

Assembly Bill No. 305

Passed the Assembly September 9, 2015

Chief Clerk of the Assembly

Passed the Senate September 8, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 4663 of, and to add Section 4660.2 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 305, Gonzalez. Workers' compensation: permanent disability apportionment.

Existing workers' compensation law generally requires employers to secure payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. An employer is liable only for the percentage of the permanent disability directly caused by the injury arising out of, and occurring in the course of, employment.

Existing law requires apportionment of permanent disability to be based on causation, and a physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury is required to address the issue of causation of the permanent disability. The physician is required to make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment, and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.

This bill would prohibit apportionment of permanent disability, in the case of a physical injury occurring on or after January 1, 2016, from being based on pregnancy or menopause if the condition is contemporaneous with the claimed physical injury. The bill would also prohibit apportionment of permanent disability, in the case of a psychiatric injury occurring on or after January 1, 2016, from being based on psychiatric disability or impairment caused by sexual harassment, pregnancy, or menopause if the condition is contemporaneous with the claimed psychiatric injury. The bill would also provide, notwithstanding any other law, for injuries occurring on or after January 1, 2016, that the impairment ratings for breast cancer and the aftereffects of the disease, known

as sequelae, shall in no event be less than comparable ratings for prostate cancer and its sequelae.

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

SECTION 1. Section 4660.2 is added to the Labor Code, to read:

4660.2. Notwithstanding any other law, for injuries occurring on or after January 1, 2016, the impairment ratings for breast cancer and its sequelae shall in no event be less than comparable ratings for prostate cancer and its sequelae.

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

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

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

(c) (1) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination.

(2) (A) A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.

(B) Apportionment in the case of a physical injury occurring on or after January 1, 2016, shall not be based on either of the following conditions if those conditions are contemporaneous with the claimed physical injury:

(i) Pregnancy.

(ii) Menopause.

(C) Apportionment in the case of a psychiatric injury occurring on or after January 1, 2016, shall not be based on psychiatric disability or impairment caused by sexual harassment that is contemporaneous with the claimed psychiatric injury, or caused by any of the conditions listed in subparagraph (B) that are contemporaneous with the claimed psychiatric injury.

(3) If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of a prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

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

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

Approved _____, 2015

Governor