

SA2003 RF0058



**PEOPLE'S
ADVOCATE, INC.**

*Paul Gann, Founder
Your Voice in Government*

November 20, 2003

Hon Attorney General
Bill Lockyer

Attention Trish Knight, Initiative Coordinator
Re: Amendment

Dear Trish Knight, Initiative Coordinator:

Enclosed you will find a check for \$200.00 a five page initiative entitled, "The California Job Protection Act". I am asking you to prepare a title and summary. I am a registered voter in the state of California and an American citizen. I am also enclosing my affidavit (9608).

Thank You

Edward J. "Ted" Costa

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NOV 20 2003

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE



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AFFIDAVIT

I, Ted Costa, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Ted Costa _____

Dated this 20 day of November 2003

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**INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE**

The California Job Protection Act

INITIATIVE INTENT

This measure will substantially eliminate the abuse of the California workers' compensation program by those who seek to profit from the system's liberality. The changes will impose on applicants a reasonable standard of eligibility for workers' compensation benefits, and will exclude claimants who seek payments for long-developing conditions that do not predominantly arise out of a work injury or illness. The statute will enhance California's business climate by placing reasonable controls on doctors and chiropractors who often benefit from over-treating legitimately injured workers and who can encourage fraudulent claims. It preserves resources for legitimately injured workers by ensuring that permanent disability benefits go only to those who remain with some objective medical evidence of a loss of work capacity. Finally, this provision encourages employers to hire workers with chronic medical conditions or a history of industrial injuries, by ensuring that the new employment will be responsible only for benefits arising out of an injury or illness arising out of the new employment.

INITIATIVE

APPORTIONMENT

Add Labor Code section 5705.1:

a. The burden of proof for apportionment regarding permanent disability under Labor Code sections 4663, 4750 and 4750.5 shall rest upon the defendant. In accordance with Labor Code section 3202.5, defendant must demonstrate by a preponderance of the evidence that absent the industrial injury the injured worker, as a consequence of a previous injury or illness, lost some capacity to perform the activity affected by the injury.

b. Notwithstanding any other provision of the Labor Code relating to workers' compensation benefits:

1. The Workers' Compensation Appeals Board must deduct from any award of permanent disability all the permanent disability previously awarded for prior injury to the same body part or affecting the same capacity to do work.

2. Apportionment to a prior illness or injury must be found and assessed whenever the injured worker remains with a loss of capacity to perform work of any sort as a consequence of a prior or pre-existing injury, disease, illness or diagnosable medical condition. The prior or pre-existing loss of capacity must be ascertainable at the time of the subsequent injury with reasonable medical certainty, whether or not the loss was previously described by a physician or determined in a judicial or administrative proceeding.

3. The appeals board may not rely upon any medical report that fails to describe to a reasonable medical certainty the medical findings on which the reporting physician relies in determining that a prior or pre-existing loss of capacity, injury, disease or illness healed without a permanent loss of work capacity at the time of the evaluation. A report that records only that the injured worker returned to work of any sort does not adequately describe the medical process of recovery for the purpose of this paragraph.

CUMULATIVE TRAUMA

Amend Labor Code Section 3600.

(a) Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division.

(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment.

(3) Where the injury is proximately caused by the employment, either with or without negligence.

(4) Where the injury is not caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured employee. As used in this paragraph, "controlled substance" shall have the same meaning as prescribed in Section 11007 of the Health and Safety Code.

(5) Where the injury is not intentionally self-inflicted.

(6) Where the employee has not willfully and deliberately caused his or her own death.

(7) Where the injury does not arise out of an altercation in which the injured employee is the initial physical aggressor.

(8) Where the injury is not caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the Penal Code, by the injured employee, for which he or she has been convicted.

(9) Where the injury does not arise out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment. The administrative director shall promulgate reasonable rules and regulations requiring employers to post and keep posted in a conspicuous place or places a notice advising employees of the provisions of this subdivision. Failure of the employer to post the notice shall not constitute an expression of intent to waive the provisions of this subdivision.

(10) Except for psychiatric injuries governed by subdivision (e) of Section 3208.3, where the claim for compensation is filed after notice of resignation, termination or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that one or more of the following conditions apply: (A) The employer has notice of the injury, as provided under Chapter 2 (commencing with Section 5400), prior to the notice of termination or layoff. (B) The employee's medical records, existing prior to the notice of termination or layoff, contain