

AMENDED IN SENATE MARCH 22, 2011

**SENATE BILL**

**No. 863**

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**Introduced by Senator Lieu**

*(Principal coauthor: Assembly Member Hagman)*

February 18, 2011

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~~An act to amend Section 51 of the Labor Code, relating to the Department of Industrial Relations. An act to amend Sections 4903.1, 4903.5, 4904, and 4905 of, and to add Section 4903.05 to, the Labor Code, relating to workers' compensation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 863, as amended, Lieu. ~~Director of Industrial Relations: appointment.~~ *Workers' compensation: liens.*

*Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.*

*(1) Existing law prescribes certain requirements upon the filing of a lien by a lien claimant and requires the Workers' Compensation Appeals Board to file liens immediately upon receipt.*

*This bill would recast these provisions.*

*(2) Existing workers' compensation law authorizes the appeals board to determine and allow specified expenses, including, but not limited to, certain expenses incurred by a medical provider as liens against any sum to be paid as compensation. Existing law requires, before issuing an award or approval of any compromise of claim, the determination of whether any benefits have been paid or services provided by specified entities.*

*This bill would remove a health care provider from among these entities. This bill would also remove the appeals board's authority to order specified medical liens in a proceeding before the board without a request for the lien having been made.*

*(3) Existing law prohibits a lien claim for reasonable expenses incurred by or on behalf of the injured employee and medical-legal expenses from being filed after 6 months from the date on which the appeals board or a workers' compensation administrative law judge issues a final decision, findings, order, including an order approving compromise and release, or award, on the merits of the claim, after 5 years from the date of the injury for which the services were provided, or after one year from the date the services were provided, whichever is later.*

*This bill would instead prohibit a lien claim from being filed after 3 years from the date the services were provided, or more than 18 months after the date the services were provided if the services were provided on or after July 1, 2012. This bill would also authorize a health care service plan, group disability insurer, self-insured employee welfare benefit plan, or publicly funded program providing medical benefits on a nonindustrial basis to file a lien claim for medical expenses within 6 months after the entity has notice that an industrial injury is being claimed but in no event later than 3 years from the date the services were provided to the employee. This bill would require the appeals board to adopt prescribed rules of practice and procedure. This bill would state that these provisions apply to any liens that are filed with the appeals board on or after the operative date of this act regardless of the date services were provided, except as expressly provided.*

*(4) Existing law allows the Employment Development Department (EDD) to file a lien for unemployment compensation benefits and unemployment disability benefits.*

*This bill would provide that for a claim allowable as a lien in favor of EDD, the claim is a lien against any amount thereafter payable as temporary or permanent disability compensation. This bill would state that this provision is declarative of existing law and shall not constitute good cause to reopen, rescind, or amend any final order, decision, or award of the appeals board.*

~~Existing law provides that the Director of Industrial Relations has control over the operations of the Department of Industrial Relations. Existing law provides for the appointment of the director by the~~

Governor with the advice and consent of the Senate and provides that the director holds office at the pleasure of the Governor.

This bill would make nonsubstantive changes to those provisions.

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

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

1 SECTION 1. Section 4903.05 is added to the Labor Code, to  
2 read:

3 4903.05. (a) Any lien claimant under Section 4903 shall file  
4 its lien with the appeals board in writing upon a form approved  
5 by the appeals board. The lien shall be accompanied by a full  
6 statement or itemized voucher supporting the lien and justifying  
7 the right to reimbursement and proof of service upon the injured  
8 worker, or if deceased, upon the worker's dependents, the  
9 employer, the insurer, and the respective attorneys or other agents  
10 of record.

11 (b) The appeals board shall file liens pursuant to Section 4903  
12 immediately upon receipt. Numbers shall be assigned pursuant to  
13 subdivision (c) of Section 5500.

