

SA 2005 RF 0143

December 15, 2006

**VIA MESSENGER**

Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814

Attention: Tricia Knight

**RECEIVED**  
DEC 16 2005  
INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Re: *The Worker Empowerment Act (Version 2)*

Dear Ms. Knight:

Pursuant to Elections Code section 9002, I request that the Attorney General prepare a title and summary of version 2 of a measure entitled "The Worker Empowerment Act." The text of the measure, a check for \$200.00, and the address at which I am registered to vote are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Sincerely,

Danielle L. Viohl

Version 2

## ***THE WORKER EMPOWERMENT ACT***

### **SECTION 1. Title.**

This measure shall be known as “the Worker Empowerment Act.”

### **SECTION 2. Findings and Declarations.**

The people of California find and declare as follows:

- A. Every year thousands of California workers suffer from workplace injuries, threatening their long-term health and well-being, the economic stability of their families, and the productivity of the businesses that drive our state’s economy.
- B. If these workers remain ill or disabled, they cannot work at full capacity; instead, they remain dependent on the workers’ compensation system. A crucial goal of any effective system of workers’ compensation, therefore, must be to quickly restore injured workers to health so they can return to their jobs.
- C. The workers’ compensation system is based on a compromise between employers and employees. When either employers or employees are forced to shoulder too much of the system’s burdens, reform is necessary to bring the system back into balance.
- D. Recent efforts to reform workers’ compensation have made the health care system for truly injured workers worse, not better. Workers are now prohibited from seeking treatment from doctors they trust, and insurance companies routinely refuse to allow workers to receive the medical treatment and medication their doctors have prescribed. These practices may boost insurance companies’ profits, but they hurt the rest of us, especially injured workers and the businesses that employ them.
- E. These reforms have led to declining workers’ compensation costs, but insurance companies have refused to pass much of these savings on to employers. It therefore makes sense to build upon these reforms while at the same time improving them so that the reforms benefit everyone.
- F. We need to protect a patient’s right to choose his or her own doctor, and give doctors – not bureaucrats – a stronger voice in making medical treatment decisions.

G. The workers' compensation system should include a safety valve to help truly injured workers when the workers' compensation system fails them. Injured workers should be permitted to have their day in court if their employers or employers' insurers refuse to treat them fairly. If the workers' compensation system cannot treat workers fairly, then truly injured workers deserve a second chance to restore their health and get back to work as soon as possible.

### **SECTION 3. Purpose and Intent.**

It is the intent of the people of California in enacting this measure to:

- A. Ensure that a fair balance is struck between employers and employees by permitting an injured worker to choose his or her own physician if the company doctor does not provide adequate care.
- B. Restore balance to the workers' compensation system by permitting an injured worker to sue his or her employer if the worker is treated unfairly.
- C. Remove any doubt that the people, through the power of initiative, may amend workers' compensation laws.
- D. Ensure that workers' compensation statutes are construed as they were intended: to help injured workers.

### **SECTION 4. Section 4 of Article XIV of the California Constitution is amended to read:**

SEC. 4. The Legislature, *and the people through the power of initiative,* are hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such

insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed.

**SECTION 5. Section 3202 of the Labor Code is amended to read:**

3202. This division and Division 5 (commencing with Section 6300) *and all amendments thereto* shall be liberally construed by the *Appeals Board and the courts* with the purpose of extending their benefits for the protection of persons injured in the course of their employment.

**SECTION 6. Section 3602.1 is added to the Labor Code to read:**

*3602.1. (a) After 90 days from the date the injury is reported, the employee, or his or her dependents in the event of his or her death, may choose*

*whether to proceed within the workers' compensation system or to pursue an action at law for damages against the employer or the employer's insurer, as if this division did not apply.*

*(b) A medical provider may bring an action at law for damages against the employer or the employer's insurer, as if this division did not apply, where the medical provider has provided authorized services but the employer fails to pay the claim within 60 days of receiving all information from the provider that is reasonably required to authorize payment.*

*(c) Notwithstanding subdivision (a), this Section shall not apply to any employee who is subject to a collective bargaining agreement or labor-management agreement pursuant to Sections 3201.5 or 3201.7, or is an employee of the State of California or any state or local agency including, but not limited to, cities, counties, cities and counties, school districts, special districts, local and regional agencies, and joint power agencies.*

*(d) In all cases where the employee or medical provider chooses to pursue an action at law for damages, the liability of the employer or the employer's insurer shall be the same as if this division had not been enacted.*

*(e) Where an employee, or his or her dependents, receives the compensation provided by this division and secures a judgment for, or settlement of, civil damages pursuant to those specific exemptions to the employee's exclusive remedy set forth in this section, the compensation paid under this division shall be credited against the judgment or settlement, and the employer or employer's insurer shall be relieved from the obligation to pay further compensation to, or on behalf of, the employee or his or her dependents up to the net amount of the judgment or settlement received by the employee or his or her heirs, or that portion of the judgment as has been satisfied.*

**SECTION 7. Section 4616.8 is added to the Labor Code to read:**

*4616.8. (a) Notwithstanding any other provision of law, if the employer or the employer's insurer has established a medical provider network as provided for in Section 4616, 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 after 30 days from the date the injury is reported. The treatment shall be at the expense of the employer or the employer's insurer.*

*(b) The findings of this physician are presumed to be correct. This presumption is rebuttable and may be controverted by a preponderance of medical opinion indicating a different level of disability.*

## **SECTION 8. Section 4600.2 is deleted from the Labor Code:**

~~4600.2. (a) Notwithstanding Section 4600, when a self-insured employer, group of self-insured employers, insurer of an employer, or group of insurers contracts with a pharmacy, group of pharmacies, or pharmacy benefit network to provide medicines and medical supplies required by this article to be provided to injured employees, those injured employees that are subject to the contract shall be provided medicines and medical supplies in the manner prescribed in the contract for as long as medicines or medical supplies are reasonably required to cure or relieve the injured employee from the effects of the injury.~~

~~(b) Nothing in this section shall affect the ability of employee-selected physicians to continue to prescribe and have the employer provide medicines and medical supplies that the physicians deem reasonably required to cure or relieve the injured employee from the effects of the injury.~~

~~(c) Each contract described in subdivision (a) shall comply with standards adopted by the administrative director. In adopting those standards, the administrative director shall seek to reduce pharmaceutical costs and may consult any relevant studies or practices in other states. The standards shall provide for access to a pharmacy within a reasonable geographic distance from an injured employee's residence.~~

## **SECTION 9. Severability.**

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

## **SECTION 10. Liberal Construction.**

The provisions of this act shall be liberally construed to effectuate its purposes.

## **SECTION 11. Retroactivity Clause.**

The provisions of this act shall apply retroactively to all claims, cases and controversies arising out of any injury occurring before, on or after the effective date of this act.

## **SECTION 12. Conflicting Initiatives.**

In the event that this measure and another initiative measure or measures that address workers' compensation shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.