

**ASSEMBLY BILL**

**No. 2732**

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**Introduced by Committee on Insurance (Assembly Members Perea (Chair), Hagman (Vice Chair), Bradford, Ian Calderon, Cooley, Dababneh, Frazier, Gonzalez, Nestande, V. Manuel Pérez, and Wieckowski)**

February 25, 2014

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An act to amend Sections 4600, 4903.07, 4903.8, and 5410 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2732, as introduced, Committee on Insurance. Workers' compensation.

(1) Existing law requires that a lien claimant in a workers' compensation matter is entitled to an order or award for reimbursement of a lien filing fee or lien activation fee, together with interest at the rate allowed on civil judgments, if certain conditions are satisfied.

This bill would specify that these fees are to be paid by the employer of the injured worker.

(2) Existing law requires an order or award for payment of a lien for medical or hospital treatment in a workers' compensation matter to be made for payment only to the person who was entitled to payment for the expenses for medical or hospital treatment at the time the expenses were incurred, and not to an assignee unless the person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee.

This bill would authorize an assignment of that payment if the assignment was completed prior to January 1, 2013, or if it was required

by a contract that became enforceable and irrevocable prior to January 1, 2013. The bill would state that this provision is declarative of existing law.

(3) Existing law authorizes an injured worker to institute proceedings for the collection of compensation, including vocational rehabilitation services, within 5 years after the date of the injury upon the ground that the original injury has caused new and further disability or that providing vocational rehabilitation services has become feasible because the employee’s medical condition has improved or because of other factors not capable of determination at the time the employer’s liability for vocational rehabilitation services otherwise terminated.

This bill would delete the provisions relating to vocational rehabilitation, but retain the authority of an injured worker to institute proceedings for the collection of compensation within 5 years after the date of the injury upon the ground that the original injury has caused new and further disability.

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 4600 of the Labor Code is amended to  
2 read:

3 4600. (a) Medical, surgical, chiropractic, acupuncture, and  
4 hospital treatment, including nursing, medicines, medical and  
5 surgical supplies, crutches, and apparatuses, including orthotic and  
6 prosthetic devices and services, that is reasonably required to cure  
7 or relieve the injured worker from the effects of his or her injury  
8 shall be provided by the employer. In the case of his or her neglect  
9 or refusal reasonably to do so, the employer is liable for the  
10 reasonable expense incurred by or on behalf of the employee in  
11 providing treatment.

12 (b) As used in this division and notwithstanding any other law,  
13 medical treatment that is reasonably required to cure or relieve the  
14 injured worker from the effects of his or her injury means treatment  
15 that is based upon the guidelines adopted by the administrative  
16 director pursuant to Section 5307.27.

17 (c) Unless the employer or the employer’s insurer has  
18 established or contracted with a medical provider network as  
19 provided for in Section 4616, after 30 days from the date the injury

1 is reported, the employee may be treated by a physician of his or  
2 her own choice or at a facility of his or her own choice within a  
3 reasonable geographic area. A chiropractor shall not be a treating  
4 physician after the employee has received the maximum number  
5 of chiropractic visits allowed by subdivision (c) of Section 4604.5.

6 (d) (1) If an employee has notified his or her employer in  
7 writing prior to the date of injury that he or she has a personal  
8 physician, the employee shall have the right to be treated by that  
9 physician from the date of injury if the employee has health care  
10 coverage for nonoccupational injuries or illnesses on the date of  
11 injury in a plan, policy, or fund as described in subdivisions (b),  
12 (c), and (d) of Section 4616.7.

13 (2) For purposes of paragraph (1), a personal physician shall  
14 meet all of the following conditions:

15 (A) Be the employee's regular physician and surgeon, licensed  
16 pursuant to Chapter 5 (commencing with Section 2000) of Division  
17 2 of the Business and Professions Code.

18 (B) Be the employee's primary care physician and has  
19 previously directed the medical treatment of the employee, and  
20 who retains the employee's medical records, including his or her  
21 medical history. "Personal physician" includes a medical group,  
22 if the medical group is a single corporation or partnership  
23 composed of licensed doctors of medicine or osteopathy, which  
24 operates an integrated multispecialty medical group providing  
25 comprehensive medical services predominantly for  
26 nonoccupational illnesses and injuries.

27 (C) The physician agrees to be predesignated.

28 (3) If the employee has health care coverage for nonoccupational  
29 injuries or illnesses on the date of injury in a health care service  
30 plan licensed pursuant to Chapter 2.2 (commencing with Section  
31 1340) of Division 2 of the Health and Safety Code, and the  
32 employer is notified pursuant to paragraph (1), all medical  
33 treatment, utilization review of medical treatment, access to  
34 medical treatment, and other medical treatment issues shall be  
35 governed by Chapter 2.2 (commencing with Section 1340) of  
36 Division 2 of the Health and Safety Code. Disputes regarding the  
37 provision of medical treatment shall be resolved pursuant to Article  
38 5.55 (commencing with Section 1374.30) of Chapter 2.2 of  
39 Division 2 of the Health and Safety Code.

