

AMENDED IN SENATE MARCH 24, 2011

**SENATE BILL**

**No. 631**

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**Introduced by Senator Evans**

February 18, 2011

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An act to ~~amend Section 12926.1 of~~ *add Section 12926.15* to the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 631, as amended, Evans. Insurance Commissioner: ~~compliance: enforcement: funds: violations: remedies.~~

*Existing law requires the Insurance Commissioner to perform all duties imposed upon him or her by the provisions of the Insurance Code and other laws regulating the business of insurance in this state, and to enforce the execution of those provisions and laws.*

*This bill would additionally authorize the commissioner, in the exercise of his or her discretion to take enforcement action, to impose upon an insurer, licensee, or other entity or person subject to the commissioner's authority specified remedies, either by way of settlement or following a hearing, whenever the commissioner finds that there has been a violation of an applicable insurance provision, as prescribed.*

~~Existing law requires the Insurance Commissioner to require from every insurer in the state full compliance with the provisions of the Insurance Code. Existing law requires that any fines, penalties, fees, and costs resulting from any matter involving compliance with or enforcement of any provisions of the Insurance Code, or other laws involving any entity subject to the jurisdiction of the commissioner, be deposited in the appropriate fund as provided by law. Existing law requires that any funds ordered, or allocated by a settlement, to be used for public outreach, be subject to specified limitations.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

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

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

1     SECTION 1. Section 12926.15 is added to the Insurance Code,  
2     to read:  
3     12926.15. (a) The Legislature finds and declares all of the  
4     following:  
5     (1) Existing law permits the commissioner to order restitution  
6     only in limited circumstances.  
7     (2) The commissioner regularly finds that, as a result of legal  
8     violations, Californians are entitled to refunds or restitution, but  
9     in many circumstances, the commissioner has no specific authority  
10    to order refunds or restitution.  
11    (3) This section is intended to provide the commissioner the  
12    authority to order refunds or restitution in all instances where he  
13    or she finds that an insurer, licensee, or other entity or person has  
14    violated the code.  
15    (b) In addition to any other remedy provided in this code, and  
16    notwithstanding Sections 12921, 12926.1, and 12975.7, in the  
17    exercise of his or her discretion to take enforcement action, the  
18    commissioner may impose upon an insurer, licensee, or other  
19    entity or person subject to the commissioner's authority the  
20    remedies provided in this section. Whenever the commissioner  
21    finds, either by way of settlement or following a hearing, that an  
22    insurer, licensee, or other entity or person subject to this code has  
23    violated any of the provisions of this code, he or she may order  
24    the following remedies:  
25    (1) The commissioner may order an insurer, licensee, or other  
26    entity or person subject to this code to pay restitution to a person.  
27    Restitution shall mean quantifiable monetary sums that an insurer,  
28    licensee, or other entity or person owes to a person, but did not  
29    pay, in violation of a law or regulation enforced by the  
30    commissioner. Restitution, as defined herein, shall also include  
31    out-of-pocket expenses incurred or economic harm suffered by a  
32    person because of an insurer's, licensee's, or other entity's or

1 *person's violation of a law or regulation enforced by the*  
2 *commissioner.*

3 *(2) In matters where the commissioner finds a violation of the*  
4 *provisions of this code, the commissioner may order an insurer,*  
5 *licensee, or other entity or person to pay attorney's fees and costs*  
6 *of the department and future costs of the department to ensure*  
7 *compliance with the settlement, or order requiring restitution or*  
8 *other remedies.*

9 *(c) Where restitution is ordered and paid to a person pursuant*  
10 *to the provisions of this section, the amount paid shall be credited*  
11 *to any subsequent judgment obtained by that person in a civil*  
12 *action arising from the same facts and circumstances.*

13 *(d) Nothing in this section is intended to limit or restrict actions,*  
14 *remedies, or procedures otherwise available to the department or*  
15 *any person pursuant to any other provision of law.*

16 *(e) It shall not be a defense in an administrative or private civil*  
17 *action that the commissioner did not order an insurer, licensee,*  
18 *or other entity or person to pay restitution.*

