/SECURITY

AB 1149—Identity Theft: Local Agencies - SIGNED

This bill extends existing data breach disclosure requirements under the California Information Practices Act (CIPA) to local agencies, including JPAs.

SB 46—Personal Information: Privacy - SIGNED

This bill expands the scope of personal information subject to existing security breach disclosure requirements to include a user name or e-mail address in combination with a password or security question and answer pairing that permits access to an online account. This bill also imposes additional requirements on the disclosure of a breach of the security of the system or data in situations where the breach involves personal information that permits access to an online or e-mail account. Because of AB 1149, the provisions in this bill also apply to public agencies.

EMPLOYMENT/HR ISSUES

SB 292—Employment: Sexual Harassment - SIGNED

This bill clarifies that, with respect to an employment-related sexual harassment claim made under the Fair Employment and Housing Act (FEHA), sexually harassing conduct need not be motivated by sexual desire. In support of this bill, the sponsor, California Employment Lawyers Association (CELA), asserted that although case law had already established that sexual desire or intent is not required to prove a hostile work environment sexual harassment claim, the court in *Kelley v. Conco Cos. (2011) 196 Cal.App.4th 191* directly contradicted prior case law. CELA argued that "[d]espite the sexually explicit, offensive, and directly sexual nature of the harassment of this case, which included threats of sexual violence, the court held that because the plaintiff had not proved the harasser actually desired to have sex with the victim, there was no claim for sexual harassment." There was no registered opposition to this bill.

AB 556—Fair Employment and Housing Act: Military Veterans - SIGNED

This bill adds military and veteran status to the list of categories protected from discrimination under FEHA. It also provides an exemption for an inquiry by an employer regarding military or veteran status for the purpose of awarding a veteran's preference. This bill would entitle veterans to bring actions against potential, current or former employers for discrimination related to their military and veteran status.

AB 633—Emergency Medical Services: Civil Liability - SIGNED

This bill prohibits an employer from having a policy or practice of prohibiting an employee from providing voluntary emergency medical services, including cardiopulmonary resuscitation (CPR), in response to a medical emergency. The bill would allow an employer to adopt and enforce a policy authorizing employees trained in emergency services to provide those services, or prohibiting an employee from providing emergency medical services, including CPR, on a person who has expressed the desire to forgo resuscitation through any legally recognized means. The bill specifies that it does not impose any express or implied duty on an employer to train employees regarding emergency medical services or CPR. According to the author, this measure was introduced

in response to a recent well-publicized incident at a retirement community in Bakersfield. According to media reports, in February 2013 an 87-year-old resident of the Glenwood Gardens retirement community collapsed in the dining room of the facility. Media reports showed that a 911 call revealed that an employee of the facility indicated that she would not perform CPR on the woman due to a facility policy that prevented employees from performing life-saving procedures. The woman subsequently passed away before emergency services personnel could arrive. According to news reports, the facility director later issued a written statement asserting that the incident resulted from a "complete misunderstanding" of the facility's practice with regards to emergency medical care for its residents.

PUPIL RIGHTS

AB 1266—Pupil Rights: Sex-Segregated School Programs - SIGNED

This bill requires that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records. So far, there has been no published guidance from the California Department of Education on how schools should implement this new requirement. This law is now the subject of a proposed repeal by ballot measure.

SCHOOL SAFETY

AB 449—Certificated School Employees: Teacher Credentialing - SIGNED

This bill requires a superintendent of a school district or county office of education or the administrator of a charter school to report to the Commission on Teacher Credentialing (CTC) any change in the employment status of a credential holder if the credential holder either resigns or is terminated as a result of an allegation of misconduct or while an allegation of misconduct is pending. This bill specifies that if the superintendent/administrator fails to report such a change in employment status to the CTC within 30 days, he or she may be subject to adverse action by the CTC. Furthermore, failure to make such a report is a misdemeanor punishable by a fine of between \$500 and \$1,000. These fines are considered the personal responsibility of the superintendent/administrator and may not be paid with public funds.

AB 514—The Safe Schools and Safe Learning Act of 2013 - SIGNED

This bill creates the Safe Schools for Safe Learning Act of 2013. The bill requires the Superintendent of Public Instruction to post on the Department of Education's Web site a list of statewide resources for youth who have been affected by gangs, gun violence, and psychological trauma caused by violence at home, at school and in the community.

AB 549—Comprehensive School Safety Plans: Adult Role on Campus Guidelines - SIGNED

This bill specifies that as comprehensive school safety plans are reviewed and updated, the Legislature encourages all plans, to the extent that resources are available, include clear guidelines for the roles and responsibilities of mental health professionals, community intervention professionals, school counselors, school resource officers (SROs), and police officers on school campus, if the school district uses these people. The bill specifies that the guidelines may include primary strategies to create and maintain a positive school climate,

promote school safety, increase pupil achievement, prioritize mental health and intervention services, restorative and transformative justice programs, and positive behavior interventions and support. Prior versions of the bill mandated the inclusion of these guidelines and strategies, but the bill was later amended to remove the mandate.

AB 1252—Retail Food Safety - SIGNED

This bill makes various technical, clarifying, and conforming changes to the California Retail Food Code (CRFC), the state's principal law governing food safety and sanitation in retail food facilities, and makes changes necessary to implement California's cottage food operations law. Included in the bill are several changes regarding the covering of wounds, use of single-use gloves and minimizing bare arm and hand contact with food. School cafeterias are included in the food facilities covered by this bill.

SB 326—Sex Offenders - SIGNED

Under current law, any person who is required to register as a sex offender who comes into any school building or upon any school grounds without lawful business and written permission from the chief administrative official (“CAO”—principal or principal's designee) of that school is guilty of a misdemeanor and may be imposed with a fine and imprisonment. This bill requires the authorization by the CAO to indicate the date or dates and times for which permission is granted. The bill also authorizes the CAO to grant a person who is required to register as a sex offender and is not a family member of a pupil who attends that school permission to come into a school building or upon the school grounds to volunteer at the school under specified conditions. Specifically, the bill requires the CAO to, at least 14 days prior to the first date for which permission has been granted, notify the parent or guardian of each child attending the school that a person who is required to register as a sex offender has been granted permission to come into a school building or upon school grounds, the date or dates and times for which permission has been granted, and his or her right to obtain information regarding the person from a designated law enforcement entity. The bill provides immunity from civil liability to any CAO or school employee who in good faith disseminates the notification and information in accordance with this bill. According to the Senate Public Safety Committee, a newspaper article indicates that this bill was introduced due to parent outrage over a parochial school event at which a convicted sex offender was allowed to volunteer, with a permission slip from the Diocese of San Jose. It is unclear whether there have been similar problems at public schools. According to the author's office, the notification requirement may reduce the number of such authorizations. The bill's author stated, "This bill ensures that parents are aware that the individual will be on the premises ahead of time. Parental notification of a sex offender on campus gives parents the opportunity to take precautionary measures if they have questions regarding their child's safety."

AB 56—School Facilities: Carbon Monoxide Devices - SIGNED

This bill requires, by July 1, 2015, the State Fire Marshal to propose for adoption by the California Building Standards Commission, for the commission's next triennial code adoption cycle, appropriate standards for the installation of carbon monoxide devices in school buildings.

Please contact your Keenan account representative for questions regarding this *Briefing* or if you require any additional information regarding how these new laws may impact your Property & Casualty programs.

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