

ASSEMBLY BILL

No. 2663

Introduced by Assembly Member Dababneh

February 21, 2014

An act to amend Section 1871.7 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2663, as introduced, Dababneh. Fraud prevention.

Existing law prohibits knowingly employing runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain services or benefits under workers' compensation coverage or to procure clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer. Existing law makes every person who violates these prohibitions liable for a civil penalty of not less than \$5,000 and not more than \$10,000.

This bill would adjust those civil penalties to not less than \$10,000 and not more than \$25,000.

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

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

- 1 SECTION 1. Section 1871.7 of the Insurance Code is amended
- 2 to read:
- 3 1871.7. (a) It is unlawful to knowingly employ runners,
- 4 cappers, steerers, or other persons to procure clients or patients to
- 5 perform or obtain services or benefits pursuant to Division 4

1 (commencing with Section 3200) of the Labor Code or to procure
2 clients or patients to perform or obtain services or benefits under
3 a contract of insurance or that will be the basis for a claim against
4 an insured individual or his or her insurer.

5 (b) Every person who violates any provision of this section or
6 Section 549, 550, or 551 of the Penal Code shall be subject, in
7 addition to any other penalties that may be prescribed by law, to
8 a civil penalty of not less than ~~five~~ *ten* thousand dollars ~~(\$5,000)~~
9 *(\$10,000)* nor more than ~~ten~~ *twenty-five* thousand dollars ~~(\$10,000)~~
10 *(\$25,000)*, plus an assessment of not more than three times the
11 amount of each claim for compensation, as defined in Section 3207
12 of the Labor Code or pursuant to a contract of insurance. The court
13 shall have the power to grant other equitable relief, including
14 temporary injunctive relief, as is necessary to prevent the transfer,
15 concealment, or dissipation of illegal proceeds, or to protect the
16 public. The penalty prescribed in this paragraph shall be assessed
17 for each fraudulent claim presented to an insurance company by
18 a defendant and not for each violation.

19 (c) The penalties set forth in subdivision (b) are intended to be
20 remedial rather than punitive, and shall not preclude, nor be
21 precluded by, a criminal prosecution for the same conduct. If the
22 court finds, after considering the goals of disgorging unlawful
23 profit, restitution, compensating the state for the costs of
24 investigation and prosecution, and alleviating the social costs of
25 increased insurance rates due to fraud, that such a penalty would
26 be punitive and would preclude, or be precluded by, a criminal
27 prosecution, the court shall reduce that penalty appropriately.

28 (d) The district attorney or commissioner may bring a civil
29 action under this section. Before the commissioner may bring that
30 action, the commissioner shall be required to present the evidence
31 obtained to the appropriate local district attorney for possible
32 criminal or civil filing. If the district attorney elects not to pursue
33 the matter due to insufficient resources, then the commissioner
34 may proceed with the action.

35 (e) (1) Any interested persons, including an insurer, may bring
36 a civil action for a violation of this section for the person and for
37 the State of California. The action shall be brought in the name of
38 the state. The action may be dismissed only if the court and the
39 district attorney or the commissioner, whichever is participating,

1 give written consent to the dismissal and their reasons for
2 consenting.

3 (2) A copy of the complaint and written disclosure of
4 substantially all material evidence and information the person
5 possesses shall be served on the district attorney and commissioner.
6 The complaint shall be filed in camera, shall remain under seal for
7 at least 60 days, and shall not be served on the defendant until the
8 court so orders. The local district attorney or commissioner may
9 elect to intervene and proceed with the action within 60 days after
10 he or she receives both the complaint and the material evidence
11 and information. If more than one governmental entity elects to
12 intervene, the district attorney shall have precedence.

13 (3) The district attorney or commissioner may, for good cause
14 shown, move the court for extensions of the time during which the
15 complaint remains under seal under paragraph (2). The motions
16 may be supported by affidavits or other submissions in camera.
17 The defendant shall not be required to respond to any complaint
18 filed under this section until 20 days after the complaint is unsealed
19 and served upon the defendant.

