

**CEMA Government Affairs
La Quinta CA.
March 2019**

NEW STUFF – DEVELOPMENTS

HR.4318, S.2018 – Repeals expired reductions in duties and taxes for imported chemicals and other imported products that lapsed since similar legislation enacted in 2012.

Analysis: The bills seek to reduce or eliminate nearly 1,700 taxes on imported products not manufactured or available domestically. The last MTB passed by Congress expired on December 31, 2012. Since then, businesses have paid billions of dollars of tariffs on products not even made in the United States, to the detriment of good-paying American jobs and American competitiveness. The Miscellaneous Tariff Bill Act of 2018 would eliminate import tariffs of more than \$1.1 billion over the next three years and boost U.S. manufacturing output by more than \$3.1 billion. (Source NAM Analysis)

Status: 12/18 - Signed into Law

Infrastructure

According to the US Chamber “*Congress must come to grips with the fact that most of this system was built 60-150 years ago... congestion on the Interstate highway System alone cost the trucking industry nearly \$74.5 billion in 2016 and wasted more than 1.2 billion hours,*” Donohue explained. *In addition, congestion and vehicle repairs due to poor roads cost the average commuter over \$1,500 - a majority of small businesses consider roads and bridges as critical to their success. But 62% said local roads and bridges are in average, poor, or very poor conditions, and 52% said the same about the state of U.S. highways*”. Sources cite there is over \$100 Billion in private financing waiting on the sidelines to invest in projects plus the ability to strengthen private- public partnerships. Both the White House and both sides of the aisle in Congress have stated this must be addressed and yet, nothing has been done....

HR.6760 – Small Business Tax Cut Act - Seeks to make permanent the 20% deduction on business earned income for pass- through entities (S Corp).

Status: Passed House and sent on to Senate where it sits

S.659 – A Bill to Provide Certain Additional Requirements with Respect to Patent

Status: Interestingly – published without text 3/5/19 – sent to committee – will monitor

HR.1409 – Health Care Pricing Act of 2019 – Requires all providers of health care services, products, devices, medicines – including hospitals, doctors, nurses, pharmacies, device retailers and wholesalers to make all pricing related to same available at point of purchase, over the internet and in writing. This must include pricing and all applicable discount layers.

Status: Introduced 2/27/19 – given the facts that health care represents over 16% of the economy, represents a major cost to employers and the true pricing for health care services and products is obscured in every way imaginable, this is desperately needed legislation

HR. 300 – Unfunded Mandates Information and Transparency Act of 2019 – Requires agencies considering the issuance of new rules – to consider the cost and benefits on business, states, individuals – provide an analysis of how it is to be implemented, outline steps taken to avoid duplication of rules, how it solves the problem and if other means can be found without issuing new regulations. This analysis must be based on objective scientific, technical and economic information and must be written in easy to understand and concise language to facilitate adoption by the public and minimize the possibility of litigation.

Status: Introduced 1/8/19 - This common sense and much-needed legislation that brings sound business practice that we use every day to Federal rule making. Similar legislation is rolled out with every new Congress and goes nowhere. I expect this will get caught up in the same malaise that all previous versions have.

HR.575 – Lessening Regulatory Costs & Establishing Federal Regulatory Budget Act of 2019 –

When new regulations are passed, the Feds must weigh the cost impact and eliminate older, redundant or obsolete

