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THIRD READING

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Bill No: AB 1398  
Author: Valencia (D)  
Amended: 4/24/25 in Assembly  
Vote: 21

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SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 5-0, 7/9/25  
AYES: Smallwood-Cuevas, Strickland, Cortese, Durazo, Laird

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/29/25  
AYES: Caballero, Seyarto, Cabaldon, Dahle, Grayson, Richardson, Wahab

ASSEMBLY FLOOR: 79-0, 6/3/25 - See last page for vote

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**SUBJECT:** Workers' compensation

**SOURCE:** Author

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**DIGEST:** This bill, in order to facilitate the prosecution of workers' compensation fraud, clarifies the following provisions: 1) existing laws on referrals for workers' compensation related-services do not preclude any other applicable laws, and 2) an interested party in a workers' compensation claim must disclose a financial interest in an entity providing services, in writing, to a third-party payer or any other entity paid for services furnished pursuant to a referral.

**ANALYSIS:**

Existing law:

- 1) Establishes a comprehensive system of workers' compensation that provides a range of benefits for an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to insure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by obtaining insurance from a company authorized by the state. (Labor Code §§3200-6002)

- 2) Establishes the Division of Workers' Compensation (DWC) and Workers' Compensation Appeal Board (WCAB) within DIR and charges them with monitoring the administration of workers' compensation claims and providing administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor Code §3200)
- 3) Specifies that failure to have workers' compensation coverage, or make a false or fraudulent statement to obtain or deny any compensation, is a criminal and civil offense; including a misdemeanor or felony, punishable by imprisonment, and/or fines ranging from \$10,000 to \$100,000; as well as civil penalties, including stop orders, and personal liability. (Labor Code §§3700-3823)
- 4) Requires all interested parties in a workers' compensation claim to disclose any financial interest in any entity providing services pertaining to that claim. (Labor Code §139.32)
  - a) Except as otherwise permitted by law, prohibits an interested party other than a claims administrator or network service provider from referring a person for services provided by another entity, or using services provided by another entity, if the other entity will be paid for those services through the workers' compensation system and the interested party has a financial interest in the other entity.
  - b) Prohibits an interested party from entering into an arrangement or scheme, such as a cross-referral arrangement, that the interested party knows, or should know, has a purpose of ensuring referrals by the interested party to a particular entity that, if the interested party directly made referrals to that other entity, would be in violation of this section.
  - c) Prohibits an entity from presenting a claim for payment to any interested party, individual, third-party payer, or other entity for any services furnished pursuant to a referral prohibited under this section.
  - d) Prohibits an insurer, self-insurer, or other payer from knowingly paying a charge or lien for any services resulting from a referral for services or use of services in violation of this section.
  - e) Provides that a violation of these provisions is a misdemeanor, and subject to civil penalties up to \$15,000 for each offense, which may be enforced by the Insurance Commissioner, Attorney General, or a district attorney.

- i. Defines “financial interest in another entity” to mean either of the following:
  1. Any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise, between the interested party and the other entity to which the employee is referred for services; or
  2. An agreement, debt instrument, or lease or rental agreement between the interested party and the other entity that provides compensation based upon, in whole or in part, the volume or value of the services provided as a result of referrals.
- ii. Specifies that the following arrangements between an interested party and another entity do not constitute a “financial interest in another entity”:
  1. A loan between an interested party and another entity, if the loan has commercially reasonable terms, bears interest at the prime rate or a higher rate that does not constitute usury, and is adequately secured, and the loan terms are not affected by either the interested party’s referral of any employee or the volume of services provided by the entity that receives the referral.
  2. A lease of space or equipment between an interested party and another entity, if the lease is written, has commercially reasonable terms, has a fixed periodic rent payment, has a term of one year or more, and the lease payments are not affected by either the interested party’s referral of any person or the volume of services provided by the entity that receives the referral.
  3. An interested party’s ownership of the corporate investment securities of another entity, including shares, bonds, or other debt instruments that were purchased on terms that are available to the general public through a licensed securities exchange or NASDAQ.
- iii. Defines “interested party” to mean any of the following:
  1. An injured employee,

