

AMENDED IN SENATE SEPTEMBER 7, 2007

AMENDED IN SENATE AUGUST 1, 2007

AMENDED IN SENATE JULY 17, 2007

AMENDED IN SENATE JULY 5, 2007

AMENDED IN SENATE JUNE 19, 2007

AMENDED IN ASSEMBLY APRIL 11, 2007

AMENDED IN ASSEMBLY MARCH 29, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1456

Introduced by Assembly Member Mullin Laird
(Principal coauthor: Assembly Member Jones)
(Principal coauthor: Senator Corbett)

February 23, 2007

~~An act to add Chapter 12.5 (commencing with Section 14990) to Part 5.5 of Division 3 of Title 2 of the Government Code, relating to intellectual property. An act to amend Section 14124.70 of the Welfare and Institutions Code, relating to Medi-Cal.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1456, as amended, ~~Mullin Laird. Office of Intellectual Property~~*Medi-Cal: third party liability.*

~~Existing law permits various state agencies to enter into contracts and agreements, create liabilities, and develop, own, and control the use of intellectual property developed by the state.~~

~~This bill would establish the Office of Intellectual Property in the Business, Transportation and Housing Agency. The agency would be responsible for tracking intellectual property generated by state employees and by state-funded research, developing a database to track intellectual property, developing an outreach campaign informing state agencies of their rights and abilities concerning intellectual property, developing a sample maintenance plan of an inventory of intellectual property, and developing sample invention assignment agreements and sample language for licenses or terms-of-use agreements for use by state agencies. The bill would define terms that apply to the function of the agency, and would make findings and declarations regarding intellectual property. This bill would, notwithstanding any other provision of law, provide that state agencies and departments may, upon request, share records and information related to intellectual property generated by state employees and state-funded research with the office. This bill would also impose certain restrictions on employees and former employees of the office with respect to divulging certain information provided by state agencies and departments regarding intellectual property. This bill would provide that these provisions do not apply to intellectual property agreements administered by the Regents of the University of California, with exceptions, or to intellectual property agreements governed by the California Stem Cell Research and Cures Bond Act.~~

Existing law provides for the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons.

Existing law authorizes the Director of Health Care Services, as well as the Attorney General, and other specified officials, to bring an action to recover the reasonable value of benefits provided or that will be provided to a Medi-Cal recipient against a 3rd party, including an insurance carrier, because of any injury for which the 3rd party is liable.

Existing law contains procedures governing these actions, as well as provisions pertaining to the director's right to claim reimbursement when the claim against a 3rd party is brought by another person, including the recipient. Existing law prohibits the director's claim for exceeding one-half of the beneficiary's recovery after deducting fees and costs.

Existing law defines the term “lien” as the director’s claim for recovery, from a beneficiary’s tort action or claim, of the reasonable value of benefits provided on behalf of the beneficiary.

This bill would prohibit the amount paid by Medi-Cal from being considered as evidence of past medical damages or for the purpose of reducing the third party’s liability to the beneficiary in any third-party action.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14124.70 of the Welfare and Institutions
2 Code is amended to read:

3 14124.70. As used in this article:

4 (a) “Carrier” includes any insurer as defined in Section 23 of
5 the Insurance Code, including any private company, corporation,
6 mutual association, trust fund, reciprocal or interinsurance
7 exchange authorized under the laws of this state to insure persons
8 against liability or injuries caused to another, and also any insurer
9 providing benefits under a policy of bodily injury liability insurance
10 covering liability arising out of the ownership, maintenance or use
11 of a motor vehicle which provides uninsured motorist endorsement
12 or coverage, pursuant to Section 11580.2 of the Insurance Code.

13 (b) “Beneficiary” means any person who has received benefits
14 or will be provided benefits under this chapter because of an injury
15 for which another person or party may be liable. It includes such
16 beneficiary’s guardian, conservator or other personal representative,
17 his estate or survivors.

18 (c) “Reasonable value of benefits” means both of the following:

19 (1) Except in a case in which services were provided to a
20 beneficiary under a managed care arrangement or contract,
21 “reasonable value of benefits” means the Medi-Cal rate of payment,
22 for the type of services rendered, under the schedule of maximum
23 allowances authorized by Section 14106 or, the Medi-Cal rate of
24 payment, for the type of services rendered, under regulations
25 adopted pursuant to this chapter, including but not limited, to
26 Section 14105.

27 (2) If services were provided to a beneficiary under a managed
28 care arrangement or contract, “reasonable value of benefits” means

1 the rate of payment to the provider by the plan for the services
2 rendered to the beneficiary, except in cases where the plan pays
3 the provider on a capitated or risk sharing basis, in which case it
4 means the value of the services rendered to the beneficiary
5 calculated by the plan as the usual customary and reasonable charge
6 made to the general public by the provider for similar services.

7 (d) “Lien” means the director’s claim for recovery, from a
8 beneficiary’s tort action or claim, of the reasonable value of
9 benefits provided on behalf of the beneficiary. *The amount paid*
10 *by Medi-Cal shall not be considered as evidence of past medical*
11 *damages or for the purpose of reducing the third party’s liability*
12 *to the beneficiary in any third-party action.*

13 SECTION 1. Chapter 12.5 (commencing with Section 14990)
14 is added to Part 5.5 of Division 3 of Title 2 of the Government
15 Code, to read:

16

17 CHAPTER 12.5. OFFICE OF INTELLECTUAL PROPERTY

18

19 14990. The Legislature finds and declares all of the following:

20 (a) The state is home to many of the world’s top research
21 universities, national laboratories, and leading-edge high
22 technology companies that generate significant intellectual
23 property.

