

PANE & PANE ASSOCIATES, INC.

October 12, 2011

MEMO TO: California Bus Association

FROM: Josh Pane and Donna Wetterer Pane
pane@cwo.com (916) 835-3036 or (916) 447-8982

RE: Legislative Update: FINAL LEGISLATIVE UPDATE FOR 2011 SESSION

The deadline for the Governor to sign or veto legislation was October 9th at midnight bringing the 2011 legislative session to an official end. The Governor's actions were mixed whereby he pleased both labor and the Chamber of Commerce (he vetoed five of their job killer bills). He was, therefore, unpredictable, much like he was in the 70's, showing both a liberal and then a more conservative side. Note how many bills he vetoed on the list of bills we were following for CBA below.

This will be the final update of the 2011 legislative session. A reminder that there are a number of bills, which are now on the Two-Year Bill list (which can be viewed at the end of this update and on the web-site) that will be considered again next year, including AB 45 (Hill) which is still on the list below because of its importance to CBA members. So this bill and others will be eligible to be heard again in January 2012. Please don't hesitate to contact us if you would like additional information on any of these bills.

2011 Legislation

AB 45 (Hill-D)) Charter-party carriers of passengers: alcoholic beverages: open containers. (A-6/14/2010) Sponsor: Author Staff: Graceila Castillo (916) 319-2019

Summary: This is the charter-party carrier bill that makes the driver the "police" for alcohol for underage persons that we have been trying to amend in order to remove CBA opposition. The June 14th amendments did nothing to improve this bill and, in fact, made it more confusing. Specifically, the bill would expand the application of those alcoholic beverage provisions that currently apply to limousines concerning passengers under 21 years of age by applying those requirements to the driver of any vehicle providing charter bus transportation for hire operated by a permitted or certificated carrier when the driver knows, or has reasonable reason to believe, that alcoholic beverages will be transported on the bus and accessible to passengers. The bill would also authorize a driver that terminates a contract of hire because of a minor's consumption of alcohol, rather than dropping off the offending passengers and their party at the point of origin of the ride, to drop the offending passengers and their party off at the customer's home, nearest police station, or any other point mutually agreed to by both parties, as long as the conditions are safe for the driver. The bill would subject the driver providing charter bus transportation to existing open container prohibitions and make the 3rd or subsequent violation of a specified open container prohibition by a driver of any vehicle used in the transportation of passengers for hire operating under a valid certificate or permit a misdemeanor.

STATUS: Passed Senate Utilities, Commerce and Communications on June 21st but double-referred to Senate Public Safety where it is being held as a two-year bill.

CBA Position: OPPOSE

AB 135 (Hagman-R) ARB: Membership: small business owner (A-8/15/11) Sponsor: National Federation of Independent Businesses Staff: Lauren Dominguez (916) 319-2060

Summary: This bill, until January 1, 2017, would require one appointed member of the state board to be an owner within the past 5 years of a small business.

STATUS: Vetoed by the Governor on September 26th. Veto message below:

CBA Position: Support (taken at February 11th Board meeting)

VETO MESSAGE:

I am returning Assembly Bill 135 without my signature. This bill requires that one member of the governing board of the California Air Resources Board (CARB) be an owner of a small business, as defined, within the past five years. I agree that persons with business experience should be on the Air Board. In fact, four sitting members have such experience. But, whether the Air Board should have one member, as provided in this bill, or four, is best left to the discretion of the Governor.

AB 325 (Lowenthal-D) Employee's right to bereavement leave. (A-9/211) Sponsor: CA Employment Lawyers' Association Staff: Dominic Bulone (916) 319-2054

Summary: This bill would prohibit an employer from refusing to grant a request by any employee to take up to 3 days of bereavement leave or to interfere with or restrain an employee from doing so and would authorize an employee who has been discharged, disciplined, or discriminated against for exercising his or her right to bereavement leave to bring a civil action against his or her employer for reinstatement and attorney's fees. The provisions of the bill would not apply to an employee who is covered by a valid collective bargaining agreement that provides for bereavement leave and other specified working conditions.

