

Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 1681 (Daly) – As Amended April 18, 2022

PROPOSED CONSENT

**SUBJECT:** INSURANCE: FRAUD PREVENTION AND DETECTION

**KEY ISSUES:**

- 1) SHOULD DISTRICT ATTORNEYS BE GRANTED THE POWER (CURRENTLY AVAILABLE ONLY TO THE INSURANCE COMMISSIONER) TO CONVENE MEETINGS WITH INSURERS TO ADDRESS SUSPECTED, ANTICIPATED, OR COMPLETED ACTS OF INSURANCE FRAUD, MEETINGS IN WHICH PARTICIPANTS ARE IMMUNE FROM LIABILITY FOR LIBEL, SLANDER, AND OTHER RELEVANT CAUSES OF ACTION—AND IF SO, UNDER WHAT CONDITIONS?
- 2) SHOULD SELF-INSURED EMPLOYERS BE PERMITTED TO ATTEND THESE MEETINGS, WHETHER CONVENED BY THE INSURANCE COMMISSIONER OR A DISTRICT ATTORNEY?

**SYNOPSIS**

*In 2010, the Legislature enacted SB 156 (Wright), which authorized the Insurance Commissioner to convene meetings with representatives of multiple insurance companies to discuss specific information regarding suspected, anticipated, or completed acts of insurance fraud—particularly, workers’ compensation fraud. In order to promote the free exchange of information which might help identify insurance fraud, SB 156 granted participants in these meetings immunity from suit for libel, slander, and related causes of action, provided certain conditions were met. These meetings have helped prevent insurance fraud, and the grant of immunity does not appear to have been excessive.*

*This bill would build on the SB 156 framework by (i) permitting representatives of self-insured employers (including many public entities) and district attorneys to attend such meetings; (ii) requiring the Insurance Commissioner or the Commissioner’s designee to attend one such meeting per month convened by a district attorney; and (iii) continuing to offer attendees at these meetings immunity if the required conditions are satisfied. It is hoped that this expansion of SB 156 will advance the goal of combating insurance fraud, without inappropriately granting legal immunity for malfeasance.*

*This bill is sponsored by American Property Casualty Insurance Association and California Coalition on Workers Compensation. It is supported by various insurance industry trade associations, multiple associations representing self-insured employers (including many public entities), and the District Attorneys of Orange and San Diego Counties. There is no opposition on file and the bill previously passed the Assembly Insurance Committee on consent.*

**SUMMARY:** Permits district attorneys to convene and/or participate in meetings with the Insurance Commissioner, insurance companies, and self-insured employers to discuss suspected, anticipated, or completed acts of insurance fraud, accompanied by a grant of conditional immunity to meeting participants for libel, slander, and other relevant causes of action. Specifically, **this bill:**

- 1) Makes the following uncoded findings and declarations:
  - a) Insurance fraud is rampant in the state, amounting to billions of dollars in damages annually, particularly within workers' compensation insurance.
  - b) The cost of insurance fraud results in higher insurance premiums for consumers, increased costs for self-insured employers, and higher taxes for public entities.
  - c) The Insurance Commissioner and numerous district attorneys have recently publicly called upon insurers, self-insured employers, and public entities to more proactively investigate and fight insurance fraud, including workers' compensation insurance fraud.
  - d) In 2010, the Legislature passed, and the Governor signed into law, Section 1879.1 of the Insurance Code to empower the Insurance Commissioner to convene investigative debriefings as a tool to fight fraud.
  - e) Existing law does not authorize self-insured employers, including public entities that are self-insured employers, and district attorneys to participate in those debriefings if they are convened.
  - f) An analysis of major fraud prosecutions of the last decade demonstrates that investigative debriefings are an indispensable tool to combat major fraud rings.
  - g) Multimillion dollar prosecutions are often complex and require sophisticated investigative approaches to identify and gather evidence in a timely manner, which would be made possible with the participation of representatives of insurance companies, self-insured employers, and district attorneys in those debriefings.
- 2) Permits the Insurance Commissioner or their designated Deputy Commissioner to invite representatives of self-insured employers to participate in meetings convened by the Commissioner or their Deputy to discuss specific information concerning suspected, anticipated, or completed acts of insurance fraud.
- 3) Permits a district attorney to convene meetings with representatives of insurance companies or representatives of self-insured employers to discuss specific information concerning suspected, anticipated, or completed acts of insurance fraud.
- 4) Requires the Insurance Commissioner, their Deputy Commissioner, or employees of the Department of Insurance's (Department's) Fraud or Legal division to attend one such meeting convened by a district attorney per month.
- 5) Permits the Insurance Commissioner, if more than one district attorney seeks to convene a meeting in a given month or a single district attorney seeks to convene more than one

meeting in a given month, to choose which meeting the Commissioner, their Deputy Commissioner, or employees of the Department will attend.