2. The employer of an injured employee, and, if the employer is insured, its insurer,
  3. A claims administrator, which includes, but is not limited to, a self-administered workers' compensation insurer, a self-administered self-insured employer, a self-administered joint powers authority, a self-administered legally uninsured employer, a third-party claims administrator for an insurer, a self-insured employer, a joint powers authority, or a legally uninsured employer or a subsidiary of a claims administrator,
  4. An attorney-at-law or law firm that is representing or advising an employee regarding a claim for workers' compensation,
  5. A representative or agent of an interested party, including either of the following:
    - a. An employee of an interested party,
    - b. Any individual acting on behalf of an interested party, including the immediate family of the interested party or of an employee of the interested party. For purposes of this clause, immediate family includes spouses, children, parents, and spouses of children,
  6. A provider of any medical services or products.
- iv. Defines "services" to include, but not be limited to:
1. A determination regarding an employee's eligibility for workers' compensation, that includes both of the following:
    - a. A determination of a permanent disability rating, as specified.
    - b. An evaluation of an employee's future earnings capacity resulting from an occupational injury or illness.
  2. Services to review the itemization of medical services set forth on a medical bill, as specified.
  3. Copy and document reproduction services.
  4. Interpreter services.
  5. Medical services, including the provision of any medical products such as surgical hardware or durable medical equipment.

6. Transportation services.
7. Services in connection with utilization review, as specified.
- 5) Prohibits a person from concealing, or knowingly failing to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled and prohibits knowingly assisting or conspiring with a person to violate this provision. (Penal Code §550(b)(3))
- 6) Provides that a violation of this is punishable by imprisonment for two, three, or five years, as specified, or by a fine not exceeding \$50,000 or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, or by a fine of not more than \$10,000, or by both that imprisonment and fine. (Penal Code §550(c)(3))

This bill:

- 1) Provides that an interested party in a workers' compensation claim must disclose a financial interest in an entity providing claim services to a third-party payer or any other entity paid for services furnished pursuant to a referral.
  - a) Specifies the disclosure must be made in writing, at the time the claim for payment is presented for services furnished pursuant to a referral.
- 2) Clarifies that existing laws concerning referrals for workers' compensation-related services do not preclude the ability of any other law that may apply to the transaction.

## Background

*Workers' Compensation, Fraud, and Illegal Referrals.* Under the California workers' compensation system, if a worker is injured on a job, the employer must pay for the worker's medical treatment, and provide monetary benefits if the injury is permanent. In return for receiving free medical treatment, the worker surrenders the right to sue the employer for monetary damages in civil court.

The workers' compensation system is often a myriad, complex system. If a worker is injured, they must first report the injury to their employer and file a claim in order to receive treatment or benefits. While the injured worker receives an initial evaluation by a medical provider within a network specified by the employer or their insurer, the employer submits a report of the injury to the insurer. A claims

administrator with the insurer then determines whether the claim is approved or denied, and if approved, the treatment can be provided. There are several formal dispute resolution processes for any disputes among the interested parties regarding the details of the injury, the medical necessity of aspects of the treatment plan, or the billing of insurers by medical providers, etc. that involve qualified medical evaluators (QMEs), workers' compensation administrative law judges, and the Workers' Compensation Appeals Board (WCAB) among others.

As a result, many different parties and professionals are involved from beginning to end in the workers' compensation process. The injured worker or employer depends on interpreters, attorneys, medical providers, and many other professionals who then depend on other networks from the initial filing of a claim until the completion of treatment. Unfortunately, workers' compensation fraud has also been rampant and costs California billions each year. Workers' compensation fraud can take many forms, including for example, health care providers billing for services never performed, employers under-reporting payroll, and attorneys or claims adjusters facilitating fraud.

Workers' compensation fraud also includes illegal referrals, also known as "kickback schemes." In these fraudulent schemes, individuals or entities providing services related to a workers' compensation claim will refer the injured worker or the employer to another service provider in which they have financial interest without disclosing that relationship. After that illegal referral, the individual issuing the referral will receive payment from the workers' compensation system for the services provided.