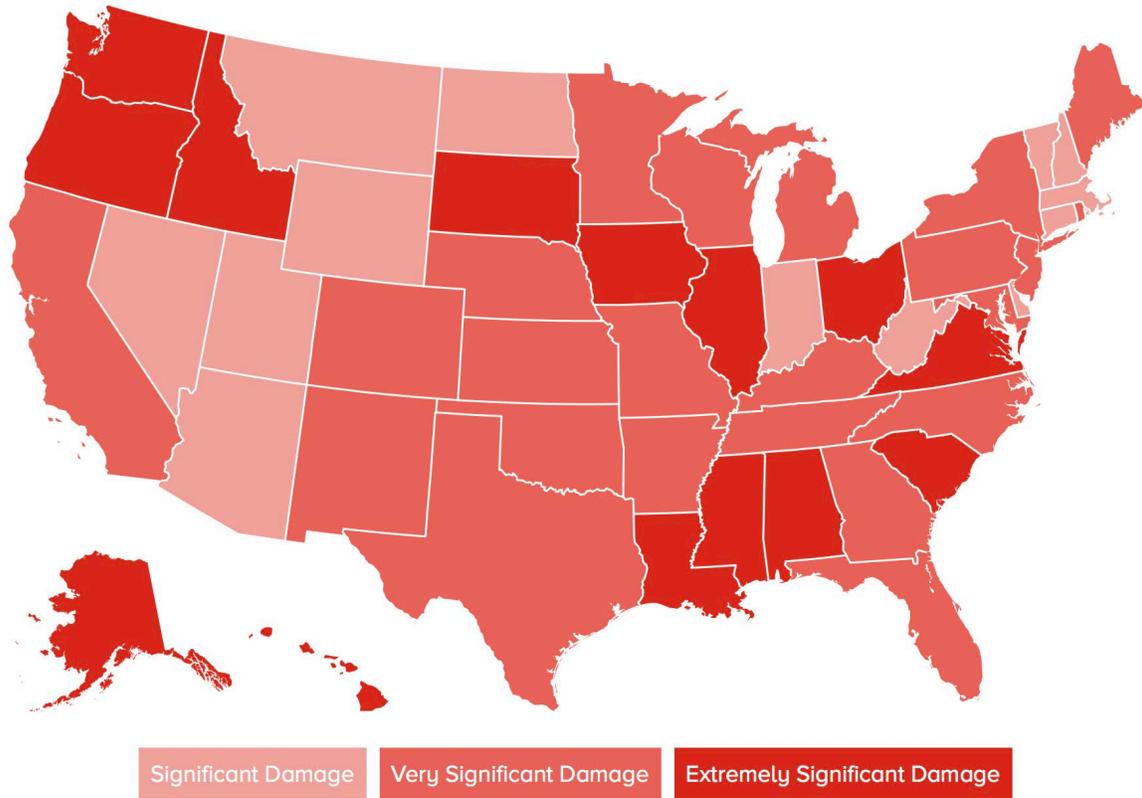
- Each Agency shall appoint a Regulatory Reform Officer (RRO) to work singly within the agency of in concert with counterparts in inter-agency actions to oversee new rulemaking and the elimination of older regulations
- Regulations targeted for elimination to be ranked by those that emanated jobs, are outdated or unnecessary, whose costs outweigh their benefits or are inconsistent with their intended purpose.
- Invite input from stakeholders from the public and private sectors
- RRO shall publish records of ongoing activity and periodic summaries of all actions taken
- Agency Director shall publish an annual budget of all regulatory actions to be taken – creating new, eliminating old or obsolete – statement of objectives – legal authority for action and estimated cost and benefits of proposed regulatory actions

Status: Introduced 2/25/19 – Once again – smart – necessary and has not a snowball’s chance

OLD STUFF

Steel and Aluminum Tariffs

United States imposed a 25% tariff on imports of steel, and a 10% tariff on aluminum, on the European Union, Canada, and Mexico. They are still in effect. Almost all business groups and US Chamber of commerce are opposed to the tariffs. For all the talk of an impending agreement with China, the Tariffs still hold. It was reported that we now pay the highest prices for steel of any industrialized country.



National Debt-

The US Chamber has come out strongly in favor of enacting reforms that will slow down the unsustainable growth in Federal Debt. Many economists predict that while the tax reforms will put off a recession from 2019 to late 2020 or 2021 the increased debt will greatly deepen the recession from the 2% decline originally predicted for 2019. It also been pointed out that the white House estimates for growth are overstated and unsustainable and balancing the budget will not occur until 2035.

HR 5870 – OSHA Notification Act. – Amends OSHA Act of 1970 to require immediate notification to an employer of the issuance of a penalty, to prohibit any public notice of such citation for a period of 24 hours after issuance of the citation, and to require a public notice where an employer successfully contests any proposed penalty.

