



OFFICE OF THE GOVERNOR

SEP 30 2016

To the Members of the California State Assembly:

I am returning Assembly Bill 1643 without my signature.

This bill prohibits apportionment in cases of physical injury based on pregnancy, menopause, osteoporosis, and carpal tunnel syndrome and requires that breast cancer not be less than the comparable impairment rating for prostate cancer.

I am vetoing this bill for many of the same reasons that I returned a similar measure, AB 305, last year. This bill is poorly drafted and reflects a seriously flawed understanding of both the workers' compensation system and the nature of physical disability that may result from a work-related injury. The bill would, among other provisions, mandate that impairment ratings for breast cancer be no less than the ratings for prostate cancer. It would also create broad gender-based exceptions to the core principle of apportionment: that employers are liable only for the permanent disability directly caused by their employee's work-related injury.

This measure seeks to draw a false comparison between disability ratings resulting from prostate and breast cancers, notwithstanding that these organs neither perform analogous physiological functions nor do their treatments result in similar physical limitations. There is a wide disparity in impairment levels that may result among individual women diagnosed with breast cancer and individual men diagnosed with prostate cancer, and individuals of all genders diagnosed with any form of cancer, depending on the stage at which the cancer was diagnosed, the nature of the treatment, and the degree and process of recovery. The suggestion that these two very different conditions should be rated equivalently in all cases has no basis in medical fact and upends the goals of ensuring consistency, uniformity and objectivity in ratings supported by substantial medical evidence.

On the issue of apportionment, this bill creates broad, gender-based exceptions to the rule that employers are liable only for the percentage of permanent disability directly caused by a work-related injury. As written, the bill would prohibit apportionment to, and thus require employers to pay for, a permanent disability that actually resulted from pregnancy or menopause, or from osteoporosis or carpal tunnel syndrome where these are preexisting conditions or unrelated to work.



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As I said last year, there is no place for gender discrimination in the workers' compensation system. Current law, however, already prohibits apportionment to risk factors, including gender, age, and family history. There is ample opportunity within the workers' compensation adjudicatory process for workers, their counsel, and others to raise any concerns or allegations of improper and impermissible gender discrimination in the medical evaluation or apportionment process.

California's workers' compensation system strives to treat all injured workers fairly and to ensure that all workers, regardless of gender, are adequately compensated for any permanent disability directly caused by work-related injuries. Rather than promoting equality, the statutory changes proposed by this measure would create new gender-based classifications and spur additional and costly litigation, undermining the successful reforms enacted in 2012 and the sustainability of the system.

I urge proponents of this bill to support efforts to educate medical evaluators on current laws prohibiting bias and to collaborate with my administration.

Sincerely,

A handwritten signature in black ink that reads "Edmund G. Brown Jr." with a long, sweeping flourish extending to the right.

Edmund G. Brown Jr.