14 SEC. 2. Section 4903.1 of the Labor Code is amended to read:

15 4903.1. ~~(a)~~The appeals board, arbitrator, or settlement  
16 conference referee, before issuing an award or approval of any  
17 compromise of claim, shall determine, on the basis of liens filed  
18 with it pursuant to ~~subdivision (b) or (c)~~ Section 4903.05, whether  
19 any benefits have been paid or services provided by a health care  
20 provider, a health care service plan, a group disability policy,  
21 including a loss of income policy, a self-insured employee welfare  
22 benefit plan, or a hospital service contract, and its award or  
23 approval shall provide for reimbursement for benefits paid or  
24 services provided under these plans as follows:

25 (†)

26 (a) When the referee issues an award finding that an injury or  
27 illness arises out of and in the course of employment, but denies  
28 the applicant reimbursement for self-procured medical costs solely  
29 because of lack of notice to the applicant's employer of his need  
30 for hospital, surgical, or medical care, the appeals board shall  
31 nevertheless award a lien against the employee's recovery, to the  
32 extent of benefits paid or services provided, for the effects of the

1 industrial injury or illness, ~~by a health care provider,~~ a health care  
 2 service plan, a group disability policy, a self-insured employee  
 3 welfare benefit plan, or a hospital service contract.

4 ~~(2)~~

5 (b) When the referee issues an award finding that an injury or  
 6 illness arises out of and in the course of employment, and makes  
 7 an award for reimbursement for self-procured medical costs, the  
 8 appeals board shall allow a lien, to the extent of benefits paid or  
 9 services provided, for the effects of the industrial injury or illness,  
 10 ~~by a health care provider,~~ a health care service plan, a group  
 11 disability policy, a self-insured employee welfare benefit plan, or  
 12 a hospital service contract.

13 ~~(3)~~

14 (c) When the referee issues an award finding that an injury or  
 15 illness arises out of and in the course of employment and makes  
 16 an award for temporary disability indemnity, the appeals board  
 17 shall allow a lien as living expense under Section 4903, for benefits  
 18 paid by a group disability policy providing loss of time benefits.  
 19 ~~Such~~ The lien shall be allowed to the extent that benefits have been  
 20 paid for the same day or days for which temporary disability  
 21 indemnity is awarded and shall not exceed the award for temporary  
 22 disability indemnity. ~~No~~ A lien shall *not* be allowed hereunder  
 23 unless the group disability policy provides for reduction, exclusion,  
 24 or coordination of loss of time benefits on account of workers'  
 25 compensation benefits.

26 ~~(4)~~

27 (d) When the parties propose that the case be disposed of by  
 28 way of a compromise and release agreement, in the event the lien  
 29 claimant, ~~other than a health care provider,~~ does not agree to the  
 30 amount allocated to it, then the referee shall determine the potential  
 31 recovery and reduce the amount of the lien in the ratio of the  
 32 applicant's recovery to the potential recovery in full satisfaction  
 33 of its lien claim.

34 ~~(b) When a compromise of claim or an award is submitted to~~  
 35 ~~the appeals board, arbitrator, or settlement conference referee for~~  
 36 ~~approval, the parties shall file with the appeals board, arbitrator,~~  
 37 ~~or settlement conference referee any liens served on the parties.~~

38 ~~(e) Any lien claimant under Section 4903 or this section shall~~  
 39 ~~file its lien with the appeals board in writing upon a form approved~~  
 40 ~~by the appeals board. The lien shall be accompanied by a full~~

1 ~~statement or itemized voucher supporting the lien and justifying~~  
2 ~~the right to reimbursement and proof of service upon the injured~~  
3 ~~worker, or if deceased, upon the worker's dependents, the~~  
4 ~~employer, the insurer, and the respective attorneys or other agents~~  
5 ~~of record.~~

6 ~~(d) The appeals board shall file liens required by subdivision~~  
7 ~~(e) immediately upon receipt. Numbers shall be assigned pursuant~~  
8 ~~to subdivision (e) of Section 5500.~~

9 *SEC. 3. Section 4903.5 of the Labor Code is amended to read:*

10 4903.5. (a) ~~No~~A lien claim for expenses as provided in  
11 subdivision (b) of Section 4903 ~~may shall not~~ be filed after six  
12 months from the date on which the appeals board or a workers'  
13 compensation administrative law judge issues a final decision,  
14 findings, order, including an order approving compromise and  
15 release, or award, on the merits of the claim, after five years from  
16 the date of the injury for which the services were provided, or after  
17 ~~one year~~ *three years* from the date the services were provided,  
18 ~~whichever is later~~ *nor more than 18 months after the date the*  
19 *services were provided if the services were provided on or after*  
20 *July 1, 2012.*

