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CALIFORNIA RETAILERS ASSOCIATION
 980 NINTH STREET, SUITE 2100 · SACRAMENTO, CA 95814
 (916) 443-1975 · FAX (916) 441-4218

February 16, 2005

Golden State Report

Legislative Update

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Dates to Remember:

- Feb 18—Last Day to Introduce New Bills
- Feb 21—President's Day Observed
- Jun 22—CRA Member Dinner
- Jun 23—CRA Annual Meeting, Sacramento, CA
- Jun 25-28—Western States Retail Conference, Coronado Island, CA

HEALTH AND HUMAN SERVICES ANNOUNCES DRUG DISCOUNT PLAN FOR UNINSURED

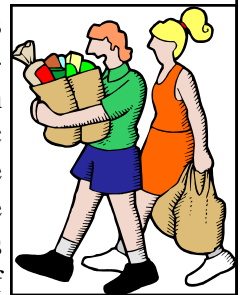
Secretary of Health and Human Services Secretary Kim Belshe followed up on the announcement by the Governor during his State of the State address by presenting the details of the new "Cal Rx" program. The Pharmaceutical Researchers and Manufacturers Association (PhRMA) has agreed to spend \$10 million to create a Web-based clearinghouse to help Californians enroll in manufacturers' free and discount drug programs. The



program will be available to persons with incomes below \$27,930 for an individual or \$56,550 for a family of four; enrollment will occur through a pharmacy, the Internet or a physician's office. CRA has sent the program summary information to our members with pharmacies, but additional copies are available upon request. The program still requires implementing legislation, which is **SB 19**, jointly carried by Democrat Deborah Ortiz and Republican Chuck Poochigian.

LOS ANGELES CONSIDERS BAG FEE ORDINANCE

The City of Los Angeles is beginning discussions on reduction of plastic litter, and a bag fee may be one of the recommendations that comes out of the study. Councilman Ed Reyes chairs a committee on the Los Angeles River and his focus is on litter and pollution of the river. A recent trash characterization study was conducted in the City and it showed that plastics are the number one component in the trash. Staff has been directed to develop a series of recommendations in the next 60 days.



GROCERY INDUSTRY: SLOTTING FEE HEARING

The Senate Business and Professions Committee held a hearing on "slotting fees" on February 9th. Speaking on behalf of indus-

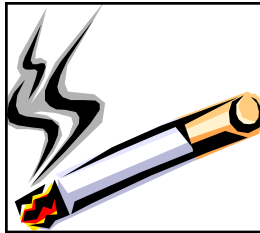


Legislative Update cont.

try was Mr. Christopher MacAvoy, an attorney who serves as outside counsel to the Food Marketing Institute, and who is an acknowledged national expert on the issue. Copies of the Background Paper prepared for the hearing by the Senate Office of Research are available from CRA. Senator Liz Figueroa is carrying a bill to require disclosure of slotting fees to all vendors.

FIRE-SAFE TOBACCO LEGISLATION INTRODUCED

Assemblyman Paul Koretz has introduced **AB 178** which would require that only “fire-safe” cigarettes may be sold in California. The technology exists to manufacture cigarettes that extinguish themselves after a period of time, and supporters say they save lives by avoiding fires caused by unattended or forgotten lit cigarettes. Opponents argue that they give smokers a false sense of security, and that they self-extinguish so soon that smokers actually end up smoking them faster and then smoking more.



OBESITY LIABILITY LAWSUIT REINSTATED: MAY HAVE IMPLICATIONS FOR FOOD RETAILERS AND RESTAURANTS

You may recall the 2002 lawsuit filed by a couple of teenagers in the Supreme Court in New York alleging that eating at McDonald’s made them fat. The complaint was dismissed in January of ’03, but an amended complaint was filed, alleging false and deceptive advertising practices in the promotion of unhealthy foods. This case was ultimately dismissed in September of 2003 because the judge decided that the plaintiffs had “failed to demonstrate the required element of causation (i.e., a plausible theory of how they had been injured in any way)”.



Now, the federal 2nd District Court of Appeals in New York has reinstated the case, saying that, while causation had not been proved, the plaintiffs were not required at the early stage of the case to make such a showing and they are entitled to more discovery to try to prove their case.



This decision will push forward more state-level proposals to provide immunity from liability for manufacturers and sellers of foods that may have a long-term effect on a person’s weight or health. Such a bill died in California last Session. **AB 173**, Houston, has been introduced again this year, but is not likely to pass.

