

Introduced by Senator Leno

February 18, 2011

An act to amend ~~Section 138.6~~ *Sections 138.6 and 138.7* of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 826, as amended, Leno. Workers' compensation: data reporting requirement: administrative penalties.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires the administrative director to develop a cost-efficient workers' compensation information system and requires the administrative director to adopt regulations specifying the data elements to be collected by electronic data interchange.

Existing law establishes the Workers' Compensation Administration Revolving Fund in the State Treasury. Money in the fund may be expended by the Department of Industrial Relations, upon appropriation by the Legislature, for the administration of the workers' compensation program, except as provided, and for the Return-to-Work Program.

This bill would require the administrative director to assess an administrative penalty against a claims administrator for ~~failing to comply with any data reporting requirement as prescribed. This bill would require that a penalty not exceed \$100 for each violation or \$5,000 in any calendar year and would require that the annual maximum penalty be doubled for each consecutive year that the same deficiency~~

results in violations of the same type a violation of data reporting requirements. This bill would require the administrative director to promulgate a schedule of penalties providing for an assessment of no more than \$5,000 against a claims administrator in any single year, calculated by violation type and excluding threshold rates of violations, as prescribed. This bill would provide that ~~this~~ any penalty is to be deposited in the Workers' Compensation Administration Revolving Fund.

Existing law provides that a person who, or public or private entity that, is not a party to a claim for workers' compensation benefits may not obtain individually identifiable information, as defined, that is obtained or maintained by the division on that claim, except as specified.

This bill would require the administrative director to publish an annual report disclosing the compliance rates of claims administrators and would authorize the administrative director to publish the identity of claims administrators for this purpose.

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. The Legislature finds and declares that the goal
2 of this act is to encourage compliance with existing law.

3 ~~SECTION 1.~~

4 SEC. 2. Section 138.6 of the Labor Code is amended to read:

5 138.6. (a) The administrative director, in consultation with
6 the Insurance Commissioner and the Workers' Compensation
7 Insurance Rating Bureau, shall develop a cost-efficient workers'
8 compensation information system, which shall be administered by
9 the division. The administrative director shall adopt regulations
10 specifying the data elements to be collected by electronic data
11 interchange.

12 (b) The information system shall do the following:

13 (1) Assist the department to manage the workers' compensation
14 system in an effective and efficient manner.

15 (2) Facilitate the evaluation of the efficiency and effectiveness
16 of the benefit delivery system.

17 (3) Assist in measuring how adequately the system indemnifies
18 injured workers and their dependents.

1 (4) Provide statistical data for research into specific aspects of
2 the workers' compensation program.

3 (c) The data collected electronically shall be compatible with
4 the Electronic Data Interchange System of the International
5 Association of Industrial Accident Boards and Commissions. The
6 administrative director may adopt regulations authorizing the use
7 of other nationally recognized data transmission formats in addition
8 to those set forth in the Electronic Data Interchange System for
9 the transmission of data required pursuant to this section. The
10 administrative director shall accept data transmissions in any
11 authorized format. If the administrative director determines that
12 any authorized data transmission format is not in general use by
13 claims administrators, conflicts with the requirements of state or
14 federal law, or is obsolete, the administrative director may adopt
15 regulations eliminating that data transmission format from those
16 authorized pursuant to this subdivision.

17 (d) *(1)* The administrative director shall assess an administrative
18 penalty against a claims administrator for ~~failing to comply with~~
19 ~~any data reporting requirement adopted pursuant to this section.~~
20 ~~The administrative director shall promulgate regulations~~
21 ~~establishing categories of violations. A penalty shall not exceed~~
22 ~~one hundred dollars (\$100) for each violation or five thousand~~
23 ~~dollars (\$5,000) in any calendar year for all violations resulting~~
24 ~~from any single deficiency in the procedures adopted by a reporting~~
25 ~~entity to comply with the reporting requirements. The annual~~
26 ~~maximum penalty shall be doubled for each consecutive year the~~
27 ~~same deficiency results in violations of the same type. Any penalty~~
28 ~~a violation of data reporting requirements adopted pursuant to~~
29 ~~this section. The administrative director shall promulgate a~~
30 ~~schedule of penalties providing for an assessment of no more than~~
31 ~~five thousand dollars (\$5,000) against a claims administrator in~~
32 ~~any single year, calculated as follows:~~

33 (A) *No more than one hundred dollars (\$100) multiplied by the*
34 *number of violations in that year that resulted in a required data*
35 *report not being submitted or not being accepted.*

36 (B) *No more than fifty dollars (\$50) multiplied by the number*
37 *of violations in that year that resulted in a required report being*
38 *late or accepted with an error.*

39 (C) *Multiple errors in a single report shall be counted as a*
40 *single violation.*

1 (D) No penalty shall be assessed pursuant to Section 129.5 for
2 any violation of data reporting requirements for which a penalty
3 has been or may be assessed pursuant to this section.

