



FLOOR ALERT

September 5, 2017

TO: Members, California State Senate

FROM: California Chamber of Commerce
California Manufacturers and Technology Association
California Retailers Association
Civil Justice Association of California

**SUBJECT: AB 569 (GONZALEZ FLETCHER) DISCRIMINATION: REPRODUCTIVE HEALTH
OPPOSE**

The California Chamber of Commerce and the organizations listed above must respectfully **OPPOSE AB 569** (Gonzalez Fletcher), as amended on September 1, 2017 as it creates another pathway of costly litigation against an employer for issues that are already protected under multiple laws, as well as holding employers liable for providing insurance coverage as a benefit to employees.

AB 569 prohibits an employer from taking an adverse action against an employee based upon the employee "or the employee's dependent" use of any drug, device or medical service related to reproductive health. The disclosure of any employee medical information to an employer, without employee consent, is already prohibited under the Health Insurance Portability and Accountability Act (HIPAA). Additionally, the Fair Employment and Housing Act (FEHA) already prohibits discrimination based upon pregnancy, perceived pregnancy, childbirth, or medical condition related to pregnancy. *Johnson Controls, Inc. v. Fair Employment and Housing Act*, 218 Cal.App.3d 517 (1990); *Badih v. Myers*, 36 Cal.App.4th 1289 (1995). FEHA also precludes discrimination on the basis of marital status, gender or sex. Accordingly, there are multiple levels of protection that exist to protect an employee from any adverse action for medical/reproductive health related issues that expose employers to costly litigation and damages. **AB 569** does not add any layer of protection, just another avenue of litigation under the Private Attorneys General Act (PAGA), Labor Code Section 2698, *et seq.*

Moreover, because such actions are already protected under FEHA, **AB 569** also exposes employers to different state agencies with different procedural and investigative requirements. Claims under FEHA are required to be filed with the Department of Fair Employment and Housing (DFEH), whereas claims under the Labor Code would be subject to enforcement through the Labor Code.

AB 569 also prohibits an employer from requiring an employee to sign a code of conduct or "similar document" that purports to deny any employee the right to make choices regarding his or her own reproductive health care decisions. While we appreciate the author's effort to narrow this language, we look forward to further discussions regarding what qualifies as a "similar document" to make sure there are no unintended consequences with regard to the type of documents captured under this phrase.

For these reasons, we are **OPPOSED** to **AB 569**.

cc: The Honorable Lorena Gonzalez Fletcher
Camille Wagner, Office of the Governor
Gideon Baum, Senate Committee on Labor and Industrial Relations
Cory Botts, Senate Republican Caucus
Senate Floor Analyses
District Offices, Members, California State Senate
Department of Industrial Relations
Labor and Workforce Development Agency