1 (4) If the employee has health care coverage for nonoccupational  
2 injuries or illnesses on the date of injury in a group health insurance  
3 policy as described in Section 4616.7, all medical treatment,  
4 utilization review of medical treatment, access to medical  
5 treatment, and other medical treatment issues shall be governed  
6 by the applicable provisions of the Insurance Code.

7 (5) The insurer may require prior authorization of any  
8 nonemergency treatment or diagnostic service and may conduct  
9 reasonably necessary utilization review pursuant to Section 4610.

10 (6) An employee shall be entitled to all medically appropriate  
11 referrals by the personal physician to other physicians or medical  
12 providers within the nonoccupational health care plan. An  
13 employee shall be entitled to treatment by physicians or other  
14 medical providers outside of the nonoccupational health care plan  
15 pursuant to standards established in Article 5 (commencing with  
16 Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety  
17 Code.

18 (e) (1) When at the request of the employer, the employer's  
19 insurer, the administrative director, the appeals board, or a workers'  
20 compensation administrative law judge, the employee submits to  
21 examination by a physician, he or she shall be entitled to receive,  
22 in addition to all other benefits herein provided, all reasonable  
23 expenses of transportation, meals, and lodging incident to reporting  
24 for the examination, together with one day of temporary disability  
25 indemnity for each day of wages lost in submitting to the  
26 examination.

27 (2) Regardless of the date of injury, "reasonable expenses of  
28 transportation" includes mileage fees from the employee's home  
29 to the place of the examination and back at the rate of twenty-one  
30 cents (\$0.21) a mile or the mileage rate adopted by the Director  
31 of Human Resources pursuant to Section 19820 of the Government  
32 Code, whichever is higher, plus any bridge tolls. The mileage and  
33 tolls shall be paid to the employee at the time he or she is given  
34 notification of the time and place of the examination.

35 (f) When at the request of the employer, the employer's insurer,  
36 the administrative director, the appeals board, or a workers'  
37 compensation administrative law judge, an employee submits to  
38 examination by a physician and the employee does not proficiently  
39 speak or understand the English language, he or she shall be  
40 entitled to the services of a qualified interpreter in accordance with

1 conditions and a fee schedule prescribed by the administrative  
2 director. These services shall be provided by the employer. For  
3 purposes of this section, “qualified interpreter” means a language  
4 interpreter certified, or deemed certified, pursuant to Article 8  
5 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of  
6 Division 3 of Title 2 of, or Section 68566 of, the Government  
7 Code.

8 (g) If the injured employee cannot effectively communicate  
9 with his or her treating physician because he or she cannot  
10 proficiently speak or understand the English language, the injured  
11 employee is entitled to the services of a qualified interpreter during  
12 medical treatment appointments. To be a qualified interpreter for  
13 purposes of medical treatment appointments, an interpreter is not  
14 required to meet the requirements of subdivision (f), but  
15 ~~commencing March 1, 2014,~~ shall meet any requirements  
16 established by rule by the administrative director that are  
17 substantially similar to the requirements set forth in Section  
18 1367.04 of the Health and Safety Code, ~~notwithstanding any other~~  
19 ~~effective date established in regulations.~~ The administrative director  
20 shall adopt a fee schedule for qualified interpreter fees in  
21 accordance with this section. Upon request of the injured employee,  
22 the employer or insurance carrier shall pay for interpreter services.  
23 An employer shall not be required to pay for the services of an  
24 interpreter who is not certified or is provisionally certified by the  
25 person conducting the medical treatment or examination unless  
26 either the employer consents in advance to the selection of the  
27 individual who provides the interpreting service or the injured  
28 worker requires interpreting service in a language other than the  
29 languages designated pursuant to Section 11435.40 of the  
30 Government Code.

31 (h) Home health care services shall be provided as medical  
32 treatment only if reasonably required to cure or relieve the injured  
33 employee from the effects of his or her injury and prescribed by  
34 a physician and surgeon licensed pursuant to Chapter 5  
35 (commencing with Section 2000) of Division 2 of the Business  
36 and Professions Code, and subject to Section 5307.1 or 5703.8.  
37 The employer shall not be liable for home health care services that  
38 are provided more than 14 days prior to the date of the employer’s  
39 receipt of the physician’s prescription.

40 SEC. 2. Section 4903.07 of the Labor Code is amended to read:

1 4903.07. (a) A lien claimant shall be entitled to an order or  
2 award for reimbursement *from the employer* of a lien filing fee or  
3 lien activation fee, together with interest at the rate allowed on  
4 civil judgments, only if all of the following conditions are satisfied:

5 (1) Not less than 30 days before filing the lien for which the  
6 filing fee was paid or filing the declaration of readiness for which  
7 the lien activation fee was paid, the lien claimant has made written  
8 demand for settlement of the lien claim for a clearly stated sum  
9 which shall be inclusive of all claims of debt, interest, penalty, or  
10 other claims potentially recoverable on the lien.