Status: Introduced 5/2018 – still languishing

EX-IM Bank – has lacked a quorum limiting loans to 10M or less. Industry groups are pressuring the Senate to approve the remaining 4 nominees. McConnell and Toomey are stonewalling the approval of a nominee. According to the American action forum: “President Trump has nominated individuals to serve on the Ex-Im Bank’s Board of Directors, yet they await confirmation in the Senate. Given the lack of a quorum, as of Summer 2018, there is \$43 billion in transactions awaiting approval that Ex-Im estimates could support 250,000 U.S. jobs”.

Part of the delay is Trump’s lack of cooperation following the rejection of his choice, Garrett as head of the bank. This is holding up over 30 Billion in business.

Status: Trump is finally pushing to approve a nominee but, in the Senate, - one foolish political delay after another

HR. 6136 – Border Security and Immigration Reform Act

- Provide a path for Dreamers to become citizens in the future
- Various measures to improve border security
- Creates a system of matching visas for work place skills needed

Status: Failed in first pass through House – voted to reconsider in the future

HR.4808 – Health Care Pricing Act of 2018

Requires all health care products and service providers to disclose all pricing to consumers at point of service and on the internet – including all cost levels – wholesale, retail and trade discounted.

Analysis: This is an obvious winner and badly needed since consumers can’t intelligently shop for health related services and products costing their employers billions in extra insurance costs. It’s amazing that we are buying blind for a segment that represents 16.9% of GNP.

Status: Placed in Health Sub-Committee 1/2018. – no further action

HR. 3441 – Save Local Business Act

Overturms NLRB decision in Browning-Ferris Industries Case in which the NLRB greatly expanded what constitutes a joint employer to include employers that may exercise indirect, potential or unexercised control over an employee. It restores the definition of a joint employer to one that directly, actually and immediately exercises control over an employee.

Analysis: this serves to limit liability for practices, injuries and health related issues for employees to joint employment situations where both employers exercise direct control over an employee. Before the reversal, a case could be made that consultants, sub-contractors such as riggers in our industry might be considered joint employees.

Status: Passed House and has been passed to the Senate. It has yet to be passed into a committee.

S.1516 – Bill to expand health care choices by allowing Americans to buy Health Care coverage across State Lines

Bill would allow people to buy insurance from any state they choose which is expected to increase availability, increase competition, and ultimately reduce costs to consumers

Status: Introduced 6/29/17 – No further action

S.1390, HR 5430– Stronger Patents Act of 2017

Bill is broken into several basic areas:

- Stronger infringement enforcement

- Fully funding the USPTO and end diversion of funds to general fund. A fully funded patent office can hire more examiners – speed up the process and reduce or eliminate the practice of rejecting new claims out of hand and prioritizing applications on resubmission and appeal
- When new submissions are challenged – make them fairer and less demanding for the applicant to respond
- Steps to limit spurious patent demand letters – often used by individuals and some companies to suggest infringement hoping to extort a settlement when the sender had no real intent to prosecute an infringement case

Status: Hearings ongoing in both chambers

GENERAL DATA PROTECTION REGULATION (GDPR)

We do not own our personal data in the US – in the EU (European Union) & EEA (European Economic Zone) under GDPR (General Data Protection Regulation) – you do. In the US, those possessing your your data are free to do with it as they wish, share it without your knowledge and keep it for as long as they wish so long as it's not illegal. It's is the wild west in the US with your personal information. GDPR became enforceable May 25, 2018.



SCOPE

- Any company collecting, processing or storing personal data of EU residents.
- All companies established in EEA irrespective of where they are based.
- Applied regardless Location and nationality of individual if data within EEA.
- Applies to entities outside EU if they are handling data of EU residents.
- Exempts data held by national defense or law enforcement agencies.
- A single set of rules apply to all countries in EU.
- Each member state is required to establish its of Supervisory Authority (SA) to hear complaints and sanction enforcement.