- 6) Permits the party that convenes a meeting under 2) or 3) to invite a district attorney to participate in a meeting if the suspected, anticipated, or completed acts of insurance fraud to be discussed previously occurred or may occur in the county that the district attorney represents.
- 7) Provides that, if the following conditions are met, sharing information regarding suspected, anticipated, or completed acts of insurance fraud at a meeting convened under 2) or 3) does not make attendees liable for libel, slander, or any other relevant cause of action:
  - a) The Insurance Commissioner, their designated Deputy Commissioner, or employees of the Department's Fraud or Legal Division are present.
  - b) The Insurance Commissioner, their designated Deputy Commissioner, or employees of the Department's Fraud or Legal Division advises participants, at the beginning of the meeting, of guidelines to ensure compliance with federal and state antitrust laws.
  - c) There is no fraud or malice on the part of any of the following attendees: the Commissioner, their designated Deputy Commissioner, or designated employees of the Department; representatives of insurance companies; representatives of self-insured employers; and any district attorney or their employees.
- 8) Requires reports of fraudulent claims made by insurance companies or self-insured employers based on information obtained at a meeting convened under 2) or 3) to comply with requirements under applicable fraud reporting statutes and regulations.
- 9) Permits, if the Insurance Commissioner reasonably believes or knows that a fraudulent claim is being made based on information obtained at a meeting convened under 2) or 3), the Commissioner to share information with any district attorney with which the Department has entered into a written agreement for the investigation and prosecution of insurance fraud.
- 10) Requires any representative of a district attorney who attends a meeting convened under 2) or 3) to be the district attorney's employee as well as a licensee of the State Bar of California.

**EXISTING LAW:**

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of employment, and requires all employers to secure payment of benefits by either obtaining workers' compensation insurance coverage or the consent of the Department of Industrial Relations to self-insure. (Labor Code Sections 3200-6002.)
- 2) Permits the Insurance Commissioner or their designated Deputy Commissioner to convene meetings with representatives of insurance companies to discuss specific information concerning suspected, anticipated, or completed acts of insurance fraud. (Insurance Code Section 1879.1.)

- 3) Provides that information shared at meetings permitted under 1) shall not make a person subject to civil liability for libel, slander, or any other relevant cause of action provided that all of the following requirements are met:
  - a) The Insurance Commissioner or their designated Deputy Commissioner is present at the meeting or meetings.
  - b) The Insurance Commissioner or their designated Deputy Commissioner advises meeting participants, at the beginning of any meeting convened pursuant to this provision, of guidelines to ensure compliance with federal and state antitrust laws.
  - c) There is no fraud or malice on the part of the representatives of the insurance companies, or the Commissioner or their designated Deputy Commissioner. (*Ibid.*)
- 4) Sets forth requirements for insurance companies that reasonably believe or know that a fraudulent claim is being made to report the pertinent information to the Department's Fraud Division. (Insurance Code Section 1872.4.)
- 5) Requires governmental agencies to share information relating to workers' compensation fraud, upon request, to other agencies for purposes of investigation and prosecution unless doing so would violate federal law or compromise an investigation. (Insurance Code Section 1877.3.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** It has been more than a decade since the Legislature enacted SB 156 (Wright, Chap. 305, Stats. 2010), which authorized the Insurance Commissioner to convene meetings with representatives of multiple insurance companies to discuss specific information regarding suspected, anticipated, or completed acts of insurance fraud—particularly, workers' compensation fraud. In order to promote the free exchange of information which might help identify insurance fraud, SB 156 granted participants in these meetings conditional immunity from suit for libel, slander, and related causes of action. The required conditions for immunity are: (i) the presence of the Insurance Commissioner or their designated Deputy Commissioner at the meeting; (ii) advisement by the Commissioner or their Deputy, at the beginning of the meeting, of guidelines meant to ensure compliance with federal and state antitrust laws; and (iii) the absence of fraud or malice on the part of insurance company representatives and the Commissioner or their designated Deputy. (*See* Insurance Code Section 1879.1.)

These meetings have helped prevent insurance fraud, and the grant of immunity does not appear to have been excessive. According to the author:

According to the Insurance Commissioner it is estimated that workers' compensation fraud alone costs the state between \$1 billion to \$3 billion per year. Insurance fraud results in higher insurance premiums, higher taxes, higher prices and lower levels of government services, especially when those being defrauded are self-insured municipalities.

For workers' compensation, an important tool to combat fraud is the investigative debriefings allowed under the Insurance Code. These debriefings permit the Department of Insurance fraud investigators to meet with groups of insurers to identify and share fraud trends in the state while protecting these discussions from civil liability.

This bill's sponsors contend that these meetings to address fraud could be made more effective if they were expanded in two ways: first, by allowing representatives of self-insured employers (including many of the states' cities, counties, and special districts) to attend; and second, by allowing district attorneys to convene and participate in these meetings. The sponsors write:

Today, Insurance Code section 1879.1 authorizes the California Insurance Commissioner to convene insurance investigative debriefings or fraud roundtables, to collect information relative to suspected insurance fraud from representatives of insurance companies, who are themselves mandated by law to fund and maintain their own special investigative anti-fraud units. These "roundtables" help stitch together evidence across entities and are a big help. With over two hundred insurance companies underwriting workers' compensation in California, each with no more than a few percent of the overall market (other than the State Fund), the mechanism proposed by AB 1681 is needed to aggregate the necessary facts and details to identify and investigate suspected fraudulent schemes.

