

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2247**

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**Introduced by Assembly Member Niello**

February 18, 2010

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An act to ~~amend Section 4453 of~~ *add Section 3370.1* to the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2247, as amended, Niello. Workers' compensation: ~~disability indemnity.~~ *local inmates.*

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, and in the course of, employment. ~~Existing law provides certain methods for determining workers' compensation benefits payable to a worker or his or her dependents for purposes of temporary disability indemnity, permanent total disability indemnity, permanent partial disability indemnity, and in case of death.~~

~~This bill would make a technical, nonsubstantive change to the above-described provisions.~~

*Existing law provides that each inmate of a state penal or correctional institution shall be entitled to workers' compensation benefits for injury arising out of, and in the course of, assigned employment and for the death of the inmate if the injury proximately causes the death, subject to specified conditions.*

*Existing law provides that whenever a person confined in a county jail, industrial farm, road camp, or city jail suffers injuries or death while working in the prevention or suppression of forest, brush, or grass*

*fires, he or she shall be considered to be an employee of the county or city, respectively, for purposes of workers' compensation.*

*This bill would provide that each inmate of a county, city, or city and county jail, industrial farm, or road camp shall be entitled to workers' compensation benefits for injury arising out of, and in the course of, assigned employment and for the death of the inmate if the injury proximately causes the death, subject to specified conditions.*

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 3370.1 is added to the Labor Code, to  
2     read:

3     3370.1. Each inmate of a county, city, or city and county jail,  
4     industrial farm, or road camp shall be entitled to the workers'  
5     compensation benefits provided by this division for injury arising  
6     out of and in the course of assigned employment and for the death  
7     of the inmate if the injury proximately causes death, subject to all  
8     of the following conditions:

9     (a) The inmate was not injured as the result of an assault in  
10     which the inmate was the initial aggressor, or as the result of the  
11     intentional act of the inmate injuring himself or herself.

12     (b) The inmate shall not be entitled to any temporary disability  
13     indemnity benefits while incarcerated in a county, city, or city and  
14     county jail, industrial farm, or road camp.

15     (c) No benefits shall be paid to an inmate while he or she is  
16     incarcerated. The period of benefit payment shall instead  
17     commence upon release from incarceration. If an inmate who has  
18     been released from incarceration, and has been receiving benefits  
19     under this section, is reincarcerated in a city or county jail, or  
20     state penal or correctional institution, the benefits shall cease  
21     immediately upon the inmate's reincarceration and shall not be  
22     paid for the duration of the reincarceration.

23     (d) This section shall not be construed to provide for the  
24     payment to an inmate, upon release from incarceration, of  
25     temporary disability benefits which were not paid due to the  
26     prohibition of paragraph (2).

1 (e) In determining temporary and permanent disability indemnity  
2 benefits for the inmate, the average weekly earnings shall be taken  
3 at not more than the minimum amount set forth in Section 4453.

4 (f) Where a dispute exists respecting an inmate's rights to the  
5 workers' compensation benefits provided herein, the inmate may  
6 file an application with the appeals board to resolve the dispute.  
7 The application may be filed at any time during the inmate's  
8 incarceration.

9 (g) After release or discharge from a county, city, or city and  
10 county jail, industrial farm, or road camp, the former inmate shall  
11 have one year in which to file an original application with the  
12 appeals board, unless the time of injury is such that it would allow  
13 more time under Section 5804 of the Labor Code.

14 (h) The percentage of disability to total disability shall be  
15 determined as for the occupation of a laborer of like age by  
16 applying the schedule for the determination of the percentages of  
17 permanent disabilities prepared and adopted by the administrative  
18 director.

19 (i) This division shall be the exclusive remedy against the county,  
20 city, or city and county for injuries occurring while engaged in  
21 assigned work or work under contract. Nothing in this division  
22 shall affect any right or remedy of an injured inmate for injuries  
23 not compensated by this division.

24 ~~SECTION 1. Section 4453 of the Labor Code is amended to~~  
25 ~~read:~~

26 ~~4453. (a) In computing average annual earnings for the~~  
27 ~~purposes of temporary disability indemnity and permanent total~~  
28 ~~disability indemnity only, the average weekly earnings shall be~~  
29 ~~taken at:~~

30 ~~(1) Not less than one hundred twenty-six dollars (\$126) nor~~  
31 ~~more than two hundred ninety-four dollars (\$294), for injuries~~  
32 ~~occurring on or after January 1, 1983.~~

33 ~~(2) Not less than one hundred sixty-eight dollars (\$168) nor~~  
34 ~~more than three hundred thirty-six dollars (\$336), for injuries~~  
35 ~~occurring on or after January 1, 1984.~~

36 ~~(3) Not less than one hundred sixty-eight dollars (\$168) for~~  
37 ~~permanent total disability, and, for temporary disability, not less~~  
38 ~~than the lesser of one hundred sixty-eight dollars (\$168) or 1.5~~  
39 ~~times the employee's average weekly earnings from all employers,~~  
40 ~~but in no event less than one hundred forty-seven dollars (\$147),~~

1 nor more than three hundred ninety-nine dollars (\$399), for injuries  
2 occurring on or after January 1, 1990.