WHAT IS YOUR DATA:

- Anything posted to Social Media
- Electronic Medical records
- Mailing Address
- IP addresses
- GDPR defines data as "personal data is any information relating to an individual, whether it relates to his or her private, professional or public life. It can be anything from a name, a home address, a photo, an email address, bank details, posts on social networking websites, medical information, or a computer's IP address"



WHEN MAY DATA BE COLLECTED:

- When consent is given under the GDPR standard of “freely given, specific, informed, and unambiguous”.
- When needed to fulfill contractual obligations.
- To comply with data controller’s legal obligations.
- To protect individual or others vital interests.
- To perform a task in the public’s interest.
- When permitted by parents for a minor but still protected under for the child under the EU Charter of Fundamental Rights



HOW DATA IS TO BE PROTECTED:

- You must give specific permission to collect data
- Companies just can't sign you up
- There are tighter regulations on highly sensitive data such as biometrics – the ask for data must be more specific
- Can have your data deleted – must be done promptly and verified
- Use of pseudonymization or full anonymization
- Highest privacy settings possible so data cannot not shared without explicit and informed consent
- Cannot be traced back to individual unless that information is stored separately



HOW DATA IS TO BE PROTECTED:

- Data may not be stored unless specified by regulation or with informed consent of individual
- Such consent may be revoked by the individual at any time
- Data collector must disclose when the data is being collected – lawful basis for doing so – how long it is being retained – and if data being shared outside of the EEA
- Individual has right to receive copies of data held and have it erased at any time
- If primary activity of business is processing data – it must have a data protection officer (DPO) who manages compliance with PDPR
- The contact details of the DPO must be made available to the public



HOW DATA IS TO BE PROTECTED:

- Organizations based outside of the EU must appoint an EU based person as a contact point for their obligations under GDPR. This is in addition to the DPO but could possibly be held by the DPO.
- Compliance with GDPR must be designed into all business processes for services and products and must be the default position of all systems.
- Records of all processing and storage activities must be available to the SA (Supervisory Authority) upon request
- All automated decision making, and algorithms associated with data collection, storage, use and dissemination must be fully GDPR compliant.
- Must report breaches within 72 hours if breach has adverse effect on privacy unless DPO can prove the stolen data has been rendered unintelligible.



SANCTIONS:

- Warning in first case or non-intentional breach also less serious offenses
- Periodic data protection audits
- Fines can reach 20 million Euros or 4% of annual worldwide volume for more serious offenses for:
 - Violating data subject's rights
 - Illegal transfers of data to third country
 - Violation of restrictions on limiting data processing imposed by EU
 - Continuing to process after suspension
 - Ignoring provisions for informed, specific consent



POTENTIAL PROBLEMS:

- Big Business can afford compliance more easily than small ones
- Estimated cost to implement per entity is \$100,000 minimum
- May prohibit start-up companies from launching due to cost to implement
- Estimated cost to implement – in EU 200 Billion Euros – in USA 41.7 Billion Dollars
- Some rules ambiguous or unclear such as specs for pseudonymization
- 25% of software vulnerabilities present GDPR issues
- Some companies outside of the EU have blocked citizens of the EU from using their sites rather than comply with GDPR



FOR US COMPANIES:

- If a company collects personal data or track behavioral patterns of an EU resident, it is subject to GDPR
- The subjects must be in the EU at the time the data is collected – otherwise the company is exempt
- GDPR rules are not just limited to financial information
- Marketing surveys and data gathering that are specific to EU countries and or written in their language are subject to GDPR. General surveys that are non-country of specific ones are not.
- Sites that accept currency from EU residents are subject to GDPR
- Typical US companies that need to heed GDPR requirements would be companies in the travel, hospitality, software services and e-commerce



FOR US COMPANIES:

- Online forms must be modified to include a provision to obtain the consumer's consent – in the language of GDPR, the consent must be “freely given, specific, informed, and unambiguous.” This cannot be relegated to a link to a “terms and conditions” littered with legalese.
- Once collected, all the data falls subject to all the protection requirements, notice of breach and sanctions delineated within the provisions of the GDPR statute.

