

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Darren P. Wong (SBN 170304)
State Compensation Insurance Fund
1275 Market Street, 3rd Floor
San Francisco, CA 94103-1410

02307056

Mailing Address: P.O. Box 3171
Suisun City, CA 94585-6171

Telephone: 415-581-4540
Fax: 415-581-4554

RECEIVED
State of California

FEB 27 2009

Workers' Compensation Appeals Board
SAN FRANCISCO-RECONSIDERATION UNIT

Attorney for Defendant
State Compensation Insurance Fund

WORKERS' COMPENSATION APPEALS BRD
STATE OF CALIFORNIA

MARIO ALMARAZ)
)
)
 Applicant,)
)
 v.)
)
 ENVIROSERVE; STATE)
 COMPENSATION INSURANCE FUND &)
 STATE COMPENSATION INSURANCE)
 FUND,)
)
 Defendants.)

Case No. ADJ 1078163
BAK 0145426

DEFENDANT'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF PETITION FOR
RECONSIDERATION

Pursuant to Rule 8.252 of the California Rules of Court, Defendant State Compensation Insurance Fund hereby requests judicial notice of the following documents:

- (1) Transcript of Conference Committee Hearing on SB 899 April 14, 2004 2:40 a.m. State Capitol, Room 4202;
- (2) Proposed Conference Report No. 1 April 15, 2004.

Judicial notice may be taken under Evidence Code section 452(c) of "official acts of the legislative, executive and judicial departments of the United States, or any state of the United States." (*People v. Snyder* (2000) 22 Cal.4th 304, 315 fn.5; *Delaney v. Baker* (1999) 20 Cal.4th 23, 30; *Post v. Prati* (1979) 90 Cal.App.3d 626, 634.) In *Post v. Prati* (1979) 90 Cal.App.3d 626, 634, the court identified these materials as coming within the parameters of Evidence Code

1 section 452(c): a) legislative committee reports; b) excerpts from testimony given at public
2 legislative hearings; and c) correspondence to the Governor recommending passage of the bill
3 from Legislative Analyst, a state agency and an individual legislator. A court's authority to
4 exercise its discretion to judicially notice such materials under Evidence Code section 452 is
5 without significant restriction. Accordingly, Defendant respectfully requests the Appeals Board
6 take Judicial notice of Transcript of Conference Committee Hearing on SB 899 April 14, 2004
7 2:40 a.m. State Capitol, Room 4202 and the Proposed Conference Report No. 1 April 15, 2004.

8
9 February 27, 2009

10
11 **VERIFICATION - CCP 446, 2015.5**

12 I am the attorney for State Compensation Insurance Fund in the above-entitled action or
13 proceeding. I have read the foregoing and know the contents thereof. I certify that the same is true
14 of my own knowledge, except as to those matters which are therein stated upon my information or
15 belief, and as to those matters I believe them to be true.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing
17 is true and correct except as to those matters which are therein stated upon my information or belief,
18 and as to those matters I believe them to be true. Executed on February 27, 2009 at San Francisco,
19 California.

20 Respectfully submitted,

21 STATE COMPENSATION INSURANCE FUND

22
23 By: 

24 Darren P. Wong, Attorney
25
26
27
28

ROUGH DRAFT

DRAFT

Conference Committee Hearing on SB 899, Workers' Compensation

**Senate Labor and Industrial Relations Committee
Richard Alarcón, Chair
and
Assembly Labor and Employment Committee
Juan Vargas, Chair**

**April 14, 2004
2:40 a.m.
State Capitol, Room 4202**

SENATOR RICHARD ALARCÓN: ...meeting of the Workers' Compensation Reform Conference Committee.

Secretary, please call the roll.

THE SECRETARY: Mr. Speaker, Fabian Nuñez.

SPEAKER FABIAN NUÑEZ: Aye.

SENATOR ALARCÓN: No, here.

THE SECRETARY: Assemblymember Rick Keene.

ASSEMBLYMEMBER RICK KEENE: _____.

THE SECRETARY: Assemblymember Juan Vargas.

ASSEMBLYMEMBER JUAN VARGAS: Here.

THE SECRETARY: Senator John Burton.

SENATOR JOHN BURTON: _____.

THE SECRETARY: Senator Charles Poochigian.

SENATOR CHARLES POOCHIGIAN: Present.

THE SECRETARY: Senator Alarcón, Richard Alarcón.

SENATOR ALARCÓN: Here.

Presenting on the amendments, Senator Poochigian?

DRAFT

SENATOR POOCHIGIAN: Yes. Thank you, Mr. Chair and Members.

As we know, the amendments being offered today to be incorporated in the Conference Report that this committee will hopefully vote out tonight represent the culmination of months of work in building on some of the reforms last year dealing with the perhaps more difficult, well, clearly more difficult, area of indemnity and related medical care issues that are incorporated in the amendments. The language is about to be distributed very shortly. At the pleasure of the committee, I'd appreciate the opportunity to just give an overview of what we have in the measure before us, that will be before us, shortly.

In general, the reforms deal with indemnity payments in a new statewide system. There's a reduction in cost of business through managing medical costs and restructuring indemnity payments, it's a creation of a fair and impartial treatment of the law for employers by redefining—or refining, I should say—not redefining but refining—the definition of liberal construction, elimination of subjective work capacity guidelines, and replacement with objective earning capacity ratings, curbing abuse of permanent disability benefits by limiting awards to those who are able to return to work, prohibiting multiple disability awards for the same injury, requirements so that disputing partners use a single evaluator to perform disability evaluations, thereby eliminating expensive manipulation of the system by so-called dueling doctors, prohibiting workers receiving disability payments for injuries occurring outside of work. This, of course, has been a very important area of discussion, very important element of reform.

The goal is to provide all of the treatment and benefits that are appropriate to a worker for workplace injuries but not beyond that. It would cap temporary disability payments for two years, except for certain exceptional cases involving the kinds of injuries that by their nature take longer to deal with, and there's some specificity with respect to that. It reinforces controls created in 228 regarding over-utilization of the system. It eliminates—it revises—some of the penalty provisions in Labor Code 5814 so that penalties are assessed on the actual late payments rather than the

entire species of claim, as we know there's been considerable discussion of the fact—and I think near unanimous view—that reform is necessary so that the odd system that's evolved whereby you can have a 10 percent penalty on a very large species of claims rather than on the amount in arrears just doesn't make sense and so thankfully there has been, I think, a broad consensus around that reform.