The problem of fraud is a large one, and the Insurance Commissioner can use the assistance of district attorneys across the state. AB 1681 seeks to extend the authority to convene investigative debriefings or roundtables to district attorneys and, in addition, to expand the statute to allow self-insured employers and public entities to be included in these discussions. The CDI currently is not authorized to include self-insureds and public entities in its investigative debriefings. Since approximately 30 percent of employers are self-insured for workers' compensation it is important to the overall anti-fraud efforts to add the experience of self-insurers and public entities to those of insurance companies.

***How this bill would work.*** This bill would expand the framework provided by existing Insurance Code Section 1879.1 in four key respects:

- The state's district attorneys would be permitted to convene one meeting per month to address fraud that the Insurance Commissioner, their Deputy Commissioner, or an employee of the Department of Insurance's Fraud or Legal Divisions would be required to attend. Under the bill, if, in a given month, more than one DA seeks to convene a meeting or multiple DAs seek to convene meetings, the Commissioner (or their Deputy or the Department's employee, as applicable) may elect which meeting to attend.
- Representatives of self-insured employers are now eligible to be invited to attend these meetings, whether convened by a district attorney or the Insurance Commissioner.
- District attorneys of counties in which fraud is suspected or has occurred are also eligible to be invited to attend these meetings, again whether convened by a district attorney or the Insurance Commissioner.
- District attorneys and self-insured employers would be eligible for conditional immunity from libel, slander, etc. for information exchanged at these meetings, just as the Insurance Commissioner and insurance companies currently are.
- The Insurance Commissioner would be permitted to share fraud-related information obtained at these meetings with any district attorney with which the Department has entered into a written agreement for the investigation and prosecution of insurance fraud.

*Does this bill ensure an appropriate scope of conditional immunity?* The question of whether this measure would be beneficial for the provision of insurance within California is properly decided by the Assembly Insurance Committee, which passed the bill on consent earlier this month.

The principal question for this Committee is the appropriate scope of civil immunity under the bill. In the form in which the bill was referred to this Committee, the scope of immunity was arguably too broad. It would have allowed the district attorney of any county to convene meetings with representatives of insurance companies and/or self-insured employers, without the presence or participation of the Insurance Commissioner, yet still provided all participants the immunity afforded to Commissioner-convened meetings. Unlike the Insurance Commissioner, who is a statewide elected official, a district attorney is only accountable to the voters of their county, yet each district attorney would have had the power to convene meetings to discuss fraud allegedly occurring in other counties. Further, the bill would have allowed a “designee” of the Commissioner or a district attorney to convene these meetings, meaning that an employee or representative of an insurance company or self-insured employer could have been delegated the power to convene such meetings.

This in turn could have led an unscrupulous insurer to try to take advantage of one or more of California’s 58 district attorneys under the guise of targeting insurance fraud. Such an insurer could convene a meeting under this bill (as a district attorney’s “designee”) and proceed to delay or deny meritorious workers’ compensation claims, asserting that these actions were taken based on information aired at the meeting. If malfeasance was asserted, the insurer could then claim immunity under the bill’s provisions. While the bill forbids immunity if meeting participants act with fraud or malice, there would have been far less accountability (and evidence) of fraud or malice in meetings where the Insurance Commissioner was not present. Creating the potential for such misconduct would have threatened to replace workers’ compensation fraud with insurer fraud—an undesirable tradeoff.

Recent amendments have addressed these issues and established what appears to be an appropriate scope of conditional immunity for the meetings contemplated by this bill. In particular, the required presence of the Insurance Commissioner, their designated Deputy Commissioner, or an employee of the Department’s Fraud or Legal Division at these meetings should help ensure that meritorious cases of fraud are investigated and immunity does not inappropriately shield potential insurer malfeasance. Another safeguard is the requirement that district attorneys be represented at these meetings by employees licensed by the State Bar of California, in order to ensure that these participants are subject to the rules of professional conduct governing attorneys.

**ARGUMENTS IN SUPPORT:** Orange County District Attorney Todd Spitzer lauds this bill’s benefits:

AB 1681 eliminates [identified] limitations by simply expanding the current debriefing rules to permit self-insured employers to join and district attorneys to hold meetings. This expansion will further the partnership between the California Department of Insurance, district attorneys throughout the state, insurers, and self-insured employers to create an integrated framework that better identifies and roots out insurance fraud.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Property Casualty Insurance Association (co-sponsor)  
California Coalition on Workers Compensation (co-sponsor)  
Association of California Healthcare Districts  
Association of Claims Professionals  
California Association of Joint Powers Authorities  
California Grocers Association  
California Special Districts Association  
California State Association of Counties (CSAC)  
Civil Justice Association of California  
National Insurance Crime Bureau  
Orange County District Attorney  
Public Risk Innovation, Solutions, and Management (PRISM)  
Rural County Representatives of California (RCRC)  
San Diego County District Attorney  
Urban Counties of California

**Opposition**

None on file

**Analysis Prepared by:** Jith Meganathan / JUD. / (916) 319-2334