

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 1681 (Daly) – As Amended April 18, 2022

Policy Committee:	Insurance	Vote:	13 - 0
	Judiciary		9 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill revises existing law: (1) authorizing the Insurance Commissioner (IC) or their designated commissioner to convene meetings with representatives of insurance companies to discuss suspected, anticipated or completed acts of insurance fraud and (2) protecting meeting participants from civil liability under specified conditions. This bill additionally authorizes such meetings to be convened with representatives of self-insured employers and authorizes a district attorney to convene such a meeting if the IC or their specified staff attend the meeting.

Specifically, this bill:

- 1) Requires the IC, their designated commissioner or their designated Fraud or Legal Division employees to attend a meeting convened by the district attorney, but limits such meetings to only one per month. If more than one district attorney convenes a meeting in a given month, then the IC must choose which meeting to attend. A district attorney may be represented by an employee only if the employee is licensed by the State Bar of California.
- 2) Continues to protect a person who shares fraud information at a meeting from civil liability for libel, slander or any other relevant cause of action, if the following requirements are met:
 - a) The IC, their designated commissioner or their designated Fraud or Legal Division employees are present at the meeting.
 - b) The IC, their designated commissioner or their designated Fraud or Legal Division employees advise meeting participants, at the start 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 meeting participants.
- 3) Prescribes how a fraudulent claim based on information obtained at a meeting must be reported and authorizes the IC to share specified information with any district attorney with whom the department has a written agreement to investigate and prosecute fraud.

FISCAL EFFECT:

Annual costs of an unknown, but potentially significant amount, likely in excess of \$150,000, to the Department of Insurance (CDI), depending on the number of meetings convened by district attorneys (up to 12 per year) the IC or designated staff must attend. Meeting attendance costs would vary depending on the location (travel costs and time) and duration of the meeting.

COMMENTS:

- 1) **Purpose.** According to the author, California faces rampant insurance fraud, with the IC estimating workers' compensation fraud alone costs the state between \$1 billion to \$3 billion annually. The author believes existing DOI investigative debriefings, which permit DOI investigators to meet with groups of insurers to identify and share fraud trends while protecting the discussions from civil liability, are an important tool to combat fraud. However, the author notes the "critical limitations" of this statutory tool:

It does not permit self-insured employers to join these debriefings or district attorneys to hold them. Self-insureds represent nearly one-third of the workers' compensation market and are an essential partner for identifying fraud throughout the system. Likewise, district attorneys are also on the front lines of investigating and prosecuting fraudsters and need the same tools as [DOI] investigators.

AB 1681 eliminates these limitations by simply expanding the current debriefing rules to permit self-insured employers to join and district attorneys to hold meetings.

This bill is co-sponsored by the American Property Casualty Insurance Association and California Coalition on Workers' Compensation.

- 2) **Role of Self-Insured Employers and District Attorneys.** Self-insured employers, which include most municipalities, do not have the financial buffer of an insurer when employers are the direct victims of fraud. Self-insured employers also are in a weaker position to see greater fraud schemes impacting the industry.

District attorneys bring the majority of insurance fraud prosecutions in the state. In 2021, DOI requested to augment its local assistance expenditure authority to distribute additional funds to local district attorneys for automobile insurance and workers' compensation fraud prosecutions.

- 3) **Conditional Immunity.** SB 156 (Wright), Chapter 305, Statutes of 2010, authorized the IC to convene insurance fraud investigative debriefings with insurers and provided conditional immunity for participants. This bill allows self-insured employers to participate in these meetings and district attorneys to convene these meetings. Recent amendments to this bill intend to address concerns regarding the expanded universe of civil liability protections by granting protections only if the IC or their designated staff are present at a district attorney's meeting and specifying district attorneys can only be represented by their State Bar-licensed employees, thus guarding against unscrupulous insurers who may otherwise try to game the process to absolve themselves of liability.

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