21 (b) Notwithstanding subdivision (a), any ~~health care provider,~~  
22 ~~health care service plan licensed pursuant to Section 1349 of the~~  
23 ~~Health and Safety Code, group disability insurer, employee under~~  
24 ~~a policy issued in this state pursuant to the provisions of Section~~  
25 ~~10270.5 of the Insurance Code, self-insured employee welfare~~  
26 ~~benefit plan issued in this state as defined in Section 10121 of the~~  
27 ~~Insurance Code, or other entity publicly funded program providing~~  
28 medical benefits on a nonindustrial basis, may file a lien claim for  
29 expenses as provided in subdivision (b) of Section 4903 within  
30 six months after the ~~person or~~ entity first has ~~knowledge~~ *notice*  
31 that an industrial injury is being claimed, *but in no event later than*  
32 *three years from the date the services were provided to the*  
33 *employee.*

34 (c) The injured worker shall not be liable for any underlying  
35 obligation if a lien claim has not been filed and served within the  
36 allowable period. Except when the lien claimant is the applicant  
37 as provided in Section 5501 *or as otherwise permitted by rules of*  
38 *practice and procedure adopted by the appeals board,* a lien  
39 claimant shall not file a declaration of readiness to proceed in any  
40 case until the case-in-chief has been resolved.

1 (d) This section shall not apply to civil actions brought under  
2 the Cartwright Act (Chapter 2 (commencing with Section 16700)  
3 of Part 2 of Division 7 of the Business and Professions Code), the  
4 Unfair Practices Act (Chapter 4 (commencing with Section 17000)  
5 of Part 2 of Division 7 of the Business and Professions Code), or  
6 the federal Racketeer Influenced and Corrupt Organization Act  
7 (Chapter 96 (commencing with Section 1961) of Title 18 of the  
8 United States Code) based on concerted action with other insurers  
9 that are not parties to the case in which the lien or claim is filed.

10 *SEC. 4. Section 4904 of the Labor Code is amended to read:*

11 4904. (a) If notice is given in writing to the insurer, or to the  
12 employer if uninsured, setting forth the nature and extent of any  
13 claim that is allowable as a lien *in favor of the Employment*  
14 *Development Department*, the claim is a lien against any amount  
15 thereafter payable as *temporary or permanent disability*  
16 compensation, subject to the determination of the amount and  
17 approval of the lien by the appeals board. When the Employment  
18 Development Department has served an insurer or employer with  
19 a lien claim, the insurer or employer shall notify the Employment  
20 Development Department, in writing, as soon as possible, but in  
21 no event later than 15 working days after commencing disability  
22 indemnity payments. When a lien has been served on an insurer  
23 or an employer by the Employment Development Department, the  
24 insurer or employer shall notify the Employment Development  
25 Department, in writing, within 10 working days of filing an  
26 application for adjudication, a stipulated award, or a compromise  
27 and release with the appeals board.

28 (b) (1) In determining the amount of lien to be allowed for  
29 unemployment compensation disability benefits under subdivision  
30 (f) of Section 4903, the appeals board shall allow the lien in the  
31 amount of benefits which it finds were paid for the same day or  
32 days of disability for which an award of compensation for any  
33 permanent disability indemnity resulting solely from the same  
34 injury or illness or temporary disability indemnity, or both, is made  
35 and for which the employer has not reimbursed the Employment  
36 Development Department pursuant to Section 2629.1 of the  
37 Unemployment Insurance Code.

38 (2) In determining the amount of lien to be allowed for  
39 unemployment compensation benefits and extended duration  
40 benefits under subdivision (g) of Section 4903, the appeals board

1 shall allow the lien in the amount of benefits which it finds were  
2 paid for the same day or days for which an award of compensation  
3 for temporary total disability is made.

4 (3) In determining the amount of lien to be allowed for family  
5 temporary disability insurance benefits under subdivision (h) of  
6 Section 4903, the appeals board shall allow the lien in the amount  
7 of benefits that it finds were paid for the same day or days for  
8 which an award of compensation for temporary total disability is  
9 made and for which the employer has not reimbursed the  
10 Employment Development Department pursuant to Section 2629.1  
11 of the Unemployment Insurance Code.