4 (2) The schedule promulgated by the administrative director
5 pursuant to paragraph (1) shall establish threshold rates of
6 violations that shall be excluded from the calculation of the
7 assessment, as follows:

8 (A) The threshold rate for reports that are not submitted or are
9 submitted but not accepted shall not be less than 3 percent of the
10 number of reports that are required to be filed by or on behalf of
11 the claims administrator.

12 (B) The threshold rate for reports that are accepted with an
13 error shall not be less than 3 percent of the number of reports that
14 are accepted with an error.

15 (C) The administrative director shall set higher threshold rates
16 as appropriate in recognition of the fact that the data necessary
17 for timely and accurate reporting may not be always available to
18 a claims administrator or the claims administrator's agents.

19 (D) The administrative director may establish higher thresholds
20 for particular data elements that commonly are not reasonably
21 available.

22 (3) The administrative director may estimate the number of
23 required data reports that are not submitted by comparing a
24 statistically valid sample of data available to the administrative
25 director from other sources with the data reported pursuant to
26 this section.

27 (4) All penalties assessed pursuant to this section shall be
28 deposited in the Workers' Compensation Administration Revolving
29 Fund.

30 (5) The administrative director shall publish an annual report
31 disclosing the compliance rates of claims administrators.

32 SEC. 3. Section 138.7 of the Labor Code, as amended by
33 Section 1 of Chapter 611 of the Statutes of 2010, is amended to
34 read:

35 138.7. (a) Except as expressly permitted in subdivision (b), a
36 person or public or private entity not a party to a claim for workers'
37 compensation benefits may not obtain individually identifiable
38 information obtained or maintained by the division on that claim.
39 For purposes of this section, "individually identifiable information"
40 means any data concerning an injury or claim that is linked to a

1 uniquely identifiable employee, employer, claims administrator,
2 or any other person or entity.

3 (b) (1) (A) The administrative director, or a statistical agent
4 designated by the administrative director, may use individually
5 identifiable information for purposes of creating and maintaining
6 the workers' compensation information system as specified in
7 Section 138.6.

8 *(B) The administrative director may publish the identity of*
9 *claims administrators in the annual report disclosing the*
10 *compliance rates of claims administrators pursuant to subdivision*
11 *(d) of Section 138.6.*

12 (2) (A) The State Department of Public Health may use
13 individually identifiable information for purposes of establishing
14 and maintaining a program on occupational health and occupational
15 disease prevention as specified in Section 105175 of the Health
16 and Safety Code.

17 (B) (i) The State Department of Health Care Services may use
18 individually identifiable information for purposes of seeking
19 recovery of Medi-Cal costs incurred by the state for treatment
20 provided to injured workers that should have been incurred by
21 employers and insurance carriers pursuant to Article 3.5
22 (commencing with Section 14124.70) of Chapter 7 of Part 3 of
23 Division 9 of the Welfare and Institutions Code.

24 (ii) The Department of Industrial Relations shall furnish
25 individually identifiable information to the State Department of
26 Health Care Services, and the State Department of Health Care
27 Services may furnish the information to its designated agent,
28 provided that the individually identifiable information shall not
29 be disclosed for use other than the purposes described in clause
30 (i). The administrative director may adopt regulations solely for
31 the purpose of governing access by the State Department of Health
32 Care Services or its designated agents to the individually
33 identifiable information as defined in subdivision (a).

34 (3) (A) Individually identifiable information may be used by
35 the Division of Workers' Compensation, the Division of
36 Occupational Safety and Health, and the Division of Labor
37 Statistics and Research as necessary to carry out their duties. The
38 administrative director shall adopt regulations governing the access
39 to the information described in this subdivision by these divisions.

1 Any regulations adopted pursuant to this subdivision shall set forth
2 the specific uses for which this information may be obtained.