With respect to medical treatment, there are provisions that require employers to use—excuse me—injured workers—to use employer-specified physician networks for the duration of payment, of treatment, rather, establishment of Independent Medical Review process so the doctors make treatment decisions, and this is in the form that has been described, I think, fairly well in the press in terms of three physicians, then IMR, or Independent Medical Review. And at that point, the injured worker has the opportunity to opt out, should the Independent Medical Review validate the employees' or injured workers' contention with respect to the treatment decisions and otherwise they would remain in the pool.

There are provisions for the use of objective American Medical Association guides on valuating impairment ratings in connection with the Permanent Disability System. There's a total repeal of the primary treating physician presumption which completes part of the work we did last year on that subject; the requirement that workers seek immediate medical treatment, reducing potential for expensive litigation in the system; and altering or shipping the structure, benefit structure, with respect to minor and severe injuries, where there would be greater weight placed on the more severe injuries and lesser on minor injuries. There, of course, are numerous other provisions that have been widely discussed, and I'd be pleased to offer any further remarks in connection with any of those provisions that the committee may wish to ask, respond to any questions that the committee may have.

SENATOR ALARCÓN: Hearing none, witnesses in support?

UNIDENTIFIED SPEAKER: Don't all come at once.

SENATOR ALARCÓN: There's one.

UNIDENTIFIED SPEAKER: Ow.

UNIDENTIFIED SPEAKER: That's what you get.

SENATOR ALARCÓN: Workers' Comp.

UNIDENTIFIED SPEAKER: That's what I get for standing up. If it's serious, I will definitely file.

Good morning, Mr. Chair and Members of the Conference Committee. While I've not taken a formal position on the bill, because we haven't read all the provisions of it, I think that the senator's presentation points out that this is a very comprehensive package. We think there's a lot of very good reforms here that are going to be a major overhaul to the system, and we look forward to the committee passing it tonight and the legislature passing it in due order and having the cost reductions ripple through the market and hopefully benefit employers as soon as possible. So thank you all very much for your hard work and we ask for your aye vote.

SENATOR ALARCÓN: Go ahead and give your name for the record and your testimony. Go ahead, sir.

MR. WILLIAM McCLURE ??: William McClure with the county of Los Angeles, appearing also on behalf of the California League of Cities and the California Supervisors Association, County Supervisors Association of California.

We would also support the bill in concept. We haven't read the language, of course; but based on the presentation and the analysis, we believe we can support the bill.

SENATOR ALARCÓN: Other witnesses in support?

Witnesses in opposition?

MR. TOM RANKIN: Tom Rankin, California Labor Federation. We have not taken an official position on the bill yet. We will do that tomorrow morning but I want to express...

SENATOR ALARCÓN: You mean this morning?

MR. RANKIN: What?

SENATOR ALARCÓN: You mean this morning?

MR. RANKIN: This morning. Sorry. (Laughter)

I want to express some deep concerns. We all recognize the need for reform and the Labor Federation earlier this year came up with a package to achieve reform in a very systemic, thoughtful way which I think was based on a lot of empirical study and would have provided a much more reasonable, rational, comprehensive reform than this bill does. But I recognize that this is a compromise, and it has some good things in it—some elements of what we were talking about—for instance, I think the primary one being the requirement that employers provide immediate medical care up to a certain cap even before they have accepted or rejected the claim. I think that does a lot to smooth out the system. Our whole approach was to make the system into a more rational one which would take out the road bumps that cause workers to go to attorneys and to take out the incentives in the system that pushed cases to permanent disability.

Again, there are a couple of other things in here that are probably good for injured workers. One of the things that's going to help, of course, is the restoration of the user funding which will make it easier to administer the system and to implement the reforms. There's the return-to-work incentives that are benefits for more severely—for the more severely—most severely—injured; expansion of the carve out to allow unions and employers to negotiate 24-hour coverage and integration of disability, non-industrial disability benefits.

So there are many good elements in the bill. There are some elements in the bill which we have no idea how they'll work out, and I want to remind people of what happened. The last time we did major reform with some ideas that everyone, employers, thought were going to save a lot of money—the presumption of correctness of treating physician—here we have a whole new network system that's put into the law. We have no idea how it's going to work. A lot is going to depend upon how it's put into place by the administration. But we don't know; that's an uncertainty.

The revision of PD rating schedule is an uncertainty. And then there's some elements in this bill that clearly will hurt injured workers—the reduction of permanent disability benefits, the cap on temporary disability

benefit duration, the apportionment by causation which is going to result in litigation more than anyone can dream of. And I don't, to this day, understand why the employers wanted that so badly without any threshold. Every permanent disability case that involves cumulative trauma is going to be litigated. Is that what you want? I don't know. The limitations on the right to pre-designate the doctor, I don't know what happened with that issue. It was discussed earlier today. So those are the bad things and there are probably a few more. But mainly maybe most importantly is what's missing from this bill, and what's missing from this bill is what we all saw was needed earlier this year when the reforms that we did last year, which should have saved employers about 15 percent in their premiums, ended up reducing premiums in general by around 3 percent.

We really need re-regulation of the insurance industry to make whatever reforms in this bill are going to save money, especially those reductions in permanent disability benefits, work. Make sure they're passed onto the employers. Without re-regulation of the insurance industry, the same thing could well happen when this bill is passed, as happened last year when 227 and 228 were passed. The employers will not see the savings from the bill. The limits on broker fees. I mean, last year, we went after all the doctors in the system and cut the surgery centers, cut the medical fees, limited chiropractors. Here we are looking at cutting benefits to injured workers and we can't even take on the brokers. I wonder why. Their fees—it's like real estate. The amount of money they're getting, they're getting fees on, went from this much to this much; and their percentage actually went up from 6.1 percent in the early '90s to 7.1 percent a few years ago. So not only did the pie increase; the percentage of their take increased. And not to do anything about that at the same time money has been taken from injured workers' pockets is simply unacceptable.

So tomorrow, we, our executive council, will deliberate on this bill and we will make our position known. But you should understand that there are grave, grave problems with this piece of legislation.

SENATOR ALARCÓN: Next witness.

MR. DAVID SCHWARTZ: David Schwartz, California Applicants' Attorneys Association.

Mr. Chairman, we feel this is a very, very bad bill for injured workers. We're hard pressed to see what benefits there are for injured workers. I immediately noticed in looking at Page 105 of the bill, that upon implementation of the new schedule, that permanent disability benefits will be cut for all injured workers who have permanent disabilities of less than 70 percent. It was promised to us that there would be not be reductions after AB 749. The Commission on Health, Safety, and Workers' Compensation has estimated that the overall reduction in permanent disability would be 30 percent.