12 (c) In the case of agreements for the compromise and release  
13 of a disputed claim for compensation, the applicant and defendant  
14 may propose to the appeals board, as part of the compromise and  
15 release agreement, an amount out of the settlement to be paid to  
16 any lien claimant claiming under subdivision (f), (g), or (h) of  
17 Section 4903. If the lien claimant objects to the amount proposed  
18 for payment of its lien under a compromise and release settlement  
19 or stipulation, the appeals board shall determine the extent of the  
20 lien claimant's entitlement to reimbursement on its lien and make  
21 and file findings on all facts involved in the controversy over this  
22 issue in accordance with Section 5313. The appeals board may  
23 approve a compromise and release agreement or stipulation which  
24 proposes the disallowance of a lien, in whole or in part, only where  
25 there is proof of service upon the lien claimant by the defendant,  
26 not less than 15 days prior to the appeals board action, of all  
27 medical and rehabilitation documents and a copy of the proposed  
28 compromise and release agreement or stipulation. The  
29 determination of the appeals board, subject to petition for  
30 reconsideration and to the right of judicial review, as to the amount  
31 of lien allowed under subdivision (f), (g), or (h) of Section 4903,  
32 whether in connection with an award of compensation or the  
33 approval of a compromise and release agreement, shall be binding  
34 on the lien claimant, the applicant, and the defendant, insofar as  
35 the right to benefits paid under the Unemployment Insurance Code  
36 for which the lien was claimed. The appeals board may order the  
37 amount of any lien claim, as determined and allowed by it, to be  
38 paid directly to the person entitled, either in a lump sum or in  
39 installments.

1 (d) Where unemployment compensation disability benefits,  
2 including family temporary disability insurance benefits, have  
3 been paid pursuant to the Unemployment Insurance Code while  
4 reconsideration of an order, decision, or award is pending, or has  
5 been granted, the appeals board shall determine and allow a final  
6 amount on the lien as of the date the board is ready to issue its  
7 decision denying a petition for reconsideration or affirming,  
8 rescinding, altering or amending the original findings, order,  
9 decision, or award.

10 (e) The appeals board may not be prohibited from approving a  
11 compromise and release agreement on all other issues and deferring  
12 to subsequent proceedings the determination of a lien claimant's  
13 entitlement to reimbursement if the defendant in any of these  
14 proceedings agrees to pay the amount subsequently determined to  
15 be due under the lien claim.

16 *SEC. 5. Section 4905 of the Labor Code is amended to read:*

17 *4905. ~~Where~~ Except with regard to liens as permitted in*  
18 *subdivision (b) of Section 4903, where it appears in any proceeding*  
19 *pending before the appeals board that a lien should be allowed if*  
20 *it had been duly requested by the party entitled thereto, the appeals*  
21 *board may, without any request for such lien having been made,*  
22 *order the payment of the claim to be made directly to the person*  
23 *entitled, in the same manner and with the same effect as though*  
24 *the lien had been regularly requested, and the award to such person*  
25 *shall constitute a lien against unpaid compensation due at the time*  
26 *of service of the award.*

27 *SEC. 6. The amendments to Section 4903.5 made by this act*  
28 *apply to any liens that are filed with the appeals board on or after*  
29 *the operative date of this act regardless of the date services were*  
30 *provided except as otherwise expressly provided by that section.*

31 *SEC. 7. The amendments to Section 4904 made by this act are*  
32 *declarative of existing law and shall not constitute good cause to*  
33 *reopen, rescind, or amend any final order, decision, or award of*  
34 *the appeals board.*

35 ~~SECTION 1. Section 51 of the Labor Code is amended to read:~~

36 ~~51. The operations of the department are under the control of~~  
37 ~~an executive officer known as the Director of Industrial Relations.~~  
38 ~~The director shall be appointed by the Governor with the advice~~  
39 ~~and consent of the Senate, hold office at the pleasure of the~~  
40 ~~Governor, and shall receive an annual salary pursuant to Chapter~~

- 1 ~~6 (commencing with Section 11550) of Part 1 of Division 3 of~~
- 2 ~~Title 2 of the Government Code.~~

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