

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

SB 1040 (Rubio)  
Version: April 4, 2022  
Hearing Date: April 19, 2022  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Insurance: restitution

**DIGEST**

This bill authorizes the Insurance Commissioner (Commissioner) to order a respondent to provide restitution and, if the facts and equity permit, rescission for a loss arising out of the respondent's conduct, as provided. The bill authorizes the Commissioner to apply to the clerk of the superior court for a judgment to enforce an order requiring a person to pay and that such restitution is due and payable on the demand of the Commissioner. The bill authorizes a restitution or rescission order to be judicially enforced in an action brought by the Commissioner, Attorney General, a district attorney, a city attorney, or any person owed restitution pursuant to the order and provides the court may award attorney's fees and court costs to the prevailing plaintiff.

**EXECUTIVE SUMMARY**

Under existing law the Commissioner has the authority to assess penalties against those who violate the laws regulating the business of insurance but, unlike other state agencies, does not have the power to order restitution for victims harmed by violation of those laws. This bill would enhance consumer protections by authorizing the Commissioner to order restitution and, when the facts and equity permit, rescission and provide for the judicial enforcement of that order by, among others the Commissioner, Attorney General, or person owed restitution under the order. Insurance regulators in other states currently possess the authority to order restitution, as well as several state agencies, including various licensing agencies under the Business and Professions Code and the Department of Fair Employment and Housing. (Bus. & Prof. Code § 125.5 & Lab. Code § 1193.6.)

The bill is sponsored by the California Insurance Commissioner Ricardo Lara. It is supported by consumer organizations, business organizations, local governments, local chambers of commerce, and the LGBTQ Center Long Beach. There is no known opposition. It passed out of the Senate Insurance Committee on a vote of 9 to 0.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the California Department of Insurance (CDI), which is headed by the Commissioner, to regulate specified insurers and insurance practices in this state. (Ins. Code §§ 100 et. seq.)
- 2) Requires a person who solicits, negotiates, or effects contracts of insurance in this state to hold a valid license issued by the Commissioner, except as provided. (Ins. Code § 1631.)
  - a) Exempts surplus lines brokers from licensing requirements and provides for separate regulation of surplus lines activities (Ins. Code § 1634, §§ 1760-1780, & §§ 1780.50-1780.67.)
- 3) Authorizes the Commissioner to do any of the following:
  - a) issue a cease and desist order to a person who has acted in a capacity for which a license, registration, or certificate of authority from the commissioner was required but not possessed;
  - b) issue a cease and desist order to a person who has aided or abetted a person described in a); and
  - c) impose a monetary penalty, pursuant to an order to show cause, on a person described in a) or b), calculated as the greater of \$5,000 per day of violation or five times the amount of money the person received for acting in the capacity for which a license was required but not possessed. (Ins. Code § 12921.8(a).)
- 4) Authorizes the Commissioner to bring an action in the name of the people of the State of California in the superior court of the State of California to enjoin any person who the Commissioner believes is violating or is about to violate the Insurance Code, any order issued by the Commissioner, or rule promulgated by the Commissioner. (Ins. Code § 12928.6.)
- 5) Authorizes the Commissioner to apply to the clerk of the superior court for a judgment to enforce an order requiring a person to pay a monetary penalty or reimburse the department for costs incurred by CDI in prosecuting the matter, as specified. (*Id.* at subd. (b).)
- 6) Provides that all fines, forfeitures, taxes, assessments, and penalties provided for in the insurance code are due and payable on the demand of the Commissioner. If payment is not made within ten days after the demand, requires the Commissioner institute an action in the name of the people of the State of California for the purpose of recovering the moneys due. (Ins. Code § 12976.)