24 (b) It is in the interest of the state to ensure that the results of
25 state-funded research are promptly developed and protected and
26 to make the research available in the public domain, where
27 appropriate.

28 (c) The commercialization of technology developed with the
29 investment of taxpayer dollars in the form of contracts, grants, and
30 agreements could generate public benefit, including, but not limited
31 to, state revenues, favorable pricing, revenue sharing, reinvestment
32 into research, development of new technologies, the
33 commercialization of the product of state-funded research and the
34 jobs created from these types of research.

35 (d) It is in the interest of the state to facilitate, promote, and
36 enhance technology transfer programs that will facilitate the
37 transfer of technology into the marketplace for the public benefit.

38 (e) The Legislature supports the use of efficient models to
39 develop and streamline infrastructures, policies, and processes for
40 the management of intellectual property developed under state

1 ~~funding in order to stimulate economic development in the state~~
2 ~~while, at the same time, minimizing costs of administering policies~~
3 ~~in this area.~~

4 ~~(f) It is the intent of the Legislature that the rights of state~~
5 ~~agencies to track and manage intellectual property created with~~
6 ~~any state funds shall be interpreted so as to promote the benefit to~~
7 ~~the public.~~

8 ~~(g) It is the intent of the Legislature that the Office of Intellectual~~
9 ~~Property have access to information about intellectual property~~
10 ~~created by state employees and by state-funded research, consistent~~
11 ~~with state and federal laws and regulations governing access to~~
12 ~~this information.~~

13 ~~14990.1. The Office of Intellectual Property is hereby~~
14 ~~established in the Business, Transportation and Housing Agency.~~

15 ~~14990.2. Unless the context otherwise requires, the definitions~~
16 ~~in this section govern the construction of this chapter:~~

17 ~~(a) "Agency" means Business, Transportation and Housing~~
18 ~~Agency.~~

19 ~~(b) "Databases" means compilations of data, typically generated~~
20 ~~from research, sometimes from one source, but often combined~~
21 ~~from many sources.~~

22 ~~(c) "Intellectual property" means intangible assets that are~~
23 ~~subject to statutory protection under applicable patent, copyright,~~
24 ~~and trademark law. Intellectual property includes, but is not limited~~
25 ~~to, inventions, industrial designs, identifying marks and symbols,~~
26 ~~electronic publications, trade secrets, and literary, musical, artistic,~~
27 ~~photographic, and film works.~~

28 ~~(d) "Office" means the Office of Intellectual Property.~~

29 ~~14990.3. The Office of Intellectual Property shall perform all~~
30 ~~of the following functions:~~

31 ~~(a) Track intellectual property generated by state employees~~
32 ~~and state-funded research.~~

33 ~~(b) Develop a database that includes, but is not limited to,~~
34 ~~tracking intellectual property by category of protection, date of~~
35 ~~creation, owner of intellectual property, grantee, state agency or~~
36 ~~granting entity, sources of funding, and status of licensing,~~
37 ~~including invention utilization updates. Failure to include an item~~
38 ~~in the database does not create any presumption regarding~~
39 ~~ownership.~~

1 ~~(e) Develop a sample maintenance plan of an inventory of~~
2 ~~intellectual property.~~

3 ~~(d) Develop factors that state agencies should consider when~~
4 ~~deciding whether to sell their intellectual property or license it to~~
5 ~~others.~~

6 ~~(e) Develop an outreach campaign informing state agencies of~~
7 ~~their rights and abilities concerning intellectual property created~~
8 ~~by their employees.~~

9 ~~(f) Develop sample invention assignment agreements that state~~
10 ~~agencies can consider if they believe it is necessary to secure the~~
11 ~~rights to potentially patentable items created by their employees~~
12 ~~on worktime using state resources.~~

13 ~~(g) Develop sample language for licenses or terms-of-use~~
14 ~~agreements that state agencies can use to limit the use of their~~
15 ~~intellectual property by others to only appropriate purposes.~~

16 ~~14990.4. (a) Notwithstanding any other provision of law, state~~
17 ~~agencies and departments may, upon request, share records and~~
18 ~~information related to intellectual property generated by state~~
19 ~~employees and state-funded research with the office.~~

20 ~~(b) Any employee or former employee of the office who has~~
21 ~~access to or knowledge of the records and information described~~
22 ~~in subdivision (a), shall not divulge or make known to any person~~
23 ~~not employed by the office in any manner not expressly permitted~~
24 ~~by law any particulars of these records or information the public~~
25 ~~disclosure of which is restricted by law, or represents a first~~
26 ~~publication of research results, or information pertaining to patent~~
27 ~~rights that would not otherwise be publicly available.~~

28 ~~14990.5. (a) This chapter shall not apply to intellectual~~
29 ~~property or intellectual property related agreements administered~~
30 ~~by the Regents of the University of California, and the~~
31 ~~subcontractors of the Regents of the University of California,~~
32 ~~except under a funding agreement from a state agency for the~~
33 ~~performance of research.~~

34 ~~(b) This chapter shall not apply to intellectual property~~
35 ~~agreements governed by the California Stem Cell Research and~~
36 ~~Cures Bond Act (Chapter 3 (commencing with Section 125290.10)~~
37 ~~of Part 5 of Division 106 of the Health and Safety Code.~~

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