PUC STAYS TELECOMMUNICATIONS “BILL OF RIGHTS”

The Consumer Telecommunications Bill of Rights, adopted last May by the California Public Utilities Commission, spelled out 15 requirements, designed to protect people from cell phone deceptive marketing and billing practices by cell phone companies.



Some of these criteria included: letting customers cancel new service within 30 days; printing phone bills in 10 point or bigger type; and more detailed pricing information.

On January 27th the PUC issued an indefinite “stay” of the rules, on a 3-1 vote, led by Commissioner Susan Kennedy.

Speculation now is that a Telecommunications Bill of Rights could be introduced in the Legislature, to put it into statute now that the regulations have been stayed.

LOTTERY COMMISSION SIGNS CALIFORNIA UP FOR PARTICIPATION IN MULTI-STATE LOTTERY

In an attempt to further boost sales, the Lottery has decided to participate in Mega Millions. Today, only California and Florida do not participate in a multi-state game.

Powerball has 27 participating states plus D.C and the Virgin Islands, and Mega Millions has 11 member states. The Lottery hopes to increase sales by approximately \$500 million a year through offering the new multi-state game opportunity to players. Like SuperLotto, the \$1 game will be available at all current retailer locations, with two draws per week. A player chooses 5 numbers from one field and one number from another field, with 9 ways to win a cash prize. Winning tickets will be cashed the same way as SuperLotto.

All the money wagered stays in California. Players in other states cannot cash their winning tickets in California. As with all other California Lottery games, 32-33% goes to funding the jackpot, 50% of revenues will be returned as prizes, and 34% will go to education. The precise implementation dates is yet to be determined.

TIDBITS

~In 2005, The California Unemployment Insurance Fund, like in 2004, is projected to have a period of insolvency. Last year the Fund reached a level that triggered a 15% solvency surcharge in addition to the maximum rate schedule for employer contributions. In 2005 we will remain on the F+ schedule.

Assuming that the 2004 claims and employment trends continue, the 2005 claims disbursements from the fund are projected at \$5.6 billion while the employer contributions are projected at \$5.2 billion. This disconnect in employer contributions and benefit disbursements is largely the result of benefit increases required by SB 40 in 2001. The last increase was effective 1/1/05 from \$410 to \$450 for the maximum benefit level.

In 2004 California was able to reimburse the federal government for borrowed funds prior to interest being charged. Because the fund balance is lower in 2004 than it was in 2003, this year California may not be able to repay prior to interest charges. If this is the case, California employers will have an additional tax to cover interest payments as well as

principle. A substantial increase in employment and subsequent employer contributions is the only way the Fund can avoid a costly shortfall.

~The Berkeley City Council appears to have moved away from its consideration of a **minimum wage increase**. In a recent meeting to set the City's priorities for the year, "minimum wage" did not receive enough votes to leave it on the priority list.

SB 144, authored by Republican Senator George Runner, would

SB 144 would enact new food code

replace current law relative to food facilities. Co-sponsored by CRA, the bill would make the following changes:

Uniformity and Consistency

- Modeled after US Food and Drug Administration (FDA) Food Code
- Provides for greater uniformity of interstate retail food regulation
- Clarifies the enforcement actions that local environmental health officials should take relative to temporary food facilities and activities
- Provides clear and uniform requirements for outdoor foodservice
- Contains provisions that will clarify and expand the requirements pertaining to equipment, utensils, and linens used in food service operations

Best Available Science

- Based on sound scientific principles that:
 - Expands the type of food preparation activities that can take place on a mobile food facility, consistent with good public health principles
 - Expands and clarifies the restrictions and requirements related to the utilization of Hazard Analysis Critical Control Point (HACCP) food safety systems
 - Expands the requirements related to minimum cooking temperatures of potentially hazardous foods

Highly Susceptible Populations

- Contains specific provisions to address the increased public health risk associated with food service for "highly susceptible populations" (including clients of community care facilities, residential care facilities for the elderly and child day care facilities)

Consolidation/Ease of Use

- 22 separate legislative articles in current California law have been reduced, consolidated, and reformatted into 13 articles

Documentation

- Introduces concept of "person in charge" of a retail food facility and identifies responsibilities of said person

Flexibility

- Contains detailed "Variance" provisions, thereby providing for alternate food safety practices that provide equivalent consumer protection

Built In Acceptance

- Sponsored by the California Retail Food Safety Coalition (CRFSC), a broad-based coalition of federal, state, and local regulators and the retail food industry

Huge Turnout for Hearings on Meal Rest Periods Reprinted from CMTA Capitol Update

Feb. 11, 2005

The auditorium and foyer were packed beyond capacity at a Los Angeles public hearing on meal and rest periods. The hearing was halted temporarily to clear the aisles and entrance ways in order to comply with fire and occupancy requirements.