This bill:

- 1) Authorizes the Commissioner to order a respondent to provide restitution and, if the facts and equity permit, rescission for a loss arising out of the respondent's conduct on any person subject to the Commissioner jurisdiction, except as provided.
  - a) Authorizes the Commissioner to apply to the clerk of the superior court for a judgment to enforce an order requiring a person to pay restitution.
  - b) Authorizes the Commissioner to order that the respondent required to provide restitution reimburse the Commissioner for the Commissioner's costs of implementing and enforcing these provisions, including attorney's fees.
  - c) Provides that restitution is due and payable on the demand of the Commissioner.
  - d) Defines "restitution" as the full amount that will compensate each person for their direct and indirect financial and nonfinancial losses proximately caused by the respondent's violations.
- 2) Requires a restitution order to meet certain requirements including that the respondent is subject to the commissioner's jurisdiction and that the order is ancillary to another proceeding authorized by the Insurance Code where the Commissioner determines both:
  - a) the respondent violated the code when the loss occurred; and
  - b) issues an order imposing a cease and desist order, an order for a monetary penalty, or another sanction in respect to the respondent's conduct.
- 3) Provides that a restitution or rescission order is subject to judicial review in the same manner and at the same time as the order to which it is ancillary.
- 4) Authorizes a restitution or rescission order to be judicially enforced in an action brought by the Commissioner, Attorney General, a district attorney, a city attorney, or any person owed restitution pursuant to the order and provides the court may award attorney's fees and court costs to the prevailing plaintiff.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

SB 1040 is a California Department of Insurance sponsored bill that will protect consumers from unauthorized insurance sales by allowing the Commissioner to seek restitution on their behalf when an insurance product is sold by an unlicensed individual. When equity and circumstances warrant – the commissioner would also be authorized to rescind the unlawfully entered into

insurance contract to protect consumers. Under existing law, an agent or broker must be licensed by the Department of Insurance, and this bill would not change the Commissioner's authority over licensed individuals. What it would do is create a new tool for the Commissioner to help consumers get their money back from unlicensed sellers of insurance.

Like so many others, I too have received the annoying robo-call that says, "We've been trying to reach you about your car's extended warranty." Extended warranties, also known as vehicle service contracts, are an insurance product sold at dealerships but may not be sold over the phone. Unfortunately, this is just one type of insurance scam that far too many people fall victim too. Under existing law, the Commissioner may order these unlicensed sellers to cease and desist, as well as order monetary penalties, but victims must individually sue the scammer for their money back.

SB 1040 seeks to rid consumers of the barriers that come with individually accessing the judicial system by authorizing the Commissioner to order restitution to known victims along with the cease and desist order or monetary penalties they may already order. Importantly, amendments taken in the Senate Insurance Committee prioritize victims, requiring that the Department apply any funds received to the victims' restitution before the Department may apply any funds to penalties it has assessed. Finally, like the existing authority for ordering cease and desist orders and monetary penalties, the restitution and rescission authority would be subject to judicial review.

2. The bill enhances consumer protections by authorizing the Commissioner to order restitution and, when the facts and equity permit, rescission

Under existing law, the Commissioner is authorized to issue cease and desist orders and monetary penalties against an unlicensed person acting in a capacity for which a license is required but is not authorized to order restitution for the victims. Victims are required to bring their own cause of action in order to recover any damages they suffered and this can be overwhelming for victims for various reasons, including financial difficulties and language barriers. As the Senate Insurance Committee noted, "[a] sly scammer can 'fly under the radar' by defrauding many consumers of relatively small amounts, betting that it's unlikely many will have the interest or means to devote significant resources to recover a small sum."<sup>1</sup> CDI points to one insurance scam that most people are likely familiar with that this bill could address – robo-calls that say something similar to "We have been trying to reach you about your car's extended warranty that is about to expire." Extended auto warranties, or vehicle service contracts, may only be sold at dealers licensed by the Department of Motor Vehicles in

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<sup>1</sup> Sen. Com. on Insurance, Analysis of Sen. Bill No. 1040 (2021-2022 Reg. Sess.) as introduced Feb. 15, 2022 at pg. 3.

order to avoid any confusion for consumers as to whether a telephone solicitation is legitimate; however, this has not stopped dishonest individuals from trying to sell real or faulty auto warranties to innocent consumers over the phone.

