

Agenda Report

TO: CITY COUNCIL

July 31, 2006

THROUGH: Legislative Committee

FROM: City Manager

SUBJECT: Opposition to AB 1368 (Umberg) *Workers' Compensations: Apportionment: Presumptions*

RECOMMENDATION

It is recommended that the City Council oppose AB 1368 (Umberg) *Workers' Compensations: Apportionment: Presumptions* and authorize the Mayor to send letters to the appropriate authorities stating Pasadena's position.

BACKGROUND

In 2004 SB 899 (Poochigian) was enacted and brought sweeping reforms to California's workers' compensation system. One element of these reforms requires a physician who prepares a report concerning a claimed industrial disability to address the issue of causation. When a doctor examines an employee for a work-related injury and prepares a report addressing the issues of permanent disability due to a claimed injury, the doctor is required to make an apportionment determination. That is, the doctor must determine what approximate percentage of the medical conditions results from the work-related injury and what approximate percentage is a result of other factors both before and subsequent to the industrial injury.

Existing law provides that for public safety employees, certain medical conditions are rebuttably presumed to be injuries arising out of and in the course of employment. The conditions for which there is a rebuttable presumption include hernia, heart trouble, pneumonia, cancer and leukemia, tuberculosis, blood-borne infectious disease, illness or death from exposure to certain biochemical substances, meningitis, Lyme disease, and lower back impairments.

As proposed, AB 1368 would nullify for public safety employees the requirement that other potential causes of the said medical conditions be identified and apportioned. In essence, the bill would disallow a thorough and objective review

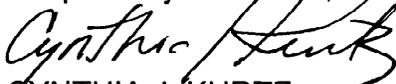
of claims regardless of the claim's legitimacy just because the claimant has a connection to public safety.

On June 2, 2005 this two-year bill cleared the Assembly. The bill is now in the Senate and on June 29, 2006 was referred to the Appropriations Committee. The League of California Cities opposes this bill as does the California Association of Counties and the Los Angeles County Board of Supervisors. The bill is supported by various peace officer associations including the California Fraternal Order of Police, California Professional Firefighters, and the California Applicants' Attorneys Association.

FISCAL IMPACT

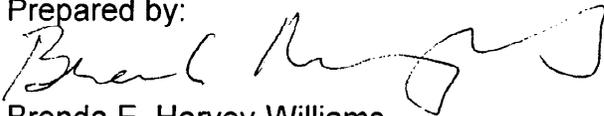
Assembly Bill 1368 would render local governing bodies defenseless to evaluate claims which could lead to the submission of frivolous workers' compensation claims and drive the costs of this program even higher.

Respectfully submitted,



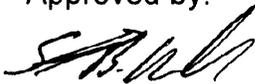
CYNTHIA J. KURTZ
City Manager

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Acting Director of Finance

AB 1368 Assembly Bill - AMENDED

BILL NUMBER: AB 1368 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 15, 2006
AMENDED IN SENATE JUNE 20, 2005
AMENDED IN ASSEMBLY JUNE 1, 2005

INTRODUCED BY Assembly Member Umberg

FEBRUARY 22, 2005

An act to amend ~~Sections 4663 and 4664~~
Section 4663 of the Labor Code, relating to workers'
compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1368, as amended, Umberg Workers' compensation:
apportionment: presumptions.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law provides that, in the case of certain state and local public safety members, the term "injury" includes hernia, heart trouble, and pneumonia that developed or manifested itself during a period while the person is in that service. Existing law further establishes a disputable presumption in this regard and prohibits these medical conditions from being attributed to any disease existing prior to the development or manifestation of that medical condition.

Existing law requires any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability ~~, and limits the employer's liability to the percentage of permanent disability directly caused by the injury~~.

This bill would exempt the above medical conditions for certain public safety members and employees from the application of this requirement ~~and limitation~~.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4663 of the Labor Code is amended to read:

4663. (a) Apportionment of permanent disability shall be based on causation.

(b) Any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.

(c) In order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability

AB 1368 Assembly Bill - AMENDED

was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(d) An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments.

(e) Subdivisions (a), (b), and (c) shall not apply to injuries or illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10, 3212.11, 3212.12, 3213, and 3213.2.

~~SEC. 2 Section 4664 of the Labor Code is amended to read:~~

~~4664. (a) The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.~~

~~(b) If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This presumption is a presumption affecting the burden of proof.~~

~~(c) (1) The accumulation of all permanent disability awards issued with respect to any one region of the body in favor of one individual employee shall not exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662. As used in this section, the regions of the body are the following:~~

~~(A) Hearing.~~

~~(B) Vision.~~

~~(C) Mental and behavioral disorders.~~

~~(D) The spine.~~

~~(E) The upper extremities, including the shoulders.~~

~~(F) The lower extremities, including the hip joints.~~

~~(G) The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed in subparagraphs (A) to (F), inclusive.~~

~~(2) Nothing in this section shall be construed to permit the permanent disability rating for each individual injury sustained by an employee arising from the same industrial accident, when added together, from exceeding 100 percent.~~

~~(d) Subdivision (a) shall not apply to injuries or illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10, 3212.11, 3212.12, 3213, and 3213.2. When it has been established that an employee has a preexisting injury or illness, apportionment may be made for any permanent disability that would exist in the absence of a compensable injury or illness.~~

~~SEC. 3 SEC. 2.~~ It is the intent of the Legislature that this act be construed as declaratory of existing law.