STATUS: Vetoed by the Governor on October 9th; Veto message below:

I am returning Assembly Bill 325 without my signature. Granting bereavement leave when a close family member dies is the moral and decent thing to do and I believe that the vast majority of employers voluntarily make such an accommodation for the loss of a loved one. I am also concerned that this measure adds a more far-reaching private right to sue than is contained in related statutes.

AB 462 (Lowenthal-D) Air pollution districts: fees: school buses. (A-6/30/11) Sponsor: South Coast Air Quality Management District Staff: Dominic Bulone ((16) 319-2054

Summary: Existing law authorizes specified air pollution control and air quality management districts to adopt a fee applicable to motor vehicles registered in counties within that district, and requires the fee to be collected by the Department of Motor Vehicles. Existing law, until January 1, 2015, authorizes the amount of the fee to be up to \$6. Existing law requires the revenues from the first \$4 of the fee to be used for specified purposes. Existing law requires that the revenues from the last \$2 of the fee be used for specified programs that the district determines remediate air pollution harms created by motor vehicles, including purchases of new school buses pursuant to the State Air Resources Board's Lower-Emission School Bus Program. This bill would additionally authorize a district based on that determination to use the last \$2 of the fee for programs to replace onboard natural gas tanks on school buses owned by a school district that are 14 years or older, with a funding amount not to exceed \$20,000 per bus and to enhance deteriorating natural gas fueling dispensers of fueling infrastructure operated by a school district, with a one-time funding amount not to exceed \$500 per dispenser, pursuant to the Lower-Emission School Bus Program.

STATUS: Signed by the Governor; Chapter 216 of 2011 Statutes.

AB 470 (Halderman-R) Air pollution districts: fees: school bus retrofits (A-6/30/11)

Sponsor: Author Staff: Maggie Winn (916) 319-2029

Summary: Existing law authorizes specified air pollution control and air quality management districts to adopt a fee applicable to motor vehicles registered in counties within that district, and requires the fee to be collected by the Department of Motor Vehicles. Existing law, until January 1, 2015, authorizes the amount of the fee to be up to \$6. Existing law requires the revenues from the first \$4 of the fee to be used for specified purposes. Existing law requires that the revenues from the last \$2 of the fee to be used for specified programs that the district determines remediate air pollution harms created by motor vehicles, including purchases of new school

buses pursuant to the State Air Resources Board's Lower-Emission School Bus Program. This bill would additionally authorize a district based on that determination to use the last \$2 of the fee to retrofit emissions control equipment for existing school buses pursuant to the State Air Resources Board's Lower-Emission School Bus Program.

STATUS: Signed by the Governor; Chapter 174 of 2011 Statutes.

AB 807 (Solorio-D) Vehicles: taxicab transportation services: periodic reports (A-6/7/11)

Sponsor: Orange Co. Transportation Authority Staff: Alejandro Huerta (916) 319-2069

Summary: This bill would also require that the prospective employer or employer of a driver of a taxicab engaged in transportation services, as described, to present these reports upon request, during regular business hours, to an authorized representative of the administrative agency responsible for issuing permits to taxicab transportation services, as specified. Since a violation of this requirement would be a crime, the bill would impose a state-mandated local program.

STATUS: Signed by the Governor; Chapter 108 of 2011 Statutes.

SENATE BILLS

SB 211 (Emmerson-R) California Global Warming Solutions Act of 2006: tire inflation regulation (A-8/16/11) Sponsor: Author Staff: Teresa Trujillo (916) 651-4037

Summary: The state ARB is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. A violation of a regulation adopted by the state board pursuant to the act is subject to specified civil and criminal penalties. Pursuant to the act, the state board adopted a regulation requiring automobile service providers, by September 1, 2010, among other things, to check and inflate vehicle tires to the recommended pressure rating when performing automobile maintenance or repair services. This bill, until January 1, 2017, would require a tire pressure gauge used to meet the requirements of this regulation to be accurate within a range of plus or minus 2 pounds per square inch of pressure (2 psi). The bill, until January 1, 2017, would authorize automotive service providers to meet the requirements of the regulation without checking and inflating a vehicle's tire if that tire is determined to be an unsafe tire, as defined.