In order to increase consumer protections, this bill authorizes the Commissioner to order an unlicensed person who violates the laws relating to transacting insurance in this state to pay restitution and, if the facts and equity permit, order rescission of any contract. In order for the Commissioner to issue an order of restitution, a person must be subject to the jurisdiction of the Commissioner and that order must be ancillary to another proceeding where it is determined that the person both violated the laws related to transacting insurance, and is ordered to cease and desist or pay a monetary penalty or other sanction. Any order of restitution or rescission is subject to judicial review in the same manner as the ancillary order, and is enforceable in an action brought by the Commissioner, the Attorney General, a district attorney, a city attorney, or any person owed restitution under the order. A court is authorized to award attorney's fees and costs to the prevailing plaintiff. The bill specifically provides that its provisions do not limit or restrict any actions, remedies, or procedures otherwise available to the Commissioner, CDI, or any person pursuant to an administrative or civil action to enforce any law, and that it is not a defense in any action that the Commissioner did not order a person to pay restitution.

### 3. Statements in support

California Insurance Commissioner Ricardo Lara, the sponsor of the bill, writes:

Every year, Californians are victimized by unscrupulous individuals who sell insurance without a license. Unlicensed sellers include unlicensed automobile warranty companies, unlicensed insurers, and unlicensed pseudo-agents and pseudo-brokers, who have defrauded California residents out of millions of dollars in recent years. The California Department of Insurance (Department) has discovered numerous instances of insurance premium theft, embezzlement, and fraud by unlicensed insurance sellers who specifically target vulnerable communities such as seniors, immigrants, and historically underrepresented communities. In many cases, small businesses are left without insurance coverage, and business owners' livelihoods are put at risk. For example, this year, an unlicensed seller was sentenced to four years in prison after being convicted of defrauding three victims out of over \$1.4 million. The unlicensed seller also provided the victims with fraudulent certificates of insurance, leading them to believe they had legitimate coverage.

Unfortunately, cases like this happen far too frequently. The Insurance Commissioner can order unlicensed insurance sellers to cease and desist and pay a fine of up to \$5,000 per day under current law, but can't order those unlicensed sellers to repay consumers for losses they suffered, such as direct premiums misappropriated and financial losses experienced when the consumer believed they were otherwise covered by insurance. As a result,

many victims of unlicensed sales must file individual lawsuits to obtain a restitution order, which can be difficult (e.g., financial difficulties, language barriers, and uncertainty about the process) and may discourage them from suing. In most cases, the harmed consumer is never repaid the money that was illegally stolen through unlicensed insurance fraud.

SB 1040 seeks to change this by granting the Insurance Commissioner with the authority to order restitution to consumers from unlicensed insurance sellers who violate California law. [...]

The Consumer Attorneys of California write in support:

All sellers of insurance must be licensed with the Department of Insurance. Current law grants the Insurance Commissioner authority to issue a cease and desist and assess a penalty of \$5,000 per day against any unlicensed seller. However, the Commissioner cannot order these unlicensed sellers to pay restitution for victims, which leaves victims to pursue justice on their own by filing individual lawsuits. SB 1040 authorizes the Department of Insurance to seek restitution on behalf of victims, a tool many other agencies such as the Bureau of Automobile Repair, Contractors State Licenses Board, Dental Hygiene Board, and others currently possess.

Unauthorized sellers of insurance defraud Californians of millions of dollars annually and the typical case involves multiple victims. These scammers often target vulnerable communities and small businesses. In one example, an unlicensed seller stole \$174,000 in premium payments from individual truck drivers and charter bus companies from 2017 to 2018. Truck drivers thought they were insured and instead temporarily lost their authority to operate and had to decline jobs while securing actual coverage.

SB 1040 gives the Insurance Commissioner the much needed authority to order restitution for these victims. For these reasons CAOC supports SB 1040.

### **SUPPORT**

California Insurance Commissioner Ricardo Lara (Sponsor)  
California Advocates for Nursing Home Reform  
City of Rosemead  
City of South El Monte  
City of West Covina  
Consumer Attorneys of California  
Gateway Chambers Alliance  
Paradise Association of Realtors  
Rosemead Chamber of Commerce

The LGBTQ Center Long Beach

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: AB 989 (Block, 2009) would have authorized any person harmed by a violation of provisions of law related to insurance transactions with persons 65 years of age and older to bring an action for compensatory damages and other remedies otherwise provided by law.

**PRIOR VOTES:**

Senate Insurance Committee (Ayes 9, Noes 0)

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