3 ~~(4) Not less than one hundred sixty-eight dollars (\$168) for  
4 permanent total disability, and for temporary disability, not less  
5 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
6 times the employee's average weekly earnings from all employers,  
7 nor more than five hundred four dollars (\$504), for injuries  
8 occurring on or after January 1, 1991.~~

9 ~~(5) Not less than one hundred sixty-eight dollars (\$168) for  
10 permanent total disability, and for temporary disability, not less  
11 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
12 times the employee's average weekly earnings from all employers,  
13 nor more than six hundred nine dollars (\$609), for injuries  
14 occurring on or after July 1, 1994.~~

15 ~~(6) Not less than one hundred sixty-eight dollars (\$168) for  
16 permanent total disability, and for temporary disability, not less  
17 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
18 times the employee's average weekly earnings from all employers,  
19 nor more than six hundred seventy-two dollars (\$672), for injuries  
20 occurring on or after July 1, 1995.~~

21 ~~(7) Not less than one hundred sixty-eight dollars (\$168) for  
22 permanent total disability, and for temporary disability, not less  
23 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5  
24 times the employee's average weekly earnings from all employers,  
25 nor more than seven hundred thirty-five dollars (\$735), for injuries  
26 occurring on or after July 1, 1996.~~

27 ~~(8) Not less than one hundred eighty-nine dollars (\$189), nor  
28 more than nine hundred three dollars (\$903), for injuries occurring  
29 on or after January 1, 2003.~~

30 ~~(9) Not less than one hundred eighty-nine dollars (\$189), nor  
31 more than one thousand ninety-two dollars (\$1,092), for injuries  
32 occurring on or after January 1, 2004.~~

33 ~~(10) Not less than one hundred eighty-nine dollars (\$189), nor  
34 more than one thousand two hundred sixty dollars (\$1,260), for  
35 injuries occurring on or after January 1, 2005. For injuries  
36 occurring on or after January 1, 2006, average weekly earnings  
37 shall be taken at not less than one hundred eighty-nine dollars  
38 (\$189), nor more than one thousand two hundred sixty dollars  
39 (\$1,260) or 1.5 times the state average weekly wage, whichever  
40 is greater. Commencing on January 1, 2007, and each January 1~~

1 thereafter, the limits specified in this paragraph shall be increased  
2 by an amount equal to the percentage increase in the state average  
3 weekly wage as compared to the prior year. For purposes of this  
4 paragraph, “state average weekly wage” means the average weekly  
5 wage paid by employers to employees covered by unemployment  
6 insurance as reported by the United States Department of Labor  
7 for California for the 12 months ending March 31 of the calendar  
8 year preceding the year in which the injury occurred.

9 (b) In computing average annual earnings for purposes of  
10 permanent partial disability indemnity, except as provided in  
11 Section 4659, the average weekly earnings shall be taken at:

12 (1) ~~Not less than seventy-five dollars (\$75), nor more than one~~  
13 ~~hundred ninety-five dollars (\$195), for injuries occurring on or~~  
14 ~~after January 1, 1983.~~

15 (2) ~~Not less than one hundred five dollars (\$105), nor more than~~  
16 ~~two hundred ten dollars (\$210), for injuries occurring on or after~~  
17 ~~January 1, 1984.~~

18 (3) ~~When the final adjusted permanent disability rating of the~~  
19 ~~injured employee is 15 percent or greater, but not more than 24.75~~  
20 ~~percent: (A) not less than one hundred five dollars (\$105), nor~~  
21 ~~more than two hundred twenty-two dollars (\$222), for injuries~~  
22 ~~occurring on or after July 1, 1994; (B) not less than one hundred~~  
23 ~~five dollars (\$105), nor more than two hundred thirty-one dollars~~  
24 ~~(\$231), for injuries occurring on or after July 1, 1995; (C) not less~~  
25 ~~than one hundred five dollars (\$105), nor more than two hundred~~  
26 ~~forty dollars (\$240), for injuries occurring on or after July 1, 1996.~~

27 (4) ~~When the final adjusted permanent disability rating of the~~  
28 ~~injured employee is 25 percent or greater, not less than one hundred~~  
29 ~~five dollars (\$105), nor more than two hundred twenty-two dollars~~  
30 ~~(\$222), for injuries occurring on or after January 1, 1991.~~

31 (5) ~~When the final adjusted permanent disability rating of the~~  
32 ~~injured employee is 25 percent or greater but not more than 69.75~~  
33 ~~percent: (A) not less than one hundred five dollars (\$105), nor~~  
34 ~~more than two hundred thirty-seven dollars (\$237), for injuries~~  
35 ~~occurring on or after July 1, 1994; (B) not less than one hundred~~  
36 ~~five dollars (\$105), nor more than two hundred forty-six dollars~~  
37 ~~(\$246), for injuries occurring on or after July 1, 1995; and (C) not~~  
38 ~~less than one hundred five dollars (\$105), nor more than two~~  
39 ~~hundred fifty-five dollars (\$255), for injuries occurring on or after~~  
40 ~~July 1, 1996.~~

