

STATE BAR FEE BILL GOES TO GOVERNOR

The Assembly Thursday concurred in Senate amendments to [AB 1708](#) (Assem. Judiciary Committee), the bill which would extend for another year the State Bar's funding authority. The 61-14 vote – the most favorable on a State Bar Fee Bill since 1995 – sends the measure to Governor Davis for his signature.

The Senate earlier in the week had approved the measure on a 28-8 vote – also the most favorable vote on a State Bar Fee Bill in that house since 1995.

In addition to keeping the State Bar functioning, the bill would permit the Bar to seek money judgments against attorneys who have had discipline costs imposed or whose actions have resulted in payments from the Client Security Fund. It also substantially narrows a loophole in existing law that permits well-compensated attorneys to take advantage of fee scaling provisions intended for their low-income counterparts.

The bill, presented to the Assembly by Judiciary Committee Chair [Ellen Corbett](#) (D-San Leandro), would also require the Bar to report back to the Legislature by January 1, 2005, on the status of its regulatory and disciplinary efforts concerning alleged abuses by private actions brought on behalf of the general public under the state's Unfair Competition Law (B&P Code §17200 *et seq.*), and make several technical, clean-up changes.

LIMITED CONFIDENTIALITY BILL ALSO APPROVED

Earlier in the week, Assembly concurred in Senate amendments to [AB 1101](#), Assembly Member [Darrell Steinberg's](#) bill to permit a lawyer to reveal confidential client information "to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual."

The vote on the bill was 75-1, with Assembly Member [Doug LaMalfa](#) (R-Biggs) casting the sole 'No' vote. The Senate had earlier approved the bill on a 35-1 vote.

The Senate amendments call for the President of the State Bar to appoint a Task Force to draft a corresponding rule of professional conduct to flesh out issues regarding the statute, and defer the

effective date of the bill until July 1, 2004, to enable the task force to complete its charge.

The bill now goes to Governor Davis for signature or veto. The Governor, who last year vetoed legislation ([AB 363](#)) by Steinberg to permit attorneys representing public entities to disclose "improper governmental activity" in certain circumstances, has not indicated whether or not he will sign the bill.

UCL BILL AMENDED

One of the two remaining bills to amend the state's Unfair Competition Law (B&P Code §17200 *et seq.*), [SB 122 \(Escutia\)](#), was substantially amended on the Assembly floor Thursday after an extensive and contentious debate over whether the bill should be re-referred to the Assembly Judiciary Committee for further hearing.

The amendments respond to concerns raised from various sources about the two-bill UCL-reform package sponsored by the Consumer Attorneys of California. The other part of the package, [AB 95 \(Corbett\)](#) is not expected to be amended.

The most significant of the amendments to SB 122 would:

- Require court review of the full provisions of offers to settle or compromise, rather than simply the attorneys' fees provisions thereof;
- Limit the disgorgement remedy in the bill to ill-gotten gains, not profits;
- Exempt small business from the disgorgement provisions of the bill;
- Limit the organizations which could receive *cy pres* awards under the bill to defined organizations or foundations to support projects consistent with the purposes of the underlying litigation, to court-approved funds consistent with the particular action, or, if neither of the two is available, to the State of California.
- Require notice to the Attorney General in cases where *cy pres* awards are sought;
- Prevent double recovery on the same action.

Republican Assembly members sought to have the bill re-referred to the Assembly Judiciary Committee, arguing that the amendments were so extensive that they demanded full analysis and committee review. The move was rejected by house Democrats, however, since returning the bill to the floor after such re-referral would require a 2/3 vote of the house. Since house Republicans would be

unlikely to provide the votes necessary to reach the 2/3 threshold, the result of re-referral would be to kill the bill.

WORKERS COMP CONFERENCE COMMITTEE COMPLETED

The joint-house Conference Committee on Workers' Compensation Reform capped off three days of hearings on Thursday evening after taking testimony from a variety of stakeholders, including insurers and labor. Thursday's hearing was the last scheduled hearing of the committee prior to the release of its draft proposal on workers' compensation reform.

The hearings, which were conducted through a series of multi-stakeholder panel presentations, were intended to provide the committee with background information, trends and costs relative to California's workers' compensation system. The committee has 19 workers' compensation bills under its auspices, though it is unclear if the package of draft proposals will utilize each of the available legislative measures.

Senator [Richard Alarcon](#), chair of the Conference Committee and the Senate Labor and Industrial Relations Committee, adjourned the committee after stating that its staff has been and will continue to work on the draft proposals. He did not give a specific date for the release of the drafts or reconvening the committee, but sometime next week seems to be a good bet on both accounts. The Legislature is scheduled to begin its fall recess at the close of business on September 12th.

FINANCIAL PRIVACY BILL SIGNED – BUT PROBLEMS LOOM

As expected, Governor Davis Wednesday signed into law the major financial privacy bill ([SB 1 – Speier](#)) passed last week by the Legislature. Reports in the national press, however, indicate that the effort might be undone in Washington, D.C., where lawmakers, supported by the Bush administration, are moving a bill forward that would pre-empt stronger state laws, including the one newly signed by Davis.

According to [Wired](#) magazine, the *New York Times*, and other sources, if the current version of [HR 2622](#) doesn't change dramatically, it is likely to nullify the new California regulation that allows Californians to say no to financial companies that want to share their personal information with marketing partners

and most affiliated companies. However, the provisions of the California legislation that force companies to get explicit permission to share information with unrelated companies would likely stand.

THE RECALL

The Scene has received the following tidbits from one of its sources (who many of you have heard on the radio, seen on TV, and/or read his articles in the state's major newspapers). This is the latest:

1. An internal poll done for the state's Democrats had Governor Davis losing the recall question by 13%, with 54% voting "yes" on the recall, and 41% voting "no". The same poll showed Cruz Bustamante leading the cast of 130+ potential governors with 33% of the vote. Schwarzenegger came in second with 25% of the vote
2. Other polls are all over the place. ABC News has Schwarzenegger up by 16% over Bustamante, while the Los Angeles Times finds Bustamante ahead by 13%.
3. For Schwarzenegger to win he needs to get more specific on the issues. As of this morning, he was not going to participate in a debate sponsored by the Contra Costa Times.
4. Schwarzenegger's people feel the race is too close to call.

It is interesting to note that due to the recall voter interest is way up, local TV stations are spending much more time following the race and California politics, and voter registration is very active. If you are interested in recall subjects such as the list of candidates, questions and answers, candidate statements, etc. take a look at the Secretary of State's web site: www.ss.ca.gov.

LEGISLATIVE DEADLINES UPCOMING

- [August 29 \(Friday\)](#) – Last day for legislative fiscal committees to report bills to the floor. ALSO bills received by the Governor by midnight of this day must be signed or vetoed by September 10. Bills received by the Governor after this date do not have to be acted upon until midnight, October 12.
- [Sept. 1 – Sept. 12](#) – Floor sessions only; no committee may meet for any purpose.
- [Sept. 12 \(Friday\)](#) – Last day for any bill to be passed. Interim recess begins on adjournment.
- [October 12 \(Sunday\)](#) – Last day for Governor to sign or veto bills received after August 29.