Led by many from the restaurant industry, workers in support of the proposed regulations turned out in such large numbers that only those workers signed up to testify were permitted in the auditorium. Organized labor and other opponents were clearly out numbered and surprised by the strong support. Throughout the morning workers wishing to testify could only enter the auditorium when a person left the room.

The Division of Labor Standards Enforcement (DLSE) convened the first of three hearings to receive comments, objections and recommendations from the regulated community on the proposal to adopt regulations on section 13700, Meal and Rest Periods, in Title 8 of the California Code of Regulations. Because of the large number of workers and employers wishing to testify, testimony was limited to a maximum of three minutes.

The next hearing in San Francisco also had a significant turnout of workers and employers in support of the proposed regulations, but the numbers were more balanced between proponents and opponents. A disturbing difference was noted between opposing testimony in Los Angeles and San Francisco. In San Francisco opponents mischaracterized the proposal as a take away of their break and meal periods. While it is clear that the proposed regulation does not take away breaks or meal periods, the news media was eager to run with it.

The Industrial Welfare Commission (IWC) has been de-funded and is unable to act on these issues. The courts and DLSE have tossed out the opinion letters as "underground regulations". In the meantime, employers are being sued in class action suits on a daily basis with little regulatory direction on how to mount a successful defense. It is imperative that DLSE take action to provide direction and clarity for employers.

A large number of individual meal period violation claims have been filed. Over 200 class action meal period violation claims have been filed and are currently being held by DLSE pending new regulations.

Classifying as a "wage" the one hour of regular wage an em-

ployer must pay an employee for each workday in which a meal or rest period is not provided is the driving force behind class action lawsuits. The monetary recovery of a "penalty" violation is limited to one year, but the monetary recovery for a "wage" violation may go back three years, including attorney fees.

Attorneys suing large employers in class action suits need only allege missed meal and rest break periods for all non-exempt employees. In defense, the employer must demonstrate that meal and rest breaks were provided. Defending the claim is further complicated by the attorneys' allegation that employers have a duty to provide the meal and rest periods and are obligated to insure that they are taken. Absence a time clock with employees punching in and out for lunch and rest periods, it is an extremely difficult assertion for an employer to successfully defend against.



Under current rules an employer and employee cannot mutually agree to waive the 30 minute meal period. This means an employee cannot work through their meal period and leave 30 minutes early. An employee cannot take an "on duty" meal period unless the employee is relieved of all duty during a 30 minute meal period. An "on duty" meal period may only be permitted when the nature of the work prevents an employee from being relieved of all duty and there is a written agreement between the parties. Generally speaking, this eliminates most jobs except safety and emergency personnel, nurses, manufacturing processors etc, where workers absolutely cannot leave the position.

The proposed regulation would provide employees and employers with flexibility to choose when and at what time meal and rest periods are taken.

The final public hearing on the proposed regulation is scheduled on:

Wednesday, March 2, 2005 at 9:00 a.m.
Fresno State Building, Room 1036
2550 Mariposa Mall, Fresno, CA 93721

Dan Walters: It's time to cut a newly serious Schwarzenegger some slack

It's easy to critique Arnold Schwarzenegger's rookie year as California governor, and this space has contained its share of criticisms about errors of action and inaction.

If one were to generalize about those mistakes, it would be that he overpromised the voting public and specific interest groups, especially on fixing the deficit-saturated state budget.

It began on inauguration day 14 months ago, when his first act was to reinstate a very popular, \$4 billion per year reduction in car taxes, while insisting that he could still fix the chronic budget gap. And it continued with promises to educators about school financing, and to voters about balancing the budget without deep spending cuts or tax increases.

In June, this column analyzed Schwarzenegger's problem this way:

"Despite his cigar-chomping, tough-guy image and his Terminator-like rhetoric, Schwarzenegger now comes across as someone who values popularity over effectiveness and never heard, or doesn't accept, Harry Truman's sage political advice: 'If you want a friend in Washington, get a dog.'

"Perhaps it's just that Hollywood and Sacramento are different cultures. In Hollywood, popularity is everything. If you can't get people to come to your movies, it doesn't matter how good an actor you may be. Conversely, you can be a very untalented actor, but if you can ring up box office receipts, Hollywood loves you. And Schwarzenegger loves to be loved.

"The corollary to that preoccupation with popularity is Schwarzenegger's evident penchant for telling people what they want to hear, rather than what they need to hear. He's done that with the public, issuing bland assertions that everything is 'fantastic' regardless of the reality, and in face-to-face sessions with other politicians and interest groups. He lets even diametrically opposed factions believe that he's standing with them, breeding confusion and mistrust."

