

CONCURRENCE IN SENATE AMENDMENTS

AB 1681 (Daly)

As Amended June 2, 2022

Majority vote

SUMMARY

Permits district attorneys (DAs) to convene and/or participate in meetings with the Insurance Commissioner (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.

Senate Amendments

Minor and technical to add the word "designated" in one place it was inadvertently omitted.

COMMENTS

It has been more than a decade since the Legislature passed SB 156 (Wright), Chapter 305, Statutes of 2010, which enacted Insurance Code Section 1879.1, authorizing the 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.

The powers ascribed to the Commissioner to convene these meetings are limited to insurance companies, and do not allow the Commissioner to include self-insured employers in such discussions. Self-insured employers throughout the state include most municipalities (cities and counties).

Self-insured employers do not have the financial buffer of an insurer when they are the direct victims of fraud, and have added incentives to actively investigate, identify, and fight insurance fraud. Additionally, self-insured employers are in no position to see the greater fraud schemes impacting the industry, or to identify and extrapolate major fraud schemes based only on the claims they see. This is especially true as it applies to workers' compensation insurance and potential fraud.

Allowing self-insured employers to aggregate their experiences, amongst themselves and with CDI, DAs, and insurance companies, will allow the industry to fight fraud with a holistic set of data, and develop insights into how each scheme is being implemented and being identified by the various participants.

Currently, CDI does partner with DAs to fight insurance fraud in the state and DAs bring the majority of insurance fraud prosecutions in the state. By augmenting this relationship to allow DAs to convene meetings related to fraud and work with CDI, insurance companies, and self-insured employers, this bill could also help catch and prevent fraud before it escalates.

This bill would expand the framework provided by existing Insurance Code Section 1879.1 in five key respects:

- 1) The state's DAs would be permitted to convene one meeting per month to address fraud that the Commissioner, their Deputy Commissioner, or an employee of CDI'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 CDI employee, as applicable) may elect which meeting to attend.
- 2) Representatives of self-insured employers are now eligible to be invited to attend these meetings, whether convened by a DA or the Commissioner.
- 3) DAs of counties in which fraud is suspected or has occurred are also eligible be invited to attend these meetings, again whether convened by a DA or the Commissioner.
- 4) DAs and self-insured employers would be eligible for conditional immunity from libel, slander, etc. for information exchanged at these meetings, just as the Commissioner and insurance companies currently are.
- 5) The Commissioner would be permitted to share fraud-related information obtained at these meetings with any DA with which CDI has entered into a written agreement for the investigation and prosecution of insurance fraud.

According to the Author

California faces rampant insurance fraud amounting to billions of dollars a year. 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 are 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.

This statutory tool, however, does not permit self-insured employers to join these debriefings or district attorneys to convene 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. This bill eliminates these limitations by simply expanding the current debriefing rules to permit self-insured employers to join meetings and district attorneys to convene meetings.

Arguments in Support

American Property Casualty Insurance Association (APCIA), the sponsor of this bill, says this bill is needed to fight insurance fraud in the state. APCIA notes that fraud tends to be regional in nature, and therefore "authorizing local district attorneys to convene investigative debriefings with insurers as well as local employers and public entities in the region is expected to multiply and enhance anti-fraud investigation and prosecutions."

Additionally, 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.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, annual costs of an unknown, but potentially significant amount, likely in excess of \$150,000, to CDI depending on the number of meetings convened by DAs (up to 12 per year) the Commissioner or designated staff must attend. Meeting attendance costs would vary depending on the location (travel costs and time) and duration of the meeting.

VOTES:

ASM INSURANCE: 13-0-1

YES: Daly, Berman, Bigelow, Calderon, Cervantes, Chen, Cooley, Cooper, Gipson, Grayson, Santiago, Voepel, Wood

ABS, ABST OR NV: Rodriguez

ASM JUDICIARY: 9-0-2

YES: Stone, Cunningham, Kalra, Kiley, Maienschein, Reyes, Robert Rivas, Lee, Wicks

ABS, ABST OR NV: Patterson, Holden

ASM APPROPRIATIONS: 16-0-0

YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

ASSEMBLY FLOOR: 76-0-2

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

ABS, ABST OR NV: Berman, O'Donnell

SENATE FLOOR: 40-0-0

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

UPDATED

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