An example of these illegal "kickback schemes" is described in the case of *People v. Luna* (2023) [89 Cal. Comp. Cases 22], discussed below:

"Luna has been practicing workers' compensation law in California for half a century. [...] At the preliminary hearing, the district attorney presented evidence Luna opened a side business called Adelante Interpreters in 2011. Although Luna controlled and ran the business, he did not mention that on the incorporation papers. Instead, he listed his daughters as its acting officers. When Luna's legal clients needed interpreter services in connection with their workers' compensation claims, he invariably enlisted Adelante for those services. Adelante then made insurance claims for the cost of those services. All told, it received payments totaling over \$100,000 from 22 different insurance carriers between 2016 and 2020. The parties stipulated those benefits would not have been paid had the carriers known of Luna's interest in Adelante."

This example illustrates how people use fraudulent “kickback schemes,” in various ways to provide one another with compensation in exchange for providing workers’ compensation services, and ultimately defraud the workers’ compensation system.

*Overlapping Fraud Statutes.* The Legislature has passed several laws to protect insurers and the workers’ compensation system by making it a crime to participate in a “kickback scheme.” Labor Code Section 139.32 requires all interested parties to disclose of any financial interest in any entity providing services. It is also illegal to “refer a person for services provided by another entity, or to use services provided by another entity, if the other entity will be paid for those services . . . and the interested party has a financial interest in the other entity.” (Labor Code §139.32(c)). These provisions are punishable as misdemeanors and subject to civil penalties up to \$15,000 for each offense.

Additionally, Penal Code Section 550 outlines several prohibitions to insured property and insurers. Under Penal Code Section 550(b)(3), it prohibits a person from concealing, or knowingly failing to disclose the occurrence of, “an event that affects any person’s initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.” The law also prohibits a person from knowingly assisting or conspiring with any person with those provisions. These provisions are punishable as felonies, with the possibility of imprisonment and fines up to \$50,000.

Although the Penal Code section is broader than the above described Labor Code section, both are nonetheless similar and both prohibit referrals for service where the person who issue a referral has a financial interest in the other entity and the entity will be paid through the workers’ compensation insurance.

As the Assembly Insurance Committee analysis describes, “The relationship between these statutes came into question in *People v. Luna* (2023) [89 Cal. Comp. Cases 22]. For [this referral scheme], the district attorney sought to charge Luna with 22 counts of felony insurance fraud pursuant to Penal Code Section 550(b)(3). In this case, the trial court held, and the appellate court upheld, that the felony charges must be dismissed due to the existence of Labor Code Section 139.32(c), which more specifically addresses the same activity, and punishes it as a misdemeanor. The court relied on the so-called *Williamson* rule, ‘which precludes criminal prosecution under a general statute if there is a more specific statute that applies to the defendant’s conduct.’ (In re *Williamson* (1954) 43 Cal.2d 651)

As a result of this decision, prosecutors have struggled to bring felony charges for illegal referrals under Penal Code Section 550(b)(3). The implications of this

preemption are not limited to the lesser penalties provided under Labor Code Section 139.32. Rather, because Penal Code Section 550(b)(3) permits trying the fraudulent activity as a felony, it is subject to the four-year statute of limitations for felony fraud in California. In contrast, Labor Code Section 139.32 is subject to a one-year statute of limitations.”

The author of this bill claims: “In its ruling, the Appellate Court [in *Luna*] called on the Legislature to address the issue and rectify the court’s interpretation stating: *‘if this is not the case, the Legislature can easily say so by amending the statute to clarify that a violation of its provisions does not preclude the applicability of any other provision of law.’*” The court stated: “*The legislature has utilized this procedure in response to past judicial decisions, and there is no reason it cannot do so in response to this case, if need be.*”

The court’s decision effectively created a misdemeanor one-year [statute of limitations (SOL)] for complex medical fraud investigations. This would have a severe impact on law enforcement’s ability to fight fraud in California’s workers’ compensation system.

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This bill, AB 1398, would clarify that illegal referral schemes can be prosecuted under either Labor Code Section 139.32(c) or Penal Code Section 550(b)(3). By adding that “[t]his section does not preclude the applicability of any other law that applies or may apply to a transaction” under Labor Code Section 139.32(j), it would allow prosecutors to enforce workers’ compensation referral financial interest laws either as a misdemeanor (with only a one-year statute of limitations) under the Labor Code or a felony, which would allow for use of the four-year statute of limitations under the Penal Code.

*Financial Interest Disclosures.* The Appellate Court in *Luna* also held that the district attorney could not bring charges for failure to disclose the financial interest under Labor Code Section 139.32(b), which requires all interested parties, as defined, to “disclose to any financial interest in any entity providing services” because the statute was “unconstitutionally vague.” This is because the statute does not specify how, when, or to whom the disclosure must be made.