1     ~~(6) When the final adjusted permanent disability rating of the~~  
2 ~~injured employee is less than 70 percent: (A) not less than one~~  
3 ~~hundred fifty dollars (\$150), nor more than two hundred~~  
4 ~~seventy-seven dollars and fifty cents (\$277.50), for injuries~~  
5 ~~occurring on or after January 1, 2003; (B) not less than one hundred~~  
6 ~~fifty-seven dollars and fifty cents (\$157.50), nor more than three~~  
7 ~~hundred dollars (\$300), for injuries occurring on or after January~~  
8 ~~1, 2004; (C) not less than one hundred fifty-seven dollars and fifty~~  
9 ~~cents (\$157.50), nor more than three hundred thirty dollars (\$330),~~  
10 ~~for injuries occurring on or after January 1, 2005; and (D) not less~~  
11 ~~than one hundred ninety-five dollars (\$195), nor more than three~~  
12 ~~hundred forty-five dollars (\$345), for injuries occurring on or after~~  
13 ~~January 1, 2006.~~

14     ~~(7) When the final adjusted permanent disability rating of the~~  
15 ~~injured employee is 70 percent or greater, but less than 100 percent:~~  
16 ~~(A) not less than one hundred five dollars (\$105), nor more than~~  
17 ~~two hundred fifty-two dollars (\$252), for injuries occurring on or~~  
18 ~~after July 1, 1994; (B) not less than one hundred five dollars (\$105),~~  
19 ~~nor more than two hundred ninety-seven dollars (\$297), for injuries~~  
20 ~~occurring on or after July 1, 1995; (C) not less than one hundred~~  
21 ~~five dollars (\$105), nor more than three hundred forty-five dollars~~  
22 ~~(\$345), for injuries occurring on or after July 1, 1996; (D) not less~~  
23 ~~than one hundred fifty dollars (\$150), nor more than three hundred~~  
24 ~~forty-five dollars (\$345), for injuries occurring on or after January~~  
25 ~~1, 2003; (E) not less than one hundred fifty-seven dollars and fifty~~  
26 ~~cents (\$157.50), nor more than three hundred seventy-five dollars~~  
27 ~~(\$375), for injuries occurring on or after January 1, 2004; (F) not~~  
28 ~~less than one hundred fifty-seven dollars and fifty cents (\$157.50),~~  
29 ~~nor more than four hundred five dollars (\$405), for injuries~~  
30 ~~occurring on or after January 1, 2005; and (G) not less than one~~  
31 ~~hundred ninety-five dollars (\$195), nor more than four hundred~~  
32 ~~five dollars (\$405), for injuries occurring on or after January 1,~~  
33 ~~2006.~~

34     ~~(e) Between the limits specified in subdivisions (a) and (b), the~~  
35 ~~average weekly earnings, except as provided in Sections 4456 to~~  
36 ~~4459, shall be arrived at as follows:~~

37     ~~(1) Where the employment is for 30 or more hours a week and~~  
38 ~~for five or more working days a week, the average weekly earnings~~  
39 ~~shall be the number of working days a week times the daily~~  
40 ~~earnings at the time of the injury.~~

1 ~~(2) Where the employee is working for two or more employers~~  
2 ~~at or about the time of the injury, the average weekly earnings~~  
3 ~~shall be taken as the aggregate of these earnings from all~~  
4 ~~employments computed in terms of one week; but the earnings~~  
5 ~~from employments other than the employment in which the injury~~  
6 ~~occurred shall not be taken at a higher rate than the hourly rate~~  
7 ~~paid at the time of the injury.~~

8 ~~(3) If the earnings are at an irregular rate, such as piecework,~~  
9 ~~or on a commission basis, or are specified to be by week, month,~~  
10 ~~or other period, then the average weekly earnings mentioned in~~  
11 ~~subdivision (a) shall be taken as the actual weekly earnings~~  
12 ~~averaged for this period of time, not exceeding one year, as may~~  
13 ~~conveniently be taken to determine an average weekly rate of pay.~~

14 ~~(4) Where the employment is for less than 30 hours per week,~~  
15 ~~or where for any reason the foregoing methods of arriving at the~~  
16 ~~average weekly earnings cannot reasonably and fairly be applied,~~  
17 ~~the average weekly earnings shall be taken at 100 percent of the~~  
18 ~~sum that reasonably represents the average weekly earning capacity~~  
19 ~~of the injured employee at the time of his or her injury, due~~  
20 ~~consideration being given to his or her actual earnings from all~~  
21 ~~sources and employments.~~

22 ~~(d) Every computation made pursuant to this section beginning~~  
23 ~~January 1, 1990, shall be made only with reference to temporary~~  
24 ~~disability or the permanent disability resulting from an original~~  
25 ~~injury sustained after January 1, 1990. However, all rights existing~~  
26 ~~under this section on January 1, 1990, shall be continued in force.~~  
27 ~~Except as provided in Section 4661.5, disability indemnity benefits~~  
28 ~~shall be calculated according to the limits in this section in effect~~  
29 ~~on the date of injury and shall remain in effect for the duration of~~  
30 ~~any disability resulting from the injury.~~