STATUS: Vetoed by the Governor on September 6th.

VETO MESSAGE:

I am returning Senate Bill 211 without my signature. This bill codifies a tire gauge accuracy requirement that is already in regulation and removes tire age as a consideration by the automotive service providers when determining whether a tire is unsafe for use. This bill is

both unnecessary and omits a significant factor relating to public highway safety. The California Air Resource Board's Regulation to Reduce Greenhouse Gas Emissions from Vehicles Operation with Under Inflated Tires requires automotive service providers to check and inflate a vehicle's tires to the manufacturer's recommended pressure at the time a vehicle is serviced. This simple action can save 75 million gallons of gasoline and reduce greenhouse gas emissions by 700,000 metric tons annually. Placing provisions of ARB's regulation into statute unnecessarily limits ARB's ability to revise the regulation in the future to ensure that it achieves the greatest air quality improvements and greenhouse gas emission reductions possible without legislative action. Furthermore, by eliminating "age" as a factor bearing on a tire's safety, the bill seeks to circumvent the rulemaking process and overlooks significant evidence that age could degrade the performance capabilities of a tire. In this way, the bill disregards the stakeholder participation and transparency that were exercised during the rulemaking process.

SB 223 (Leno) Voter-approved local assessment: vehicles (A-8/31/11)

Summary: This bill would authorize the City and County of San Francisco to impose a voter-approved local assessment for specified vehicles if certain conditions, including approval by local voters, are met. The Personal Income Tax Law and the Corporation Tax Law authorize various deductions against the income that is otherwise subject to tax under those laws, including a deduction for local taxes that were paid or incurred by a taxpayer. This bill would require the Franchise Tax Board to annually notify the department of estimated revenue losses to the state resulting from taxpayers deducting, for purposes of the Personal Income Tax Law and the Corporation Tax Law, the voter-approved local assessments authorized by this bill.

STATUS: Vetoed by the Governor October 4th; Veto message below:

I am returning Senate Bill 223 without my signature. This bill permits the City and County of San Francisco to enact a voter-approved local assessment on vehicles registered to a San Francisco address. Before we embark on a piecemeal approach for one city, we should try to fashion a broader revenue solution to our state's fiscal crisis.

SB 570 (Rubio-D) San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD): high polluter vehicles: school buses (A-4/25/11) Sponsor: SUVUAPCD Staff: Jessica Golly (916) 651-4016

Summary: Existing law, until January 1, 2013, requires the San Joaquin Valley Unified Air Pollution Control District (district) to develop and administer, in consultation with the State Air Resources Board, a voluntary program to remove high polluter vehicles within the district by exchanging high polluter vehicles in the district for donated vehicles, as provided. This bill would repeal these provisions, and instead require the district to administer, until January 1, 2014, a voluntary program to replace or retrofit high emitting school buses in the San Joaquin Valley. By imposing duties on a local air district, the bill would impose a state-mandated local program.

STATUS: Signed by the Governor October 6th; Chapter 494 of 2011 Statutes.

SB 724 (Dutton-R) ARB: penalties: mobile source certification. (A-6/22/11)

Summary: This bill would require an application for certification of a new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family to be approved or disapproved pursuant to specified requirements. The bill would authorize the state board to approve an application for certification of a new, a carryover, or a partial carryover on-road or off-road vehicle, engine, or equipment family for any model year that has been certified by the federal Environmental Protection Agency without requiring the applicant to submit to additional testing prior to certification, if specified requirements are met.