Mr. Chairman, the pool concept of forcing injured workers to go to a pool chosen by the insurance company or the employer and the loss of free choice is a very grave concern to us. Free choice of doctor is very important to the injured worker, as there's a lot of abuse when the injured worker is subject to the company doctor and has no choice but to be treated by the company doctor. According to the pool, the way I read it, you're stuck with the initial company doctor. You can get the opinion of two other doctors; and it's not until you've seen the fourth doctor that you have a way to get out of this pool. And even then, if that doctor concludes that the original doctor has complied with the ACOEM guidelines, you can't get out of the pool. We don't think that's fair.

The hard cap on temporary disability of two years is something that's not even in the initiative. If you need surgery the day after the two years runs, you don't get any temporary disability. We feel that the reduction of penalties when the present penalties are not preventing delay or denial of medical treatment is unsupportable. The two-tier system of permanent disability, the reduction of 15 percent of permanent disability when you return to work upon a 30 percent reduction of permanent disability already in the bill, we believe, is simply unconscionable. We feel that a substitution of the earning-capacity test for loss of ability to compete in the open labor market is a denial of constitutional rights for compensation for the

consequences of permanent disability that's been in the constitution since 1913, and we worry about what effect this will have on the permanent disability benefits for injured workers.

And, Mr. Chairman, we're already having the insurance companies. I have the *LA Times* from tomorrow morning, and they quote the chairman of Zenith Insurance Company saying that the effects of this bill are uncertain, won't be known for three to five years. They're not going to reduce rates. None of the insurance companies are going to reduce rates. And without rate regulation, this is just breaking the backs of the injured workers without any relief for the employers, and that's supposed to be what this is all about. It's some relief for nonprofits and small employers.

So, Mr. Chairman, we strongly object to this bill. Thank you very much.

ASSEMBLYMEMBER VARGAS ??: I'd just like to ask a quick question, if I could. You referenced Page 105. It was probably the 4:56 p.m. edition. I believe that's probably the one you referenced?

MR. SCHWARTZ: I believe so.

ASSEMBLYMEMBER VARGAS: Okay. If we could turn to that page. Column 1 is the range of percentage of permanent disability incurred. Under the current schedule, it's under 10 percent. The 1 percent is the range within four—in other words, number of weeks for which two-thirds of the average weekly earnings allow for each 1 percent of permanent disability within the permanent range is four. It goes down to three.

MR. SCHWARTZ: Yes, that's correct.

ASSEMBLYMEMBER VARGAS: Okay. So at the other end, it goes up, right? Once you get from 50 to 69.75, it goes from eight. It stays the same. But once it goes over 70, from 70 to 99.75, it goes from nine to 16.

MR. SCHWARTZ: That's correct.

ASSEMBLYMEMBER VARGAS: Okay. So...

MR. SCHWARTZ: But my point was, that under 70 percent, it's a reduction for injured workers, and the amount of injuries that result in

permanent disability of 70 to 99 percent are a very small number of injuries in the system. That was my point.

ASSEMBLYMEMBER VARGAS: Thank you.

SENATOR ALARCÓN: Further witnesses in opposition?

SENATOR POOCHIGIAN: Mr. Chairman, while witnesses are coming up, may I just address that last point? Because I think as we go through it, this might be helpful.

The proposal that had been negotiated provides for a bump up for that higher end, more severe injuries, as I think Co-Chair Vargas, I think, pointed out, that clearly, for the public's understanding, there is a bump up and a bump down—bump down for the lowest level of injury and a bump up for the higher level of injury. Those are the most severe yet more for the intermediate levels, so that's up to 14.75 percent in terms of impairment. Between 14.75 and 69.75 or, say, 70, there's no change. Everything's the same and it's that upper level. I know you said that but I'd just like to reiterate that there is actually a benefit for the worker sustaining more severe injuries.

MR. CARL BRAKENSIEK: Good morning, Mr. Chairman and Members. Carl Brakensiek representing the California Society of Industrial Medicine and Surgery. I'll be very brief.

As Mr. Rankin indicated last year, SB 228 dramatically reduced cost of medical care in workers' compensation. Our concern is that the additional changes you're making in this legislation are going to drive the good doctors out of the system. It severely restricts the ability of injured workers to be treated by physicians of their choice. Many physicians will be excluded from these pools, and you're going to lose the benefits of the best medical care that is available in California. And for that reason, we think it's going to increase employers' costs if you have delayed recovery and greater periods of disability. Thank you.

SENATOR ALARCÓN: Other witnesses? Committee members?

ASSEMBLYMEMBER KEENE ??: I just want to clarify for the record, unless I'm missing something here, looking at the permanent disability

schedule that was in place before January 1 this year, what happens, at least under what's being proposed here—and you can correct me if I'm incorrect, Mr. Vargas—that it goes back to the way it was before January 1 on the first level, of zero to ten, then ten to 15, but it bumps up those in the upper end, the 70 to 100 percent, which many folks are thinking that needs a little more help. It's going up almost 80 percent to help those who are most severely. Because I've heard some folks say that this has dramatically change things, actually what it does is, I think it re-accommodates the rate, the way it was before January just a few months ago on the lower ends. And in the upper end, I think, where people feel like, if you're seriously distressed, that it does make some extra accommodations for those who are really most injured.

So in aggregate, I guess I just wanted to clarify that for the record because I think folks have said there's a major reduction in reality. I think it's a re-accommodation to probably what was before or just three months ago and then also trying to give those who are most severely injured, at least in the ___ aspects. I just want to clarify that.

SENATOR ALARCÓN: Speaker Nuñez.

SPEAKER NUÑEZ: Listening to some of the folks that were testifying, you know, I just want to make a couple of comments about this, and I'm not going to go on too long because everyone is tired, but I've got to tell you, there is no question that this is not a perfect bill. But what it is, is an attempt to try and reach a compromise on a workers' compensation system that's broken, a system that doesn't serve the injured worker very well and a system that is costing way too much money and premiums increasingly on the rise. But I will say this—and I heard some of the testimony and I respect everybody that came before this committee—the current law allows employers up to 90 days before they provide treatment to an injured worker. The new law that Mr. Poochigian, the bill that Mr. Poochigian is carrying, and his amendments for this bill, dictate that a worker, an injured worker, would get immediate medical treatment. That's a good thing. That's something we ought to hang our hats on.

Secondly, it also entitles an injured worker to have a specialist within the pool, and I know that some folks have expressed concerns about the pool—is it fair; is it the best pool? Perhaps it's not the best pool but it does set some standards for networks to ensure adequate and appropriate care, and there is framework by which there's more than occupational, doctors in the pool. You get a first opinion, company doctor you don't like; you get a second opinion. If you don't like the second opinion within the pool, you get a third opinion. If you don't like the third opinion within the pool, you have the ability to get an Independent Medical Review, and then you can opt out of the system. Hopefully, this is a cost-control mechanism but also one that is fair in the process to ensure that injured workers get the treatment that they deserve when they get injured on the job.