3 (B) Individually identifiable information maintained in the
4 workers' compensation information system and the Division of
5 Workers' Compensation may be used by researchers employed by
6 or under contract to the Commission on Health and Safety and
7 Workers' Compensation as necessary to carry out the commission's
8 research. The administrative director shall adopt regulations
9 governing the access to the information described in this
10 subdivision by commission researchers. These regulations shall
11 set forth the specific uses for which this information may be
12 obtained and include provisions guaranteeing the confidentiality
13 of individually identifiable information. Individually identifiable
14 information obtained under this subdivision shall not be disclosed
15 to commission members. No individually identifiable information
16 obtained by researchers under contract to the commission pursuant
17 to this subparagraph may be disclosed to any other person or entity,
18 public or private, for a use other than that research project for
19 which the information was obtained. Within a reasonable period
20 of time after the research for which the information was obtained
21 has been completed, the data collected shall be modified in a
22 manner so that the subjects cannot be identified, directly or through
23 identifiers linked to the subjects.

24 (4) The administrative director shall adopt regulations allowing
25 reasonable access to individually identifiable information by other
26 persons or public or private entities for the purpose of bona fide
27 statistical research. This research shall not divulge individually
28 identifiable information concerning a particular employee,
29 employer, claims administrator, or any other person or entity. The
30 regulations adopted pursuant to this paragraph shall include
31 provisions guaranteeing the confidentiality of individually
32 identifiable information. Within a reasonable period of time after
33 the research for which the information was obtained has been
34 completed, the data collected shall be modified in a manner so that
35 the subjects cannot be identified, directly or through identifiers
36 linked to the subjects.

37 (5) This section shall not operate to exempt from disclosure any
38 information that is considered to be a public record pursuant to
39 the California Public Records Act (Chapter 3.5 (commencing with
40 Section 6250) of Division 7 of Title 1 of the Government Code)

1 contained in an individual's file once an application for
2 adjudication has been filed pursuant to Section 5501.5.

3 However, individually identifiable information shall not be
4 provided to any person or public or private entity who is not a
5 party to the claim unless that person identifies himself or herself
6 or that public or private entity identifies itself and states the reason
7 for making the request. The administrative director may require
8 the person or public or private entity making the request to produce
9 information to verify that the name and address of the requester
10 is valid and correct. If the purpose of the request is related to
11 preemployment screening, the administrative director shall notify
12 the person about whom the information is requested that the
13 information was provided and shall include the following in
14 12-point type:

15 "IT MAY BE A VIOLATION OF FEDERAL AND STATE
16 LAW TO DISCRIMINATE AGAINST A JOB APPLICANT
17 BECAUSE THE APPLICANT HAS FILED A CLAIM FOR
18 WORKERS' COMPENSATION BENEFITS."

19 Any residence address is confidential and shall not be disclosed
20 to any person or public or private entity except to a party to the
21 claim, a law enforcement agency, an office of a district attorney,
22 any person for a journalistic purpose, or other governmental
23 agency.

24 Nothing in this paragraph shall be construed to prohibit the use
25 of individually identifiable information for purposes of identifying
26 bona fide lien claimants.

27 (c) Except as provided in subdivision (b), individually
28 identifiable information obtained by the division is privileged and
29 is not subject to subpoena in a civil proceeding unless, after
30 reasonable notice to the division and a hearing, a court determines
31 that the public interest and the intent of this section will not be
32 jeopardized by disclosure of the information. This section shall
33 not operate to restrict access to information by any law enforcement
34 agency or district attorney's office or to limit admissibility of that
35 information in a criminal proceeding.

36 (d) It shall be unlawful for any person who has received
37 individually identifiable information from the division pursuant
38 to this section to provide that information to any person who is
39 not entitled to it under this section.

1 (e) This section shall remain in effect only until January 1, 2017,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2017, deletes or extends that date.

4 *SEC. 4. Section 138.7 of the Labor Code, as added by Section*
5 *2 of Chapter 611 of the Statutes of 2010, is amended to read:*

6 138.7. (a) Except as expressly permitted in subdivision (b), a
7 person or public or private entity not a party to a claim for workers'
8 compensation benefits may not obtain individually identifiable
9 information obtained or maintained by the division on that claim.
10 For purposes of this section, "individually identifiable information"
11 means any data concerning an injury or claim that is linked to a
12 uniquely identifiable employee, employer, claims administrator,
13 or any other person or entity.

14 (b) (1) (A) The administrative director, or a statistical agent
15 designated by the administrative director, may use individually
16 identifiable information for purposes of creating and maintaining
17 the workers' compensation information system as specified in
18 Section 138.6.