STATUS: Vetoed by the Governor on September 6th. Veto message below:

VETO MESSAGE:

I am returning SB 724 without my signature. This bill would require to Air Resources Board to respond to an applicant in writing within 30 working days of receipt of a certification application for a vehicle, engine, or equipment family regarding the application's completeness and acceptance for filing. If the ARB determines that the application is not complete, ARB must specify in writing the information required to make it complete. The ARB's vehicle and equipment certification process is intended to ensure that new vehicles, equipment, and engines sold in California meet minimum emission standards to protect air quality and public health. Under the current certification process, the ARB works closely with applicants to obtain the information necessary to make an approval determination and issue a certification for sale. In fact, ARB issues approval determinations within 90 days for over 96 percent of applications once they are deemed complete. Moreover, this bill could interfere with the iterative information gathering application approval process, thereby rushing the process and inadvertently allowing vehicles with defective emission components on the market. Finally, I would note that no real or convincing evidence has been presented to me that justifies a rigid, 30-day deadline for a written response.

The Two-Year Bill list follows. As always, please don't hesitate to contact us if you have any questions or need additional information at (916) 447-8982 or pane@cw.com.

TWO-YEAR BILLS

AB 128 (Logue-R) Air Resources Board: Alternative actions to assessing penalties (I-1-11-11) Sponsor: author Staff: David Kruckenberg (916) 319-2003

Summary: This bill would authorize the state board, in lieu of assessing penalties for a violation of an air pollution control law administered by the state board, to require a person who has violated that law to spend an amount equivalent to the amount that would have been assessed for the violation toward actions to comply with the air pollution control law that was violated or toward a supplemental environmental project.

STATUS: Assembly Natural Resources; now a Two-Year Bill.

CBA Position: Support (taken at February 11th Board meeting)

AB 537 (Williams)-D Vehicles: commercial vehicles: weight restriction: State Route 154.

(A-4/12/11) Sponsor: Santa Barbara CAG Staff: Erin Baum (916) 319-2035

Summary: This bill would prohibit, with specified exemptions, the operation of a commercial vehicle with 3 or more axles, or a gross vehicle weight or a combined gross weight of 9,000 pounds or more on the segment of State Route 154 (SR-154) that is located between the State Route 101 and SR-154 intersection in the City of Santa Barbara and SR-154 and State Route 246 intersection in the County of Santa Barbara. The bill would provide that, upon conviction, a violation of the above prohibition is subject to a fine based on the weight of the vehicle or \$1,000, whichever is greater.

STATUS: Assembly Transportation; Now a Two-Year Bill.

AB 1099 (Lowenthal-D) Commercial motor vehicles: emissions standards (A-7/12/11)

Summary: This bill would require the Department of Motor Vehicles to refuse registration for any commercial motor vehicle subject to registration that is of a 1996 or older model year with a gross vehicle weight rating of more than 26,000 pounds, except for any construction truck that is subject to an extension pursuant regulations adopted by the board

as determined by the department. The bill would also exempt from this requirement a commercial motor vehicle registered in California prior to January 1, 2012, if the commercial motor vehicle is continuously registered, as specified, or is certified nonoperational after January 1, 2012.

STATUS: Assembly Appropriations Suspense File; now a Two-Year Bill.

**AB 1332 (Donnelly) State Air Resources Board: abolishment. (I-2/18/11) Sponsor: Author
Staff: Kelly Shaw (916) 319-2-59**

Summary: This bill would abolish the State Air Resources Board and transfer its authority, duties, powers, purposes, responsibilities, and jurisdiction to the California EPA

STATUS: Assembly Natural Resources; Now a Two-Year Bill.

**SB 125 (Emmerson-D) Vehicles: toll highways of vehicular crossings: evading toll payments
(A-4/25/11) Sponsor: CA Toll Operators Committee Staff: Teresa Trujillo (916) 651-4037**

Summary: This bill would authorize a law enforcement officer to impound, or cause to be impounded, a vehicle that is registered to a chronic evader of toll payments, as defined, until all outstanding tolls and all required penalties are paid to the issuing agency.