The other thing is, obviously, there's a lot of talk about permanent disability. But I'll just say, you know, one or two things about that, and that is, that we're doing the very best that we can to make sure that injured workers who are disabled, if they're permanently disabled, then we bump them up on their disability. If they're not, we give them a return-to-work offer because the goal of this program is to try and get injured workers healthy and back to work and hopefully this helps the system.

Are there some holes in this proposal? Absolutely. It's not a perfect proposal. Are we passing on the savings to the employers? We're not directly passing on the savings but we're hoping, that through whatever process we're setting forth and the analysis and the full disclosure of insurance companies, that somehow this will happen. There are some of us who believe very strongly that we need a mechanism to make sure that the reforms of last year, the \$6 or \$7 billion—you can argue how much that was—and I appreciate Mr. Poochigian saying that those were important reforms combined in concert with these reforms—are going to give the system, in my view, over \$10, \$11, maybe \$12, \$13 billion worth of savings. Hopefully, we're going to pass on the savings to the employers because, after all, that is the goal; that's why we're here reforming workers' compensation.

So it's not a perfect system. But folks, we have done the very best job possible to try and make good public policy out of this compromise.

SENATOR ALARCÓN: Other members?

ASSEMBLYMEMBER VARGAS ??: I think one of the things that is attractive, very attractive, in this bill is the immediate care that workers can get and will have to get. As soon as you make a claim, you immediately get care.

It's interesting that one of the problems I heard over and over again was one that would go like this—and this is a typical case—that you would have a worker that would work at a place for ten years, a good employee. And then all of a sudden, unfortunately, the person would have an injury, a back injury, normally, and that person then would make a claim and figure that, well, I've been a good employee; I'm going to be taken care of. But, in fact, that wasn't the case.

What would normally happen was that the employer would contact the insurance company and the insurance company would say, you know, well, don't do anything. Because if you do, that's accepting the liability here. So instead, send the person home. So the person then would go home, sit there in pain, oftentimes without insurance, and say, you know, I really got screwed. I was a good employee for ten years. I was always there when they needed me. And now when I need them, they're not there for me. And you know what? The employer actually wanted to give treatment, but the insurance company said, don't do it; because once you do that, you're accepting liability. So under this system, instead, the employer must give immediate care. In fact, it's going to be cheaper for everybody because oftentimes that injury then becomes a more deep and sustained and unfortunately a more expensive injury. So here you're getting that immediate medical care that you need. That worker then is not a worker that's saying, You know, what about me? You know, I've been a great employee and I'm left out there without anything. So I think that that's a huge improvement, something that really—I'm glad we were able to fight and get that in. It was a difficult negotiating point. I mean, obviously, you

know, we had a difference of opinion. I'm very happy that we were able to muscle that one in and that's, I think, a very, very important one.

The other thing that I think we've been criticized for in the state—and I think it's a very appropriate criticism, if you take a look at the actual benefit that's given in the state, its very low compared to other states. That was remedied and is being remedied by a bill that was passed a few years back, AB 749. We see how that the benefit is increasing, especially for those that are significantly injured. So the benefit itself goes up significantly. My understanding is, as it goes up January 1 of next year, it will be the fifth highest in the nation, as it should be. We're one of the very high-cost states. But the criticism has always been, we pay the most and the injured worker gets one of the least. I think we're down at Number 11 right now, down there near Mississippi, and that's just not right.

So I think that this is a great improvement in total. Now there are some things in here that I don't like, and I'll be frank. I mean, there are some things that I find very difficult in this bill but it is a compromise. I think the compromise is...

UNIDENTIFIED SPEAKER: _____.

UNIDENTIFIED SPEAKER: There is a compromise.

UNIDENTIFIED SPEAKER: _____.

UNIDENTIFIED SPEAKER: A more difficult compromise, I imagine. (Laughter) Compromises are difficult and I hope out of this that Republicans and Democrats can actually have a little more goodwill and that's, I'm going to say, something that has to occur in this bill because I don't think that this ...(Side 2)... we do have some goodwill. I think that there is some goodwill here. There have been difficult negotiations, but I hope it's created some goodwill on both sides. I think we were very honest in our negotiations; I believe the Republicans were honest in their negotiations; and hopefully something good will come of it.

SENATOR ALARCÓN: Assemblymember Keene.

ASSEMBLYMEMBER KEENE: In the entire discussion on this issue, there's been a lot of angst and, I think, toil over trying to figure out how we

can have a system that takes care of injured workers instead of focusing everybody on litigation and everybody going back to their corners, focusing on trying to get workers to get their medical care that they need and then back to work. I think there's been a lot of effort in this particular bill to do that. This particular bill is designed to try to make sure that people are taken care of fairly, to try to keep some of the costs down that everybody has been very convinced has been run away in the workers' comp system and at the same time make sure that the emphasis is not on people trying to get cash awards for workers' comp injuries but that the emphasis would now be on folks getting better and get back to work.

We want to take care of those who are seriously injured, but we also need to curtail these runaway costs which employers in this state have been saddled with. One of those efforts has been trying to encourage return to work, trying to support return-to-work efforts. One of them is trying to cost contain under the medical system at the same time, give choices within the medical system so people don't have to have just one doctor that they're stuck with but to have choices of doctors within those constraints; to set objective medical standards so people know that they're getting fair medical treatment, not over-treated, not under-treated, but fair medical treatment. That's the attempts.

And there's no question, that in some of those attempts, some of this may not work. We're doing the best we can with the information that we have and there will have to be refinements. This is a flawed system, as all systems are, that humans are involved with. But I think this has been an effort where everybody's come to the table on both sides of the aisle to really work together to come up with solutions that are fair, that get what we need to do done, as far as trying to make a more fair system and get some of the costs out of the system so it's an affordable system and still take care of injured workers fairly.

There's a lot of work yet to be done. I think Mr. Vargas is exactly correct. This is not a finished work. This is a chunk of what needs to be done. And yet...

ASSEMBLYMEMBER VARGAS: And then I'll be gone. (Laughter)

ASSEMBLYMEMBER KEENE: But we're going to continue to work on it and to try to make sure that we continue to try to refine the system, to make it a better system.

SENATOR ALARCÓN: Senator Burton.

