

Senate Bill No. 258

Passed the Senate September 6, 2013

Secretary of the Senate

Passed the Assembly September 3, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 112, 4600, 4903.07, 4903.8, and 5410 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 258, Lieu. Workers' compensation.

Existing law establishes the 7-member Workers' Compensation Appeals Board, and provides that the members of the appeals board are appointed by the Governor with the advice and consent of the Senate. Existing law requires that 5 of the 7 members of the board be experienced attorneys admitted to practice in the State of California, and provides that the other 2 members need not be attorneys.

This bill would require that all 7 members of the board be experienced attorneys admitted to practice in the State of California.

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. Existing law requires that medical, surgical, chiropractic, acupuncture, and hospital treatment that is reasonably required to relieve the injured worker from the effects of his or her injury be provided by the employer. Existing law prohibits a chiropractor from being a treating physician after the employee has received a certain number of chiropractic visits.

This bill would correct an erroneous cross-reference with respect to these provisions.

Existing law requires that a lien claimant 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.

Existing law requires an order or award for payment of a lien for medical or hospital treatment, as specified, 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.

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.

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

SECTION 1. Section 112 of the Labor Code is amended to read:

112. (a) The members of the appeals board shall be appointed by the Governor with the advice and consent of the Senate. The term of office of the members appointed prior to January 1, 1990, shall be four years, and the term of office of members appointed on or after January 1, 1990, shall be six years and they shall hold office until the appointment and qualification of their successors.

(b) All of the members of the appeals board shall be experienced attorneys at law admitted to practice in the State of California. All members shall be selected with due consideration of their judicial temperament and abilities. Each member shall receive the salary

provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 4600 of the Labor Code is amended to read:

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

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

(c) Unless the employer or the employer's insurer has established or contracted with a medical provider network as provided for in Section 4616, after 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area. A chiropractor shall not be a treating physician after the employee has received the maximum number of chiropractic visits allowed by subdivision (c) of Section 4604.5.

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

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

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

(B) Be the employee's primary care physician and has previously directed the medical treatment of the employee, and who retains the employee's medical records, including his or her

medical history. “Personal physician” includes a medical group, if the medical group is a single corporation or partnership composed of licensed doctors of medicine or osteopathy, which operates an integrated multispecialty medical group providing comprehensive medical services predominantly for nonoccupational illnesses and injuries.

(C) The physician agrees to be predesignated.

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

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

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

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

(e) (1) When at the request of the employer, the employer’s insurer, the administrative director, the appeals board, or a workers’ compensation administrative law judge, the employee submits to examination by a physician, he or she shall be entitled to receive,

in addition to all other benefits herein provided, all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination.

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

(f) When at the request of the employer, the employer’s insurer, the administrative director, the appeals board, or a workers’ compensation administrative law judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, “qualified interpreter” means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.

(g) If the injured employee cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language, the injured employee is entitled to the services of a qualified interpreter during medical treatment appointments. To be a qualified interpreter for purposes of medical treatment appointments, an interpreter is not required to meet the requirements of subdivision (f), but shall meet any requirements established by rule by the administrative director that are substantially similar to the requirements set forth in Section 1367.04 of the Health and Safety Code. The administrative director shall adopt a fee schedule for qualified interpreter fees in accordance with this section. Upon request of the injured employee, the employer or insurance carrier shall pay for interpreter services. An employer shall not be required to pay for the services of an

interpreter who is not certified or is provisionally certified by the person conducting the medical treatment or examination unless either the employer consents in advance to the selection of the individual who provides the interpreting service or the injured worker requires interpreting service in a language other than the languages designated pursuant to Section 11435.40 of the Government Code.

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

SEC. 3. Section 4903.07 of the Labor Code is amended to read:

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

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

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

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

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

SEC. 4. Section 4903.8 of the Labor Code is amended to read:

4903.8. (a) (1) Any order or award for payment of a lien filed pursuant to subdivision (b) of Section 4903 shall be made for payment only to the person who was entitled to payment for the expenses as provided in subdivision (b) of Section 4903 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.

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

(b) If there has been an assignment of a lien, either as an assignment of all right, title, and interest in the accounts receivable or as an assignment for collection, a true and correct copy of the assignment shall be filed and served.

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

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

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

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

(d) At the time of filing of a lien on or after January 1, 2013, or in the case of a lien filed before January 1, 2013, at the earliest of the filing of a declaration of readiness, a lien hearing, or January 1, 2014, supporting documentation shall be filed including one or

more declarations under penalty of perjury by a natural person or persons competent to testify to the facts stated, declaring both of the following:

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

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

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

(f) This section shall take effect without regulatory action. The appeals board and the administrative director may promulgate regulations and forms for the implementation of this section.

SEC. 5. Section 5410 of the Labor Code is amended to read:

5410. Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.

Approved _____, 2013

Governor