This bill, AB 1398, proposes to resolve the issue of vagueness by specifying that this disclosure shall be made to “a third-party payer or other entity to whom a

claim for payment is presented for services pursuant to a referral.” The disclosure must also be made in writing, and at the time the claim for payment is presented for services pursuant to a referral.

### **Related/Prior Legislation**

SB 536 (Archuleta, 2025) would (1) require an insurer or licensed rating organization to notify the Employment Development Department (EDD) of suspected workers’ compensation fraudulent acts related to premium fraud for the purpose of notification and investigation, and (2) require EDD, upon written request, to release detailed payroll information, to insurers or licensed rating organizations that would allow the insurer or licensed rating organization to compare the records with the information they are otherwise entitled to receive from employers in workers’ compensation claims, in a confidential manner, and if specific requirements are met. This bill is currently pending in the Assembly Insurance Committee.

AB 2046 (Daly, Chapter 709, Statutes of 2018), among other things, required (1) an authorized governmental agency that is provided with specified information, upon request, to release information deemed important related to workers’ compensation fraud, and (2) authorized governmental agency that seeks to disclose this information to any other governmental agency that is not authorized to receive that information to obtain EDD approval prior to disclosure, as specified.

SB 863 (De Leon, Chapter 363, Statutes of 2012) enacted major reforms to the workers’ compensation system, including establishing the independent medical review (IMR) procedure for evaluating disputes pertaining to medically necessary treatment, and authorizing appeal of IMR findings in the event there was fraud or a conflict of interest on the part of the IMR.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- The Department of Industrial Relations (DIR) indicates that this bill would not have a fiscal impact to its Division of Workers’ Compensation (DWC).
- This bill could result in cost pressures of an unknown, but potentially significant, amount to the courts to adjudicate violations of the crime this bill makes more likely to be prosecuted. A defendant charged with a felony is entitled to no-cost legal representation and a jury trial (Trial Court Trust Fund (TCTF)). The specific number of new actions that could be filed under

the bill is unknown; however, it generally costs about \$10,500 to operate a courtroom for an eight-hour day. Courts are not funded on the basis of workload, and increased pressure on TCTF may create a need for increased funding for courts from the General Fund. The enacted 2025-26 budget includes \$38 million in ongoing support from the General Fund to continue to backfill TCTF for revenue declines.

- Additionally, this bill could result in General Fund costs of an unknown, but potentially significant amount, to the Department of Corrections and Rehabilitation and the counties to incarcerate people convicted of a violation. The specific incarceration costs resulting from the bill would be driven by the number of convictions, the length of each sentence, and whether each sentence must be served in county jail or state prison. Incarceration in county jail costs, on average, \$29,000; the comparable figure for state prison is \$133,000. County incarceration costs generally are not considered reimbursable state mandates pursuant to Proposition 30 (2012); however, overcrowding in county jails creates General Fund cost pressures, as the State has historically granted new funding to counties to offset overcrowding resulting from 2011 public safety realignment.

**SUPPORT:** (Verified 8/29/25)

American Property Casualty Insurance Association  
California Association of Joint Powers Authorities  
California Association of Winegrape Growers  
California Chamber of Commerce  
California Coalition on Workers Compensation  
California Farm Bureau  
California Hotel & Lodging Association

**OPPOSITION:** (Verified 8/29/25)

None received

**ARGUMENTS IN SUPPORT:** According to a coalition of supporters, including the California Chamber of Commerce:

“Fraud and illegal referrals within the workers’ compensation system are of the utmost concern to the employer community. AB 1398 improve enforcement against bad actors by allowing fraud claims to be prosecuted as felonies and providing additional clarity regarding certain financial disclosures. [...]”

The court's decision [in *Luna*] effectively created a misdemeanor one-year statute of limitations for complex medical fraud investigations. This would have a severe impact on law enforcement's ability to fight fraud in California's workers' compensation system. AB 1398 clarifies that workers' compensation fraud can be prosecuted by utilizing additional code sections outside of Labor Code Section 139.32."

ASSEMBLY FLOOR: 79-0, 6/3/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

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\*\*\*\* END \*\*\*\*