SENATOR BURTON: Well, I mean, clearly, this is not the type of bill that I would prefer. I'm aware of some of the issues placed by the Applicants' Attorneys' issues that were raised by Mr. Rankin. I don't really compare this bill to the current law. I compare the bill to what I consider to be a very unfair initiative that six-to-five pick ?? that could have passed or not passed. It would have been very divisive, very costly, and nobody knows whether it would have won or whether it would have lost. And the only people that would have won would have been the TV stations and the campaign consultants. This bill is flawed, as it is in certain areas, in my judgment, I believe, was a legitimate effort on the part of the administration to fairly treat injured workers. There is a, you know, perception abroad—and the administration subscribes to this—many Republicans do; some Democrats do; people do—that somehow there are people that are being unjustly enriched in the comp system because they aren't either truly injured or, for whatever reasons. We did and, you know, the governor's point of view was that it was trying to deal with those who should be justly enriched and compensated in those, and I believe they have a skewed view of the world, but that somehow we're ___ ripping off the system. Being redundant, right. But the immediate medical care, very big, because when it smoothes out the system, it solves the problem that actually Rick Keene mentioned to me and, you know, he's done a thousand comp cases on both sides; and Chairman Vargas said that a working stiff who thinks he's had a pretty good relationship with the boss; and because he's been in ___ medical care by an insurance company, all of a sudden gets hot at the boss and it makes for a kind of, a very bad relationship and a bad working relationship; whereas now, if that immediate medical care is there, one, there's a better feeling. But, two, if you catch an injury early, it's going to be

cheaper; the person's got a better chance of being, return to his or her job. If they are unable to get a return-to-work offer, they get a bump of 115, it's 115 percent of the disability, of the payment. So that's good. If there are, again, if they get a bump—if they're 70 percent or more disabled as opposed to a reduction—not of people under 70 percent but people under 15 percent. And, again, I would say this: Those of us who fought very hard for three years to pass benefit increases and finally got them signed after two vetoes, an election was lost and an administration was changed and things changed in this capitol that made negotiation a necessity as opposed to being able to, quote, not that we would ever think of rolling over the minority (laughter) but some people perceived it that way, where one of the bills or two of the bills that we passed with benefit increases had some legitimate reforms in them. That bill was vetoed. After it was cleared, the governor would sign any benefit increase, you know, that reforms went out the window.

The health network, I've got some problems with but I don't know, and I'm sure there's some, and this suggestion actually did come from the governor himself, but that you are able, if you're unhappy with A, you can go to B. If you're unhappy with B, you go to C. If you're unhappy with C, you go outside for an independent, hands-on medical review, not somebody reading a document and making a decision on it. And if the Independent Medical Review person agrees with the other three, then you're stuck. If he says, no, you can go outside the system, you're outside the system. That is a pretty good, I think, protection.

We also have required a fair percentage of non-occupational docs so that there's no way in the world that the network's going to be made up of, quote, the company doctor who, as I said, would see Tommy Bordonaro ?? and say he could back to being a lump around a furniture truck. So I think that's good.

We have preserved and but it into a project for those who have actual health plans, the ability to pre-designate their doctor, to be able to stay within their health system for care and treatment, and we think that's good, and I believe we will find out that, notwithstanding the concerns that the

administration had, that that's going to probably end up being just as good or better than the net worth, cost-wise, and that will make sense. And I think, if that's proven out, that that will certainly be continued.

The study, as far as I'm concerned, and bills may or may not still be coming, the study that the industry has to pay for about rates, and then it goes to the governor and the commissioner who then recommends to a legislature, like rates, quote, should stay the same, should reduce 10 percent or whatever it is, and then the ball is in the legislature's court but with an impartial group basically saying what it should be, and I think that would be a difficult thing for officeholders who heretofore don't want to touch the insurance companies to ignore.

We are going to pursue the issue of the—the speaker's committed to pursue the issue of the brokers in separate legislation, which I think makes more sense, because it's a simple issue but it's not as simple as one may think because, if you employ your own broker—in other words, you have your own people doing it with your own company, I don't think we've got the ability to go and say you can only pay them, you know, so much money; if you have outside people with fees, we may be able to take a look at that.

But as I look at this versus the initiative, which I know many of my Republican colleagues like, is a general thought that there's pieces of that they don't like and I don't think anybody liked the fact that the employer could pick out one doctor and say, that's your person for the rest of this case or depending, God forbid, for the rest of your life. And the advice of this, did I think it would bring, you know, to the state that this thing makes imminent sense? If there was another governor of another party, you know, this bill may, you know, would clearly be a little bit different. But I don't know anyone—or at least speaking for myself—and I was involved in, I guess, three comp bills. But this is the first time, because we were fighting to protect things as best we could, that I had to look at some of the problems in the system, and there were some that I found that were really, you know, not that big a deal but we're absolutely indefensible and we just

allowed them to exist, you know, not great things but things we should have dealt with, my opinion, you know, back in the ____ T-shirt phase.

So all in all, I think this is a bill worth supporting. There was a great concern within our caucus about the pre-designation. I think the compromise—and this was absolutely resisted for quite a while. I think that the program that is laid out will work for the worker. It will be able to prove the pre-designation within a worker's health plan. It will not ruin the system but probably will benefit the system, you know, is a good thing, and I intend to support the bill, and we are waiting of the proofreading, just actually on the actual language which reflects what the senator said.

So what I suggest, Mr. Chairman, maybe you want to recess for five minutes because they're just running off, running off the copies. And I would just like to thank both the speakers' staff, my staff, and I guess actually—Thelma and Louise still here?—the governor's staff who spent an inordinate amount of time working through this and an inordinate amount of time getting screamed at—I never did scream at your guy, I promise—but they took a lot of grief from everybody. Only the Democrats only had to take it from me. The Republicans had to take it from me in the Republican legislature. I mean, they did a hell of a lot of, you know, work, trying to make something happen and, you know, it's those of us who serve here realize that 90 percent of what we do, the staff has done for this. So I ask that we recess for five minutes. I'll see if I can move them along.

SENATOR ALARCÓN: Actually, I was going to make some comments. Maybe you can go see.

SENATOR BURTON: I'm going to the bathroom ?? (Laughter) If somebody could please record his comments for me so (laughter)...

SENATOR ALARCÓN: First of all, let me commend my staff and Assemblymember Vargas's staff, in addition to the Speaker's staff, of the pro Tem's staff. Every one of the staff members involved, no doubt, would qualify for workers' compensation. Be sure they file a claim.