The chickens that Schwarzenegger uncaged with profligate promising are now returning to the roost, most notably in harsh criticism from his erstwhile buddies in the California Teachers Association over his decision not to give schools \$2.3 billion that they claim under the state's complex school financing law. Although Schwarzenegger pledged that schools would get their share of any increase in state reve-

nues, he's now renegeing - saying, in effect, that to honor that commitment without raising taxes, he would have to slash deeply into spending on health and welfare programs benefiting the poor.

The Republican governor's pullback, which would still leave schools with relatively healthy increases in financing, is actually a sign that Schwarzenegger has matured as a political leader and is finally willing to spend his popularity to achieve some lasting accomplishments.

With his various proposals to overhaul the structure of state government, Schwarzenegger implies that he now realizes that there are no easy fixes to our crisis of governance, that things aren't "fantastic," that merely changing the name on the governor's office or sharing cigars with Democratic legislators doesn't get the job done.

By the same token, the crescendo of criticism from the CTA and other interest groups indicates that they realize that Schwarzenegger is beginning his second year in office with a stronger sense of purpose and really intends to shake up the status quo.

With that maturation, we should be willing to give Schwarzenegger a break. His specific proposals, whether in his new budget or in his reform agenda, should be rigorously debated. Everything should be on the table, including new taxes. But we should also recognize that a rich, globally famous movie star didn't need to be governor of California, but volunteered for the job out of a sincere desire to perform a civic duty - to right a badly listing ship of state and overhaul a political system that had become corrosive and dysfunctional.

He may succeed or he may fail, but we should cut him some slack for even trying to govern a state that to many Capitol insiders and outside analysts had become ungovernable. And we should ask ourselves this question: If Schwarzenegger, with his celebrity, charisma, independence, ideological centrism and popularity, cannot govern, who possibly could?

**By Dan Walters, Sacramento Bee Columnist
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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
 PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0088
 916-341-6906 • FAX 916-341-6951
 www.boe.ca.gov

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January 31, 2005

California Retailers Association
 980 9th St #2100
 Sacramento CA 95814-2741

IMPORTANT NOTICE

Do Your Members Make Retail Sales of Televisions, Computer Monitors, Laptop Computers, or Other Video Display Devices?

Retailers Must Collect Electronic Waste Recycling Fees Starting January 1, 2005

If your member makes retail sales (including leases) of new or refurbished televisions, computer monitors, laptop computers or other video display devices covered by a new state law, they must collect a new electronic waste recycling fee beginning January 1, 2005 (Senate Bill 50, Stats. 2004, ch. 863).

Your member must collect the recycling fee whether they sell or lease from a store, by mail order, or over the Internet. Penalties for not collecting the fee can be as high as \$5,000 per sale or lease.

If your member is required to collect the fee, they must register with our agency. After registration, we will send fee returns every quarter, unless the Board notifies them otherwise.

Revenue from the fee will be used to help safely recycle video display devices, which contain hazardous materials.

Covered devices and fee amounts

The fee currently applies to cathode ray tubes (CRTs) and devices that contain them—including televisions and computer monitors. It also applies to laptop computers and to computer monitors with flat panel and liquid crystal displays. Only products with display screens that measure *more than 4"* diagonally are subject to the fee. These are called "covered electronic devices," or CEDs.

The fee does not apply to video display devices that are

- Part of a motor vehicle.
- Contained within, or a part of a piece of industrial, commercial, or medical equipment.
- Contained within certain appliances. Examples include refrigerators, clothes washers, and microwave ovens.

The new law requires manufacturers to inform your members which devices are subject to the fee. The fee must be collected on covered electronic devices even if the manufacturer does not contact them. New products may be added after testing by the state Department of Toxic Substances Control.

The fee amount varies from \$6 - \$10, based on the size of the display. The amount of the fee is *not* subject to sales or use tax. Your members may keep three percent of the fee to cover their collection costs.

For an application and more information

For an application form and information on the new fee and fee rates, or general information on covered electronic devices, see our website: www.boe.ca.gov/sptaxprog/ewaste.htm.

For answers to questions about the new fee or to have us mail you a printed copy of the application, please call our Information Center: 800-400-7115 (TDD/TTY: 800-735-2929). Staff can help you M-F, 8-5, except state holidays.

For more detailed information on covered electronic devices, call the Department of Toxic Substances Control at 916-327-4499 or see their website: www.dtsc.ca.gov.