

**Introduced by Senator Migden**

January 22, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1115, as introduced, Migden. Workers' compensation: permanent disability reports: apportionment.

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 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 requires that such a report include an apportionment determination to be considered complete on the issue of permanent disability.

This bill would provide that race, religious creed, color, national origin, age, gender, marital status, sex, or genetic predisposition shall not be considered to be a cause or other factor considered in any determination made pursuant to those provisions.

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

*The people of the State of California do enact as follows:*

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

1 4663. (a) Apportionment of permanent disability shall be based  
2 on causation.

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

7 (c) In order for a physician's report to be considered complete  
8 on the issue of permanent disability, the report must include an  
9 apportionment determination. A physician shall make an  
10 apportionment determination by finding what approximate  
11 percentage of the permanent disability ~~was~~ *is* caused by the direct  
12 result of injury arising out of and occurring in the course of  
13 employment and what approximate percentage of the permanent  
14 disability ~~was~~ *is* caused by other factors both before and subsequent  
15 to the industrial injury, including prior industrial injuries. If the  
16 physician is unable to include an apportionment determination in  
17 his or her report, the physician shall state the specific reasons why  
18 the physician ~~could not~~ *cannot* make a determination of the effect  
19 of that prior condition on the permanent disability arising from the  
20 injury. The physician shall then consult with other physicians or  
21 refer the employee to another physician from whom the employee  
22 is authorized to seek treatment or evaluation in accordance with  
23 this division in order to make the final determination. *Race,*  
24 *religious creed, color, national origin, age, gender, marital status,*  
25 *sex, or genetic predisposition shall not be considered a cause or*  
26 *other factor of disability with regard to any determination made*  
27 *under this section.*

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

31 (e) Subdivisions (a), (b), and (c) shall not apply to injuries or  
32 illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3,  
33 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10,  
34 3212.11, 3212.12, 3213, and 3213.2.