For me, this is a sad day. It's a sad day because we are passing legislation that fundamentally suggests that the crisis in California is not

workers' compensation per se. And as far as legislation goes, I can take it or leave it. Given that this a democracy and political winds will shift, we recognize that legislation will change with those political winds. But the crisis in California is quite frankly a crisis of conscience and a crisis of trust because at the root of each and every change that we are making today is the suggestion—in fact, the perception of the general public—that nobody can be trusted in this system, you would think that a doctor, whether they be a participant in a network that is selected by an employer or a doctor that is selected by the worker injured, should come to the same conclusion in a system where it was fair. But in fact, greed undermines this system at every end. The workers are driven many times, at least in the perception of the public, by greed—the doctors, the lawyers, the chiropractors, the medical providers, the insurance companies—all driven by greed. So whatever legislation we pass, ladies and gentlemen, is going to be subject to the crisis of conscience that California faces unless we deal with the issues of greed in our society. We have not changed anything in California. That is our greatest challenge. I would ask each and every one of you, and ourselves as well, to look into your own conscience and ask yourself whether you can improve in terms of marshaling out the forces of greed within your particular community of interest, to drive California to a better place, because that is a part of our problem.

We can't legislate conscience and we can't legislate against greed. We can only regulate and, indeed, that is what we are attempting to do. Last year, we passed numerous relief items in the workers' comp system with a clear intention to drive down costs, and we know that greed prevented those cost reductions from taking place.

So as we move forward with this legislation—and I have to tell you, my level of trust is no more strengthened by this legislation as it was at the very beginning of this process several years ago for me because I see greed everywhere I turn. And I for one do not trust that the insurance companies will pass on the cost savings to the employer community. Small businesses throughout are struggling. They do suffer as a result of the high cost of

workers' compensation, and I do believe that they are suffering unnecessarily because the insurance companies are not passing on unreasonable profits in the way of cost savings to these employers. I also believe it is unfortunate that we are concerned that one doctor's opinion would be different than another. And we have learned that science does not drive the findings, the medical findings, in the workers' compensation system but, in fact, it is prone to the same kind of greed that you find with the insurance company. And we all know somebody or we have heard some anecdote about a worker who has exacerbated their benefits to the point where even family members and friends have sort of turned a blind eye to the fact that they ripping off California. So no matter what kind of legislation we pass, we can't deal with those issues. And I would argue that each and every one of us can do better on that score.

Today I will vote to pass this measure onto the floor. However, I reserve the right to vote against this measure on the floor. I reserve that because I am disheartened that we did not include rate regulation in this process and I will work very, very hard to see that a bill—one, two, three, four, as many bills as it takes—gets to the governor to provide the relief that is necessary to the small business community in the way of rate regulation. My efforts would be mitigated against if the insurance companies would simply lower the prices and pass the savings on as we had hoped and intended with last year's legislation.

But my vote, in no way, shape or form, should today, out of this Conference Committee, be interpreted to mean that I'm pleased with this legislation whatsoever. It is a compromise, and it is not one that makes any of us happy, I think. And most importantly, again, it does nothing if we have not changed our own mindset and the mindset of our own particular community of interest because, in fact, it's easy to regulate somebody else. But unless we start dealing internally with our own organizations to root out what truly is the greatest illness within the workers' compensation system, the illness of greed, then we haven't accomplished anything, folks. We will come back next year and the year after with more legislation to change the

system and play the game of musical chairs unless we deal with the issues of greed.

So with that, from my part, I will vote to pass this onto the floor. But again, I will, unless there is supplemental action, or at least I have a high, a much higher degree of confidence than I have at this particular point that other legislation will be provided that would enhance the workers' compensation system to my way of thinking, particularly with regard to rate regulation, I will against this measure on the floor.

So with that, I hope that all of us will take this to heart, that we can do better, folks—we can do a hell of a lot better—and I don't think we're trying as hard as we can. I really believe that we can do much better.

With that, Senator Poochigian, _____.

SENATOR POOCHIGIAN: Thank you, Mr. Chairman.

If I may, just before the close, ask Michael Prosio ??, who's a representative of the governor's administration, to say a few words, brief comments.

MR. MICHAEL PROSIO ??: Very brief. Thank you. Senator, thank you, Mr. Chair.

Don't feel the need to get into the details. I think Senator Poochigian in his opening and also Senator Burton in his remarks summarized a great deal of what is in the package which will be for you shortly, I'm hopeful. But what is coming before you represents months of negotiations, debate, and ultimately compromise. And speaking for the administration, we believe that it's a good representation of what can happen when members of both houses, members of both parties, recognize that there is a problem facing California, and in this case, a very large problem, and roll up their sleeves and choose to focus on the problem and find a solution.

And to that end, I'd like to echo the sentiments that were shaded by Senator Burton and others relative to thanking the individuals, Myora Topp ?? and Cynthia Brian ?? in the Governor's Office—I don't dare refer to them as Thelma and Louise—as well the individuals sitting up here next to you—Don Moulds with the Governor's Office and others—who gave up their

nights, their weekends, their Easter holiday, to, as I said, roll up their sleeves and get this done and meet these deadlines and to get to where we need to be. I think everybody that's been, like myself, is kind of a hanger on in this process as well as the employers and the people of California in general owe them a debt of gratitude and we very much appreciate that because the package of reforms that they've put together, while some would say it's not a perfect package, it does represent a compromise and it more importantly does address a number of the core problems that plague California's workers' comp system. And we do believe that this package will result in billions of dollars' worth of savings for California employers, and those savings are so desperately needed so that businesses can keep their business here in California, add jobs to their businesses, and continue to grow the California economy. So, again, I wanted to express the administration's gratitude for having this hearing at this late hour and for hopefully passing it onto the floor and look forward to working in the future on further workers' comp issues with you. Thank you.

UNIDENTIFIED SPEAKER: Just a quick correction or statement. I don't know if Don Moulds knew he was hired by the governor.

UNIDENTIFIED SPEAKER: Either that or John Burton...

UNIDENTIFIED SPEAKER: (Laughter) I think he stated that Don _____, but Don certainly still works for the Senate.

SENATOR ALARCÓN: Thank you. Let me correct—Don Moulds works for the Senate Office of Research.

MR. PROSIO ??: That's right.

SENATOR ALARCÓN: Senator Poochigian.

SENATOR POOCHIGIAN: Yes. Thank you, Mr. Chairman.

In closing, just a few things I'd like to touch upon.

First, I think perhaps there's been inadequate attention to the reason that this debate has taken place and that we are here at this point today, and that is, the crisis in California of the very high cost of workers' compensation which is really representative or emblematic of a deeper set of economic problems facing our state. We have just over the course of the

last 24 hours learned that California has added just 5,000, slightly over 5,000, jobs in the month of March compared to 308,000 nationwide. We do have problems and we are, in fact, the drag on the national economy, and workers' comp is viewed generally throughout the country—and certainly in the state of California—by employers, public and private, as being one of the most significant issues that is an impediment to job creation, to job growth, to inducing companies from out of state, to locate here, and making it tougher for public agencies as well to make ends meet with the taxpayer support that they receive. So it is in fact that issue which drives the debate and brings us to this point.