19 (B) *The administrative director may publish the identity of*
20 *claims administrators in the annual report disclosing the*
21 *compliance rates of claims administrators pursuant to subdivision*
22 *(d) of Section 138.6.*

23 (2) The State Department of Public Health may use individually
24 identifiable information for purposes of establishing and
25 maintaining a program on occupational health and occupational
26 disease prevention as specified in Section 105175 of the Health
27 and Safety Code.

28 (3) (A) Individually identifiable information may be used by
29 the Division of Workers' Compensation, the Division of
30 Occupational Safety and Health, and the Division of Labor
31 Statistics and Research as necessary to carry out their duties. The
32 administrative director shall adopt regulations governing the access
33 to the information described in this subdivision by these divisions.
34 Any regulations adopted pursuant to this subdivision shall set forth
35 the specific uses for which this information may be obtained.

36 (B) Individually identifiable information maintained in the
37 workers' compensation information system and the Division of
38 Workers' Compensation may be used by researchers employed by
39 or under contract to the Commission on Health and Safety and
40 Workers' Compensation as necessary to carry out the commission's

1 research. The administrative director shall adopt regulations
2 governing the access to the information described in this
3 subdivision by commission researchers. These regulations shall
4 set forth the specific uses for which this information may be
5 obtained and include provisions guaranteeing the confidentiality
6 of individually identifiable information. Individually identifiable
7 information obtained under this subdivision shall not be disclosed
8 to commission members. No individually identifiable information
9 obtained by researchers under contract to the commission pursuant
10 to this subparagraph may be disclosed to any other person or entity,
11 public or private, for a use other than that research project for
12 which the information was obtained. Within a reasonable period
13 of time after the research for which the information was obtained
14 has been completed, the data collected shall be modified in a
15 manner so that the subjects cannot be identified, directly or through
16 identifiers linked to the subjects.

17 (4) The administrative director shall adopt regulations allowing
18 reasonable access to individually identifiable information by other
19 persons or public or private entities for the purpose of bona fide
20 statistical research. This research shall not divulge individually
21 identifiable information concerning a particular employee,
22 employer, claims administrator, or any other person or entity. The
23 regulations adopted pursuant to this paragraph shall include
24 provisions guaranteeing the confidentiality of individually
25 identifiable information. Within a reasonable period of time after
26 the research for which the information was obtained has been
27 completed, the data collected shall be modified in a manner so that
28 the subjects cannot be identified, directly or through identifiers
29 linked to the subjects.

30 (5) This section shall not operate to exempt from disclosure any
31 information that is considered to be a public record pursuant to
32 the California Public Records Act (Chapter 3.5 (commencing with
33 Section 6250) of Division 7 of Title 1 of the Government Code)
34 contained in an individual's file once an application for
35 adjudication has been filed pursuant to Section 5501.5.

36 However, individually identifiable information shall not be
37 provided to any person or public or private entity who is not a
38 party to the claim unless that person identifies himself or herself
39 or that public or private entity identifies itself and states the reason
40 for making the request. The administrative director may require

1 the person or public or private entity making the request to produce
2 information to verify that the name and address of the requester
3 is valid and correct. If the purpose of the request is related to
4 preemployment screening, the administrative director shall notify
5 the person about whom the information is requested that the
6 information was provided and shall include the following in
7 12-point type:

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10 BECAUSE THE APPLICANT HAS FILED A CLAIM FOR
11 WORKERS’ COMPENSATION BENEFITS.”

12 Any residence address is confidential and shall not be disclosed
13 to any person or public or private entity except to a party to the
14 claim, a law enforcement agency, an office of a district attorney,
15 any person for a journalistic purpose, or other governmental
16 agency.

17 Nothing in this paragraph shall be construed to prohibit the use
18 of individually identifiable information for purposes of identifying
19 bona fide lien claimants.

20 (c) Except as provided in subdivision (b), individually
21 identifiable information obtained by the division is privileged and
22 is not subject to subpoena in a civil proceeding unless, after
23 reasonable notice to the division and a hearing, a court determines
24 that the public interest and the intent of this section will not be
25 jeopardized by disclosure of the information. This section shall
26 not operate to restrict access to information by any law enforcement
27 agency or district attorney’s office or to limit admissibility of that
28 information in a criminal proceeding.

29 (d) It shall be unlawful for any person who has received
30 individually identifiable information from the division pursuant
31 to this section to provide that information to any person who is
32 not entitled to it under this section.

33 (e) This section shall become operative on January 1, 2017.