



May 21, 2021

FLOOR ALERT

On behalf of the above organizations, we have a position of SUPPORT IF AMENDED to **SB 788**, as introduced February 19, 2021, which among other things, prohibits *consideration* of race, religious creed, color, national origin, age, gender, marital status, sex, sexual identity, sexual orientation, or genetic characteristics, for the purposes of apportionment of permanent disability (PD).

In 2018, our organizations and others participated in extensive stakeholder meetings on the issues posed by **SB 788**. The outcome was an unopposed bill with broad industry support for SB 899 (Pan) which stated that apportionment of PD cannot be *based* on race or other specified factors. We respectfully request consideration that **SB 788** be amended to align with the language of SB 899 that was sent to Governor Brown in 2018.

Labor Code Section 4663 requires that an evaluating physician's "report must include an apportionment determination." The section goes on to state the physician's obligation to address "what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury." In other words, employers should only be responsible for the disability caused by the industrial injury.

Contrary to longstanding legal precedents, the City of Jackson vs. WCAB (Rice) case touched on genetics as a *basis* for reducing PD awards which raised concerns that *correlation* and *risk factors* of genetics could be used as a *basis* for reducing PD benefits. That is in contrast to existing law on appropriate apportionment that requires *causation* includes diagnosable pathology or factors the particular injured worker actually has, as opposed to what they might be at risk for.

We believe the language previously included in SB 899 is more appropriate language to further clarify existing law, which prohibits discrimination in providing workers' compensation benefits. The language would ensure that any apportionment that involves race, religious creed, color, national origin, age, gender, marital status, sex, sexual identity, sexual orientation, or genetic characteristics is not done on those bases, considering what someone *may* have, but rather on *specific diagnosable pathology or factors they actually have*.

We look forward to continuing the conversation on how to ensure injured workers have appropriate medical treatment and compensation. We sincerely hope that an opportunity exists to discuss the proposed amendments.