At the same time, it would be inappropriate to focus strictly on cost as we evaluate, have evaluated, systemic reforms, that are, I believe, comprehensive, as appropriately they should be. And thus, the emphasis on making sure that the truly injured workers are recipients of the treatment that they deserve and they need, has been a focus of all members, of all participants in the debate. No one, not a single person, involved in the workers' compensation reform effort, the debate here or outside of this chamber, has had any interest in injuring workers further. That's the furthest thing from anyone's mind. The idea has been for all of us to make sure that we have and build an efficient system that delivers fair services to injured workers while at the same time dealing with the problem, the victimization, if you will, of employers in this state that make it harder for them to make ends meet.

The problems of the system, generally speaking, have to do with arbitrariness, with delay, with costliness, all of which add not only to expense but also foster an environment in which there is a great deal of litigation. And the system that was not meant to be litigated or in which litigation was to be minimized, there's been a great deal of litigation and it's really the result of frustration and anxiety and delay. So by the adoption of standards of evidenced-based, scientific standards, nationally approved standards, in terms of—for example, the ACOEM guidelines in medical care component or element of workers' comp reform—AMA guides, with respect

to physical disability and the permanent disability ratings, that part of the system that we seek to modify, those are very, very important. They bring stability to the system, predictability to the system, reduced cost, reduced delay, and reduced the level of anxiety that is otherwise felt by many of those who have to deal with the system.

SENATOR ALARCÓN: _____.

SENATOR POOCHIGIAN: Yes, they're here. If I may, just a couple more remarks. I understand that...

SENATOR ALARCÓN: You have stretched long enough.

SENATOR POOCHIGIAN: I understand.

SPEAKER NUÑEZ: Move to approve the Conference...

SENATOR POOCHIGIAN: If I may, just to finish the close (laughter), there's been a lot said today about where the costs are and...

SENATOR ALARCÓN: Apparently not quite enough. (Laughter)

SENATOR POOCHIGIAN: Well, in terms of volume, let me just share with you that the author has had less to say than many others who have had the opportunity to speak.

SENATOR ALARCÓN: _____.

SENATOR POOCHIGIAN: I have the privilege and I appreciate the respect.

UNIDENTIFIED SPEAKER: _____.

SENATOR POOCHIGIAN: Yes, I understand, but just to share this with you, just to share this point with you, the fact of the matter is, that the private insurance market comprises a fairly small part of the market share. The reality is, and you've all heard from self-insureds who have told you the same stories that I've heard. Typical of those stories is the fact that there are, has been, in many instances, the ability to reduce claims while costs have doubled and tripled for many self-insureds. So the answer does not lie, does not rest, in the area of regulation, that it really underscores—the experience of the self-insureds underscores the necessity for the systemic reforms that we've tried to accomplish.

Finally, I too would like to thank the governor, first and foremost, without whose involvement in this movement—you know, we wouldn't be here—and I think that we all owe him a debt of gratitude, in terms of getting us here, on a package which none of us believe is perfect and all of us would craft differently if it were left to each of our own devices, but it is a compromise. Thanks to Senator Burton, to Speaker Nuñez, to Mr. McCarthy, Assemblyman McCarthy, and Senator Brulte, of course, for their long, hard hours of work in getting us to this point, and to, again, also all the staff that worked so hard to accomplish the gargantuan task of putting to writing the conceptual understanding that had been expressed to them by the governor less than a week ago. I ask for your aye vote.

SENATOR ALARCÓN: Perhaps Mr. Moulds and Mister—oh, never mind. (Laughter)

We have a motion by Assembly Speaker Fabian Nuñez to adopt the amendments and approve the...

ASSEMBLYMEMBER VARGAS: Second.

SENATOR ALARCÓN: ...Conference Committee Report. It's been seconded by Assemblymember Vargas.

Secretary, please call the roll.

THE SECRETARY: Mr. Speaker, Fabian Nuñez.

SPEAKER NUÑEZ: Aye.

THE SECRETARY: Nuñez, aye. Assemblymember Keene.

ASSEMBLYMEMBER KEENE: Aye.

THE SECRETARY: Keene, aye. Assemblymember Juan Vargas.

ASSEMBLYMEMBER VARGAS: Aye.

THE SECRETARY: Vargas, aye. Senator John Burton.

SENATOR BURTON: Aye.

THE SECRETARY: Burton, aye. Senator Charles Poochigian.

SENATOR POOCHIGIAN: Aye.

THE SECRETARY: Poochigian, aye. Senator Richard Alarcón.

SENATOR ALARCÓN: Aye.

THE SECRETARY: Alarcón, aye.

SENATOR ALARCÓN: Okay. We will sign three copies and move them forward.

---o0o---

DRAFT

SECRETARY OF STATE, DEBRA BOWEN
The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814

PROPOSED CONFERENCE REPORT NO. 1 - April 15, 2004
SB 899 (Poochigian)
As Amended April 15, 2004
2/3 vote. Urgency

ASSEMBLY: (July 17, 2003) SENATE: (July 23, 2003)
(vote not relevant) (vote not relevant)

ASSEMBLY CONFERENCE VOTE: 3-0 SENATE CONFERENCE VOTE: 3-0

Ayes: Vargas, Keene, Nunez Ayes: Alarcon, Burton, Poochigan

Nays: Nays:

Original Committee Reference: INS.

SUMMARY: Authorizes the development of medical provider networks; establishes a system of independent medical review; provides for immediate medical treatment to all workers filing claim forms for occupational injury; authorizes collectively bargained projects on health care integration; allows for predesignated physicians within a group health network; restores user funding and specifies use of funding for return to work program; provides return to work incentives; provides for differing permanent disability (PD) payments based on a employee's return to work; adjusts the mechanism for determining PD; restores the vocational rehabilitation program for pre-2004 injuries; limits most temporary disability payments to 104 weeks; revises 5814 penalty amounts; revises the statutes relating to apportionment; and requires a study of the insurance marketplace and the rate effects from legislative reform.

Specifically, the conference committee amendments:

- 1) Authorizes employers, beginning in 2005, to establish medical provider networks. The networks must be certified by the Administrative Director and meet the standards mandated in the bill. The standards incorporate existing group health patient protection provisions and require the networks to contain adequate numbers and types of physicians and sufficient access. Networks would be required to provide treatment in accordance with utilization controls established by the DWC. Provides that establishment of networks would be implemented under regulations established by Administrative Director (AD), in consultation with the Department of Managed Health Care.
- 2) Authorizes injured worker receiving medical care from a medical provider network to obtain a second and third medical opinions if they dispute the medical treatment determination.
- 3) Authorizes an injured worker to seek an independent medical review if they continue to dispute the medical treatment determination. The standard to be used for independent medical review is identical to that established in ACOEM guidelines or the utilization schedule established by the AD. The independent medical review may conduct a physical examination of the injured employee. Where the reviewer finds that the disputed health care

services are necessary, the injured employee may seek the services from a physician of his or her choice, from inside or outside the network.