11 (2) The defendant fails to accept the settlement demand in  
12 writing within 20 days of receipt of the demand for settlement, or  
13 within any additional time as may be provide by the written  
14 demand.

15 (3) After submission of the lien dispute to the appeals board or  
16 an arbitrator, a final award is made in favor of the lien claimant  
17 of a specified sum that is equal to or greater than the amount of  
18 the settlement demand. The amount of the interest and filing fee  
19 or lien activation fee shall not be considered in determining whether  
20 the award is equal to or greater than the demand.

21 (b) This section shall not preclude an order or award of  
22 reimbursement of the filing fee or activation fee pursuant to the  
23 express terms of an agreed disposition of a lien dispute.

24 SEC. 3. Section 4903.8 of the Labor Code is amended to read:

25 4903.8. (a) (1) Any order or award for payment of a lien filed  
26 pursuant to subdivision (b) of Section 4903 shall be made for  
27 payment only to the person who was entitled to payment for the  
28 expenses as provided in subdivision (b) of Section 4903 at the time  
29 the expenses were incurred, and not to an assignee unless the  
30 person has ceased doing business in the capacity held at the time  
31 the expenses were incurred and has assigned all right, title, and  
32 ~~interests~~ *interest* in the remaining accounts receivable to the  
33 assignee.

34 (2) *Paragraph (1) does not apply to an assignment that was*  
35 *completed prior to January 1, 2013, or that was required by a*  
36 *contract that became enforceable and irrevocable prior to January*  
37 *1, 2013. This paragraph is declarative of existing law.*

38 (b) If there has been an assignment of a lien, either as an  
39 assignment of all right, title, and interest in the accounts receivable

1 or as an assignment for collection, a true and correct copy of the  
2 assignment shall be filed and served.

3 (1) If the lien is filed on or after January 1, 2013, and the  
4 assignment occurs before the filing of the lien, the copy of the  
5 assignment shall be served at the time the lien is filed.

6 (2) If the lien is filed on or after January 1, 2013, and the  
7 assignment occurs after the filing of the lien, the copy of the  
8 assignment shall be served within 20 days of the date of the  
9 assignment.

10 (3) If the lien is filed before January 1, 2013, the copy of the  
11 assignment shall be served by January 1, 2014, or with the filing  
12 of a declaration of readiness or at the time of a lien hearing,  
13 whichever is earliest.

14 (c) If there has been more than one assignment of the same  
15 receivable or bill, the appeals board may set the matter for hearing  
16 on whether the multiple assignments constitute bad-faith actions  
17 or tactics that are frivolous, harassing, or intended to cause  
18 unnecessary delay or expense. If so found by the appeals board,  
19 appropriate sanctions, including costs and attorney's fees, may be  
20 awarded against the assignor, assignee, and their respective  
21 attorneys.

22 (d) At the time of filing of a lien on or after January 1, 2013, or  
23 in the case of a lien filed before January 1, 2013, at the earliest of  
24 the filing of a declaration of readiness, a lien hearing, or January  
25 1, 2014, supporting documentation shall be filed including one or  
26 more declarations under penalty of perjury by a natural person or  
27 persons competent to testify to the facts stated, declaring both of  
28 the following:

29 (1) The services or products described in the bill for services  
30 or products were actually provided to the injured employee.

31 (2) The billing statement attached to the lien truly and accurately  
32 describes the services or products that were provided to the injured  
33 employee.

34 (e) A lien submitted for filing on or after January 1, 2013, for  
35 expenses provided in subdivision (b) of Section 4903, that does  
36 not comply with the requirements of this section shall be deemed  
37 to be invalid, whether or not accepted for filing by the appeals  
38 board, and shall not operate to preserve or extend any time limit  
39 for filing of the lien.

1 (f) This section shall take effect without regulatory action. The  
2 appeals board and the administrative director may promulgate  
3 regulations and forms for the implementation of this section.  
4 SEC. 4. Section 5410 of the Labor Code is amended to read:  
5 5410. Nothing in this chapter shall bar the right of any injured  
6 worker to institute proceedings for the collection of ~~compensation,~~  
7 ~~including vocational rehabilitation services,~~ *compensation* within  
8 five years after the date of the injury upon the ground that the  
9 original injury has caused new and further disability ~~or that the~~  
10 ~~provision of vocational rehabilitation services has become feasible~~  
11 ~~because the employee's medical condition has improved or because~~  
12 ~~of other factors not capable of determination at the time the~~  
13 ~~employer's liability for vocational rehabilitation services otherwise~~  
14 ~~terminated.~~ The jurisdiction of the appeals board in these cases  
15 shall be a continuing jurisdiction within this period. This section  
16 does not extend the limitation provided in Section 5407.