

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1681 (Daly)  
Version: June 2, 2022  
Hearing Date: June 28, 2022  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Insurance: fraud prevention and detection

**DIGEST**

This bill authorizes the Insurance Commissioner (Commissioner) or their specified designees to convene meetings with self-insured employers and district attorneys, in addition to their existing authority to meet with representatives from insurance companies, to discuss information concerning suspected, anticipated, or completed acts of insurance fraud. The bill grants participants in these meetings immunity from suit for libel, slander, and related causes of action, provided certain conditions are met.

**EXECUTIVE SUMMARY**

Existing law authorizes the Commissioner to convene meetings with representatives of insurance companies to discuss specific information regarding suspected, anticipated, or completed acts of insurance fraud and granted participants in these meetings immunity from suit for libel, slander, and related causes of action, provided certain conditions were met. The bill expands this provision to include meetings with representatives from self-insured employers and allows district attorneys to attend the meetings.

This bill was previously analyzed by the Senate Insurance Committee – where it passed by a vote of 11 to 0 – regarding issues related to including self-insured employers and district attorneys in the above described meetings. This analysis, however, is limited to the issues within the Committee’s jurisdiction – namely, the grant of immunity from liability.

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, associations representing self-insured employers, and the District Attorneys of Orange and San Diego Counties. There is no known opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Requires an insurer to provide law enforcement, upon a written request, with any or all relevant information deemed important to the authorized governmental agency, as defined, relating to any specific insurance fraud (Ins. Code § 1873.)
  - a) Provides that, in the absence of fraud or malice, no insurer and no authorized governmental agency shall be subject to any civil liability for libel, slander, or any other relevant cause of action because of releasing or receiving the information required to be disclosed. (Ins. Code § 1873.2.)
- 2) Authorizes the 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. (Ins. Code § 1879.1.)
- 3) Provides that information shared at those meetings regarding specific suspected, anticipated, or completed acts of insurance fraud will not subject a person to any civil liability for libel, slander, or any other relevant cause of action because of releasing or receiving the information described under 2) provided that all of the following requirements are met:
  - a) the Commissioner or their designated deputy commissioner is present at the meeting or meetings;
  - b) the commissioner or their designated deputy commissioner advises meeting participants, at the beginning of any meeting convened pursuant to this section, of guidelines to ensure compliance with federal and state antitrust laws; and
  - 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. (Ins. Code § 1879.1.)

This bill:

- 1) Authorizes the Commissioner or their designated deputy commissioner to additionally meet with representatives of self-insured employers to discuss specific information concerning suspected, anticipated, or completed acts of insurance fraud.
- 2) Authorizes a district attorney to convene a meeting with representatives of insurance companies or representatives of self-insured employers to discuss specific information concerning suspected, anticipated, or completed acts of insurance fraud.
  - a) Requires the commissioner, their designated deputy commissioner, or designated employees of the department from the department's Fraud Division or the department's legal division to attend the meeting, as provided

- 3) Authorizes a party that convenes a meeting to invite a district attorney to participate in the meeting if the suspected, anticipated, or completed acts of insurance fraud to be discussed at the meeting previously occurred or may occur in the county that the district attorney represents.
- 4) Provides that information shared at the above described meetings regarding specific suspected, anticipated, or completed acts of insurance fraud will not subject a person to any civil liability for libel, slander, or any other relevant cause of action because of releasing or receiving the information provided that all of the following requirements are met:
  - a) the Commissioner, their designated deputy commissioner, or designated employees of the department from the department's Fraud Division or the department's legal division are present at the meeting or meetings;
  - b) the Commissioner, their designated deputy commissioner, or designated employees of the department from the department's Fraud Division or the department's legal division advises meeting participants, at the beginning of any meeting convened pursuant to this section, of guidelines to ensure compliance with federal and state antitrust laws; and
  - c) there is no fraud or malice on the part of the representatives of the insurance companies, the representative of the self-insured employers, the commissioner or their designated employees, or any district attorney or their employees.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

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.

2. This bill expands existing immunity from liability

Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty. As a general rule, California law provides that everyone is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by lack of ordinary care, caused their own injury. (Civ. Code § 1714(a).)

Blanket immunity provisions are generally disfavored as a matter of public policy because they, by their nature, prevent an injured party from seeking a particular type of recovery. However, the Legislature has in limited circumstances allowed for measured immunity from liability to promote other policy goals that could benefit the public. Immunity provisions are sometimes allowed when necessary to ensure the willingness of individuals to continue taking on certain roles that may involve some risk.

In 2010, the Legislature authorized the Commissioner to convene meetings with representatives of insurance companies to discuss specific information regarding suspected, anticipated, or completed acts of insurance fraud and granted participants in these meetings immunity from suit for libel, slander, and related causes of action, provided certain conditions were met. (SB 156 Wright (Ch. 305; Stats. 2010.) SB 156 granted immunity with the goal of promoting the candid exchange of information between parties in the meetings to assist in combatting insurance fraud. The immunity was tailored to libel, slander, or similar causes of action and was conditioned on several factors. These factors are: that the Commissioner or their designated deputy commissioner is present at the meeting or meetings and advises meeting participants, at the beginning of any meeting, of guidelines to ensure compliance with federal and state antitrust laws; and that there is no fraud or malice on the part of the participants in the meeting.

The bill authorizes the Commissioner to additionally meet with representatives from self-insured employers and to allow district attorneys to attend the meetings. The bill accordingly grants the existing immunity to representatives of self-insured employers and district attorneys that attend the meetings. The author states that the primary goal of the bill is to address workers' compensation fraud. The author and sponsors of the bill note self-insured entities represent nearly one-third of the workers' compensation market and, as such, are an essential partner for identifying fraud throughout the

system. They additionally highlight the role district attorneys play in combating insurance fraud. They argue that expanding the current provisions to include self-insureds and district attorneys will bolster existing fraud prevention tools used by the DOI.

### 3. Statements in support

A coalition of industry trade associations, associations representing self-insured employers, and government agencies write in support:

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.

In addition, fraud tends to be regional in nature. As such, 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, especially those aimed at large, organized fraud rings. AB 1681 is expected to further the partnership between the California Department of Industrial Relations, 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.

### 4. Statement of concern

Though not in opposition, the Consumer Attorneys of California writes with concerns stating they are "not aware of any need to go beyond the existing law immunity and allow for an expansion" and that the DOI "reports that it is well funded for worker's comp-50% of their fraud resources are used on this type of fraud and they often already partner with the district attorney's to combat fraud rings and work jointly on large cases."

**SUPPORT**

American Property Casualty Insurance Association (sponsor)  
California Coalition on Workers Compensation (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  
Housing Contractors 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 known

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: SB 156 Wright (Ch. 305, Stats. 2010), *see* comment 2 above.

**PRIOR VOTES:**

Senate Insurance Committee (Ayes 11, Noes 0)  
Assembly Floor (Ayes 76, Noes 0)  
Assembly Appropriations Committee (Ayes 16, Noes 0)  
Assembly Judiciary Committee (Ayes 9, Noes 0)  
Assembly Insurance Committee (Ayes 13, Noes 0)

\*\*\*\*\*