- 4) Deems health care service plans (Knox-Keene plans) and certified health care organizations approved as a medical provider network if they have a reasonable numbers of physicians with competency in occupational and nonoccupational medicine, as determined by the AD.
- 5) Provides for immediate medical benefits for injured workers prior to a determination of compensability. The employer must authorize medical treatment, consistent with ACOEM guidelines or the treatment utilization schedule adopted by the AD, for the alleged injury and shall continue to provide the treatment until the date that liability for the claim is either accepted or rejected by the employer. Until the date the claim is accepted, liability for medical treatment shall be limited to \$10,000.
- 6) Authorizes parties in collectively bargained alternative dispute resolution programs to negotiate occupational and nonoccupational health care integration projects involving delivery of medical benefits and delivery of disability benefits.
- 7) Defines "medical treatment that is reasonably required to cure and relieve" as treatment based on the medical utilization treatment guidelines adopted by the AD.
- 8) Authorizes the Workers Compensation Appeals Board to receive as evidence the appropriate medical treatment utilization guidelines.
- 9) Limits the amounts paid for medical services to the reasonable maximum amounts in the official medical fee schedule in effect on the date of service, except under written contracts.
- 10) Limits the number of occupational therapy visits to 24.
- 11) Restores 100% employer funding of the administration of the workers compensation system and allows for cost of return to work program to be funded out of user funding. Language prohibits total amount of employer surcharges to exceed amounts reasonably necessary to administer the workers' compensation program and implement workers' compensation reform
- 12) Allows eligible small employers (up to 50 employees) to apply for reimbursement for workplace modifications necessary to return injured workers to work. Eliminates wage reimbursement and premium reimbursements from the program. Program funded from user funding and administrative penalties collected for patterns of unreasonable behavior in delaying or denying workers' compensation payments. The program is operative as of July 1, 2004 to the extent that funding is available.
- 13) Provides an increase of 15 percent in the PD determination for workers who are not offered a return to work from their employer and a 15 percent decrease in the PD determination for workers who are offered a return to work by their employer. Exempts employers with less than 50 employees from this requirement.
- 14) Revises the process for determining the percentage of permanent disability. The bill:

- a) Requires that the nature and scope of the injury or disfigurement be based on the AMA Guides to the Evaluation of Permanent Impairment (5th Edition.)
 - b) Eliminates the requirement to consider the injured workers "ability to compete in an open labor market." Would instead require consideration be given to the injured workers diminished future earning capacity calculated using a formula developed by the AD using empirical data and findings from the "Evaluation of California's Permanent Disability Rating Schedule, Interim Report" prepared by the RAND Institute for Civil Justice.
- 15) Limits temporary disability payments to 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment. This would not apply for specified conditions for which temporary disability benefit would remain at 240 weeks within period of five years.
 - 16) Increases the number of weeks severely injured workers (more than 70% disabled) will receive permanent disability payments.
 - 17) Reduces the number of weeks that less injured workers (less than 15% disabled) will receive permanent disability payments
 - 18) Clarifies that all workers' compensation findings of fact be interpreted in an impartial and balanced manner in order that all parties are considered equal before the law
 - 19) Re-institutes the vocational rehabilitation program for injuries occurring on or before December 31, 2003, subject to sunset in 2009 and repeals a duplicate statute containing the supplemental job displacement benefit created in 2003.
 - 20) Provides that \$100 lien filing fee currently charged for each initial lien filed by providers would also be collected from those filing on behalf of providers.
 - 21) Recasts the 5814 penalty for unreasonable delay or denial to 25 percent of amount of payment delayed or denied, or \$10,000 whichever was less. Requires the appeals board to use its discretion to accomplish a fair balance and substantial justice between the parties. Allows an employer to pay a self-imposed penalty of 10 percent if the employer discovers the error prior to the filing of a claim. Provides for a two-year statute of limitations.
 - 22) Provides that any employer who knowingly violates Section 5814 with a frequency indicating a general business practice is liable for administrative penalties of up to \$400,000. Penalty amounts are deposited in the Return to Work fund.
 - 23) Requires physicians preparing a report on issue of permanent disability to address the issue of apportionment. For a report to be admissible on the issue of PD, a physician must determine approximate percentage of the PD that was caused by the present work-related injury, and what portion was caused by other factors, including prior industrial injuries. Employee claiming industrial injury must disclose all previous permanent disabilities or physical impairments.

- 24) Provides that the accumulation of all permanent disability for any region of the body shall not exceed 100% over employee's lifetime except if injury or illness is deemed to be total. No single injury may accumulate more than 100% disability.
- 25) Completes repeal of treating physician presumption, regardless of date of injury.
- 26) Requires administrative director to contract, after consultation with Insurance Commissioner, in order to study insurance market and effects of the 2003 and 2004 reform legislation on workers' compensation insurance premium rates. Final report due to specified parties by January 1, 2006. Requires the Governor and the Insurance Commissioner to review the results of the study and make recommendations as to appropriateness of regulating insurance rates. If they determine that rates do not appropriately reflect the savings and timings of savings associated with reforms, they may submit proposals to the Legislature. Proposals shall take into consideration how rates should be regulated and by whom. Cost of study up to \$1 million paid by insurers on proportionate share of market.
- 27) Eliminates the requirement that every workers' compensation insurer conduct a review of the injury and illness prevention program of each of its insureds within four months of the initial insurance policy term. Restricts this requirement to those employers with an experience modification factor of 2.0 or greater and extends the review period to six months. Allows the review to be done by a person working under the direction of a licensed California professional engineer, certified safety professional, certified industrial hygienist, or another person working under the direction of such professionals.
- 28) Provides that SB 796, the private right of action for enforcement of labor code violations, does not apply to Division 1 and Division 4.
- 29) Gives immunity to entities that appropriately report suspected fraudulent activity
- 30) Contains a severability clause.

AS PASSED BY THE SENATE, This bill added outpatient surgery, as defined, to the list of medical goods or services for which it is unlawful for a physician with self-interest in the facility to refer a person.

The Assembly amendments deleted the Senate version of this bill and instead stated the intent of the Legislature to improve the workers' compensation system by promoting the efficient delivery of high quality appropriate medical care.