19 *(f) For proceedings not required to be conducted in accordance*  
20 *with the Administrative Procedure Act (Chapter 5 (commencing*  
21 *with Section 11500) of Part 1 of Division 3 of Title 2 of the*  
22 *Government Code), the following provisions shall apply:*

23 *(1) An order requiring restitution shall become effective 45 days*  
24 *after it is delivered or mailed to the insurer, licensee, or other*  
25 *entity or person unless a stay of execution is granted.*

26 *(2) Judicial review of an order requiring restitution may be had*  
27 *by filing a petition for a writ of mandate in accordance with the*  
28 *provisions of the Code of Civil Procedure. Notwithstanding those*  
29 *provisions, the petition shall be filed within 45 days after the*  
30 *delivery or mailing of the order requiring restitution.*

31 *(g) If restitution is not paid to a person within 10 days after an*  
32 *order becomes effective, the commissioner shall proceed in*  
33 *accordance with Section 12976 for the purpose of recovering those*  
34 *moneys due to that person.*

35 *(h) As used in this section, "person" shall have the same*  
36 *meaning as set forth in Section 19.*

37 ~~SECTION 1. Section 12926.1 of the Insurance Code is~~  
38 ~~amended to read:~~

39 ~~12926.1. (a) In any matter involving compliance with or~~  
40 ~~enforcement of any of the provisions of this code or any other laws~~

1 of this state involving any entity subject to the jurisdiction or  
2 authority of the commissioner, whether the matter is a formal  
3 administrative accusation or adjudication, a formal or potential  
4 judicial action, or other enforcement tool, and whether or not the  
5 matter is settled or prosecuted to resolution, the use of any funds  
6 that are imposed as fines or penalties of any sort, or collected by  
7 means of settlement, or paid or reserved in any manner as a result  
8 of the action, shall be subject to the limitations of this section.

9 (b) Fines, penalties, fees, and costs shall be deposited in the  
10 appropriate fund as provided by law.

11 (c) Any funds ordered, or allocated by a settlement, to be used  
12 for public outreach of any sort, shall be subject to all of the  
13 following limitations:

14 (1) The commissioner's name, likeness, or voice shall not be  
15 used in any printed, audio, or visual material that is released either  
16 for general distribution or to specific recipients unless a court finds  
17 good cause to do so.

18 (2) The message shall be limited to information relevant to the  
19 enforcement action or compliance issues that generated the funds.

20 (3) The primary focus of any public outreach where the purpose  
21 is to advise members of the public of rights affecting pecuniary or  
22 property interests shall be to provide specific information needed  
23 by the affected persons to obtain or protect those rights.

24 (4) No funds subject to this subdivision shall be used for general  
25 education of the public about insurance issues, except to the extent  
26 that the education relates to the type of violations that caused the  
27 enforcement or compliance action, and otherwise complies with  
28 the limitations of this section.

29 (5) No funds subject to this subdivision shall be spent or  
30 otherwise disposed of unless the expenditure or disposal has been  
31 approved by a court of competent jurisdiction.

32 (d) (1) This section may be enforced by an affected individual  
33 with an interest in the matter or a policyholder of an insurer that  
34 is a party to a settlement with the department, a city attorney, a  
35 district attorney, or the Attorney General, who may bring an action  
36 against the commissioner in the superior court in any county where  
37 a violation of this section has occurred.

38 (2) A court may issue injunctions or provide other equitable  
39 remedies as appear to the court to be appropriate, and shall order  
40 payment by the commissioner from nonpublic funds to a prevailing

1 party who has brought an action under this section of an amount  
2 sufficient to compensate the party for all attorneys' fees, costs of  
3 litigation, and expenses incurred in bringing and prosecuting the  
4 action. For the purposes of this section, "nonpublic funds" does  
5 not include assets of an insurer or other party to a settlement that  
6 are not part of a valid and voluntary settlement with the department  
7 or commissioner.  
8 (e) The commissioner may not increase fees or assessments  
9 against insurers in order to comply with this section.