

# CALIFORNIA ADVOCATES, INC.



CONFIDENTIAL

September 13, 2011

The Honorable Edmund G. Brown, Jr.  
Governor, State of California  
State Capitol  
Sacramento, California 95814

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**SUBJECT: AB 1155 (ALEJO)—WORKERS' COMPENSATION:  
APPORTIONMENT- REQUEST FOR VETO**

Dear Governor Brown:

*Robert G. Walters  
of Counsel*

The California Association of Joint Powers Authorities (CAJPA) respectfully requests a **VETO** of **AB 1155 (Alejo)**, which is currently upon your desk awaiting action, which will increase workers' compensation costs for local public entities by unreasonably changing standards for apportionment.

As currently written, **AB 1155** seeks to prohibit from consideration certain factors when apportioning the causation of a work-related injury or illness. Apportionment is the method by which a worker's permanent disability (PD) is attributed by percentages to its various causes, including the injury, pre-existing conditions, or prior injuries. These percentages determine the amount of the worker's compensation benefit. Our organization believes that apportionment provides a basic element of fairness and protection, such that employers are not liable for disability that is not directly caused by the workplace injury, illness or chronic condition. This was the intent of legislative changes made to apportionment in 2004, under SB 899. We believe these changes resulted in fair apportionment of disability and an encouragement for employers to hire people with preexisting conditions.

**AB 1155** proponents claim that injured workers' PD awards are routinely being reduced as a result of apportionment to factors such as age, gender, race or other such factors, rather than medical conditions that contribute to disability. The fact of the matter is that these claims have not been supported with real data. Although this law sounds reasonable, numerous laws already exist that protect against discrimination. Because applicant attorneys get paid from PD, it is certain to be a source of gamesmanship rather than the intended fair play.

A good example of why **AB 1155** is important to public sector self-insured employers can be seen in the following example. This example is directly from the files of a JPA containing a number of local school districts. This claim involved apportionment of the overall PD to both a non-industrial degenerative condition AND disability related to a prior workers' compensation (WC) injury claim. The injured worker was a 47-year old public school teacher. The WC claim was cervical and related upper extremity complaints after a kicked soccer ball struck the teacher's head. The injured worker underwent a spinal fusion.

Once the worker's injuries were medically determined to be permanent and stationary (P&S), the overall PD was described at 38%, or \$ 43,010.00. Apportionment of the 38% PD award was as follows:

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- Fifty percent (50% of the 38%) was apportioned to “severe stenosis on a degenerative basis at multiple levels”. This reduced the PD to 19%, or \$16,215.00.
- Of that remaining 19%, half was apportioned due to the disability related to the teacher’s prior injury and previous PD award for that prior injury. This reduced the school’s liability for PD for the current workers’ compensation injury claim to 10%, or \$ 6,957.50.

Without the apportionment to both the non-industrial degenerative condition which pre-existed absent any trauma whatsoever, and the prior PD-award, this school employer would have paid an additional \$36,052.50 for PD on this single injury claim.

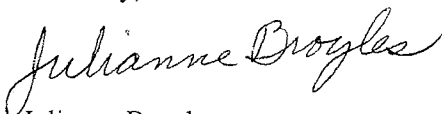
The above example of apportionment involves a degenerative condition. These conditions are most often confirmed through x-ray and/or MRI studies. When the physician determines that the non-industrial degenerative condition has contributed to the disability, the current apportionment laws ensure that the employer pays only for disability directly related to the injury. What caused the degenerative condition is not an employer issue, and causes can include prior trauma, lifestyle choices, hobby/sport activities, and simple genetics. CAJPA firmly believes that the employer should not be held responsible for the permanent disability caused by a non-industrial condition/disability.

CAJPA strongly believes that **AB 1155** poses major fiscal problems for local public agencies. Most public sector employers self-insure, either individually or in joint risk pools, to cover workers’ compensation benefits and costs. We estimate that enactment of **AB 1155** will likely double what our organization reserves for PD on any claim where apportionment is an issue. As self-insured governmental entities, these reserves will come directly out of our General Fund. Given the current state of local agency budgets, other programs will end up taking a cut to pay for **AB 1155** cost increases. The same will hold true for the state of California.

CAJPA has no doubt that **AB 1155** will increase litigation and associated costs, by prompting more legal challenges to apportionment based on bona fide medical conditions – not risk factors or protected classes – that contribute to permanent disability. The result will be higher costs, more litigation at the Workers’ Compensation Appeals Board, and virtual elimination of apportionment as a component of the workers’ compensation system. The impact will be felt by all public and private sector employers.

For these reasons, CAJPA respectfully urges a **VETO** of **AB 1155 (Alejo)** when it comes before you for action.

Sincerely,



Julianne Broyles

On Behalf of California Association of Joint Powers Authorities