STATUS: Assembly Transportation & Housing; Now a Two-Year Bill

**SB 129 (Leno-D) Medical marijuana: qualified patients and primary caregivers:
employment discrimination. (I-1/27/11) Sponsor: Americans for Safe Access
Staff: Barry Steinhart (916) 651-4003**

Summary: This bill, notwithstanding existing law, would declare it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment or otherwise penalize a person, if the discrimination is based upon the person's status as a qualified patient or a positive drug test for marijuana, except as specified. The bill would authorize a person who has suffered discrimination in violation of the bill to institute and prosecute a civil action for damages, injunctive relief, reasonable attorney's fees and costs, any other appropriate equitable relief, as specified, and any other relief the court may deem proper. The bill would not prohibit an employer from terminating the employment of, or taking other corrective action against, an employee who is impaired on the property or premises of the place of employment, or during the hours of employment, because of the medical use of marijuana.

STATUS: Senate Floor Inactive File; Now a Two-Year Bill.

**SB 144 (Wyland-R) Employment: meal periods. (I-2/1/11) Sponsor: Author
Staff none yet assigned. THIS IS A SPOT BILL THAT MAY NOT BE MOVED THIS YEAR.**

Summary: Existing law requires an employer to provide an employee with one meal period during a work period of more than 5 hours and 2 meal periods during a work period of 10 hours, as prescribed. This "Spot Bill" would make non-substantive changes to these provisions.

STATUS: Awaiting committee assignment; Now a Two-Year Bill.

**SB 316 (Emmerson-R) Meal periods: exemption: transportation industry. (I-2/14/11)
Sponsor: UPS Staff: Teresa Trujillo (916) 651-4037**

Summary: Existing law prohibits, subject to certain exceptions, an employer from requiring an employee to work more than 5 hours per day without providing a meal period and, notwithstanding that provision, authorizes the Industrial Welfare Commission to adopt a working condition order permitting a meal period to commence after 6 hours of work if the order is

consistent with the health and welfare of affected employees. This bill would add employees employed in the transportation industry to the list of employees exempt from these provisions.
STATUS: Senate Labor & Industrial Relations; Now a Two-Year Bill.

SB 319 (Wyland-R) Meal and rest periods: exceptions. (I-2/14/11) Sponsor: National Armored Car Assn. Staff: Julie Hooper (916) 651-4039

Summary: Existing law prohibits, with specified exceptions, an employer from requiring any employee to work during a meal or rest period mandated by an applicable order of the Industrial Welfare Commission. Existing law requires, with specified exceptions, employers to provide meal and rest periods to employees during work periods of specified duration and exempt from these provisions an employee in the transportation industry whose work places him or her inside an armored car in shifts during a workday.
STATUS: Senate Labor & Industrial Relations; Now a Two-Year Bill.

**SB 389 (Dutton-R) Employment: meal periods. (A-5/4/11)
Sponsor: Author Staff: Anissa Nachman (916) 651-4031**

Summary: This bill would provide that the maximum compensation an employee may receive for the employer's failure to provide a meal or rest period in a workday is one additional hour of pay. This bill would also provide that the payment of that additional one hour of pay per workday in which the employer failed to provide a meal period or a rest period would constitute compliance with any requirement to provide an employee with a meal period or rest period and is the exclusive remedy for that failure to provide a meal period or rest period and would no longer constitute a misdemeanor. This bill would declare that it is to take effect immediately as an urgency statute.
STATUS: Senate Labor & Industrial Relations; testimony only; no vote taken. Now a Two-Year bill.

SB 719 (Vargas-D) Vehicles: motor carrier of property: insurance (A-3/24/11) Sponsor: Author Staff: Ermalinda Ruiz (916) 651-4040

Summary: This bill would authorize the director of the department to initiate a rulemaking process, upon making a finding that the minimum coverage requirements are insufficient, to alter, by regulation, the required coverage amounts to better reflect market conditions, costs, and operational risks. The bill would also authorize the director to alter the minimum coverage requirements for motor carriers based on the time, place, and manner of their operations, including a motor carrier's operations while operating off of a public highway if that operation is being conducted pursuant to its motor carrier permit.
STATUS: Senate Transportation & Housing; Now a Two-Year Bill.

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