April 2, 2025

TO: Members, Senate Labor, Public Employment and Retirement Committee

SUBJECT: SB 555 (CABALLERO) WORKERS' COMPENSATION: AVERAGE ANNUAL EARNINGS
OPPOSE – AS AMENDED APRIL 1, 2025

The California Chamber of Commerce and the organizations listed below are **OPPOSED** to **SB 555 (Caballero)**. **SB 555** misidentifies permanent disability as wage replacement when a closer look at the complexities of the Workers' Compensation system in California clarifies that permanent disability is not intended to replace wages and therefore annual increases as proposed are not appropriate. Moreover, instead of streamlining incentives in the Workers' Compensation system, **SB 555's** mandatory cost of living adjustment for permanent disability would substantially increase frictional costs and would result in delays in the resolution and settlement of claims without any showing that a fix was needed. Any discussion of increased benefits is better suited for a larger discussion about system reform as was done in prior legislation.

<u>Automatic Annual Increases Are Not Appropriate in The Permanent Disability Context.</u>

A careful analysis of the Workers' Compensation system shows that an automatic, annual increase is not appropriate in the Permanent Disability (PD) context. This becomes clear when reviewing the various benefits in Workers' Compensation and clarifying which benefits already have cost of living adjustments incorporated. The two main categories for benefits to which a worker may be entitled under the workers' compensation system are Medical Benefits and Indemnity Benefits.

Medical Benefits: Employers are required to pay for medical benefits for the life of the claim, which can be the life of the injured worker. Medical benefits increase year over year due to medical inflation and any expansions in medical care which may inure to the benefit of the injured worker.

Indemnity Benefits: Beyond medical care, employers are required to provide two categories of indemnity benefits to injured workers, Temporary Disability and Permanent Disability:

> Temporary Disability: TD is intended to be a wage replacement. The average weekly wage (AWW) to calculate the TD rate is based on the injured worker's wages at the time of injury. The average weekly wage is subsequently adjusted only for changes in post-injury earnings that were reasonably anticipated at the time of injury (*Grossmont Hospital v. WCAB*). Per this decision, the TD rate is adjusted annually for minimum wage earners based on annual minimum wage increases at the state, county or city level.
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> Permanent Disability: PD is not intended to be a wage replacement. Rather, it is intended to serve as a bridge or partial compensation for a potential loss of future earning capacity. It is structured so that the duration of payments increases as the severity of the disability increases. More severe claims are entitled to larger payments.
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> The Legislature did, however, agree to cost-of-living adjustment (COLA) increases where a PD rating is 70% or higher. The 70% is used as a threshold for serious claims which are highly likely to involve severe, chronic conditions that significantly impair the worker's ability to engage in gainful employment and earn wages. When a worker is rated Permanent Total Disability or is awarded a "life pension," the benefits for such workers already include COLA increases based on the AWW.

<u>The Legislature Intentionally Chose to Treat PD Differently from TD.</u>

The Legislature intentionally chose to treat PD differently from TD in terms of adjustments for inflation *unless* the PD rating was over a specific threshold. The Legislature's intent accommodates severe and chronic conditions (70% or above) for which wage earning could seriously be impacted. We believe that is because PD is not intended as a wage replacement, nor is it an ongoing benefit that needs to account for inflation It is our understanding that few claims reach the Legislature's current cutoff, and so the system is designed to treat serious injuries in a different manner than the vast majority of claims which are soft-tissue damage or minor injuries without surgical intervention. **SB 555** would use a broad brush to treat all indemnity benefits the same and would rewrite the incentive system in Workers' Compensation inconsistent with the Legislature's current approach, which covers all scenarios in line with the purposes of those scenarios.

<u>Permanent Disability Benefits Should Only Be Reimagined or Increased as Part of a Larger Reform Effort.</u>

As a vital element of the Grand Bargain, a reconsideration of the purpose of any individual indemnity benefit or any increase should be part of a larger discussion about broader reform of the Workers' Compensation System. Substantive changes to the nature of PD benefits must be balanced by efforts to reduce costs elsewhere within the system. The last major reform (SB 863 in 2012) increased PD benefits *and paid for them by reducing frictional costs elsewhere*. Historically, such broader discussions have occurred between labor and management (not CAAA), with the Administration playing a key role in facilitating these conversations.

The self-interest of the group championing **SB 555** – CAAA – is readily apparent if one considers that applicant attorneys' payments are tied directly to the amount of PD awarded. Not only would this proposal result in a direct pay hike, but additional hearings (such as QMEs) and procedural requirements also contribute directly to applicant attorneys' bottom lines. Frictional litigation costs and med-legal challenges will by their very nature upend efficiencies with claims handling and result in delays to final claims resolution. Together, this results in substantial economic costs to the system.

Utilizing data on PD payments during 2015-2022, it is estimated that if the PD Ratings Schedule was tied to the CPI, the increased cost of permanent partial disability benefits would be approximately $570 million to $907 million over an 8-year period. Of that, about $193 million to $258 million is the cost to public employers (state plus local). Please note that the data used does *not* include life pensions or permanent total disability payments – only permanent partial disability payments.

This calculation also applies a “frequency modifier,” which assumes that when benefits are higher, there is an increased number of claims for those benefits. This modifier was developed by the WCIRB and the reforms from SB 863 give proof to the assertion that an increased number of claims should be expected.

This estimate does not incorporate all the costs resulting from **SB 555** which as described above could include costs like increased med-legal costs, increased administrative costs, possible delays in settlements due to the incentive to push claims to the following year, and increased use of WCAB and potential increases to salary continuations for public employers.

For these reasons, the California Chamber of Commerce and the organizations listed below must **OPPOSE** to **SB 555 (Caballero)** because permanent disability is not intended to replace wages and therefore annual increases as proposed are not appropriate.

Sincerely,

Ashley Hoffman
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California Chamber of Commerce

Acclamation Insurance Management Services (AIMS), Dominic Russo
Allied Managed Care (AMC), Dominic Russo
American Property Casualty Insurance Association, Laura Curtis
California Coalition of Workers’ Compensation, Jason Schmelzer
California Grocers Association, Daniel Conway
California League of Food Producers, Katie Little
Carlsbad Chamber of Commerce, Bret Schanzenbach
Coalition of Small and Disabled Veteran Businesses, Jeffrey Langlois
Corona Chamber of Commerce, Bobby Spiegel
Flasher Barricade Association (FBA), Kenneth Johnston
Gilroy Chamber of Commerce, Manny Bhandal
Greater Conejo Valley Chamber of Commerce, Danielle Borja
Lake Elsinore Valley Chamber of Commerce, Kim Joseph Cousins
National Federation of Independent Business (NFIB), Tim Taylor
Public Risk Innovation, Solutions, and Management, Michael Pott
Rual County Representatives of California, Sarah Dukett
Santee Chamber of Commerce, Kristen Dare
Valley Industry and Commerce Association, Stuart Waldman

cc: Legislative Affairs, Office of the Governor
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