20 (4) Before the expiration of the 60-day period or any extensions
21 obtained under paragraph (3), the district attorney or commissioner
22 shall either:

23 (A) Proceed with the action, in which case the action shall be
24 conducted by the district attorney or commissioner.

25 (B) Notify the court that it declines to take over the action, in
26 which case the person bringing the action shall have the right to
27 conduct the action.

28 (5) When a person or governmental agency brings an action
29 under this section, no person other than the district attorney or
30 commissioner may intervene or bring a related action based on the
31 facts underlying the pending action unless that action is authorized
32 by another statute or common law.

33 (f) (1) If the district attorney or commissioner proceeds with
34 the action, he or she shall have the primary responsibility for
35 prosecuting the action, and shall not be bound by an act of the
36 person bringing the action. That person shall have the right to
37 continue as a party to the action, subject to the limitations set forth
38 in paragraph (2).

39 (2) (A) The district attorney or commissioner may dismiss the
40 action notwithstanding the objections of the person initiating the

1 action if the person has been notified by the district attorney or
2 commissioner of the filing of the motion, and the court has
3 provided the person with an opportunity for a hearing on the
4 motion.

5 (B) The district attorney or commissioner may settle the action
6 with the defendant notwithstanding the objections of the person
7 initiating the action if the court determines, after a hearing, that
8 the proposed settlement is fair, adequate, and reasonable under all
9 the circumstances. Upon a showing of good cause, the hearing
10 may be held in camera.

11 (C) Upon a showing by the district attorney or commissioner
12 that unrestricted participation during the course of the litigation
13 by the person initiating the action would interfere with or unduly
14 delay the district attorney’s or commissioner’s prosecution of the
15 case, or would be repetitious, irrelevant, or for purposes of
16 harassment, the court may, in its discretion, impose limitations on
17 the person’s participation, including, but not limited to, the
18 following:

- 19 (i) Limiting the number of witnesses the person may call.
- 20 (ii) Limiting the length of the testimony of those witnesses.
- 21 (iii) Limiting the person’s cross-examination of witnesses.
- 22 (iv) Otherwise limiting the participation by the person in the
23 litigation.

24 (D) Upon a showing by the defendant that unrestricted
25 participation during the course of the litigation by the person
26 initiating the action would be for purposes of harassment or would
27 cause the defendant undue burden or unnecessary expense, the
28 court may limit the participation by the person in the litigation.

29 (3) If the district attorney or commissioner elects not to proceed
30 with the action, the person who initiated the action shall have the
31 right to conduct the action. If the district attorney or commissioner
32 so requests, he or she shall be served with copies of all pleadings
33 filed in the action and shall be supplied with copies of all deposition
34 transcripts, at the district attorney’s or commissioner’s expense.
35 When a person proceeds with the action, the court, without limiting
36 the status and rights of the person initiating the action, may
37 nevertheless permit the district attorney or commissioner to
38 intervene at a later date upon a showing of good cause.

39 (4) If at any time both a civil action for penalties and equitable
40 relief pursuant to this section and a criminal action are pending

1 against a defendant for substantially the same conduct, whether
2 brought by the government or a private party, the civil action shall
3 be stayed until the criminal action has been concluded at the trial
4 court level. The stay shall not preclude the court from granting or
5 enforcing temporary equitable relief during the pendency of the
6 actions. Whether or not the district attorney or commissioner
7 proceeds with the action, upon a showing by the district attorney
8 or commissioner that certain actions of discovery by the person
9 initiating the action would interfere with a law enforcement or
10 governmental agency investigation or prosecution of a criminal
11 or civil matter arising out of the same facts, the court may stay
12 discovery for a period of not more than 180 days. A hearing on a
13 request for the stay shall be conducted in camera. The court may
14 extend the 180-day period upon a further showing in camera that
15 the agency has pursued the criminal or civil investigation or
16 proceedings with reasonable diligence and any proposed discovery
17 in the civil action will interfere with the ongoing criminal or civil
18 investigation or proceedings.

19 (5) Notwithstanding subdivision (e), the district attorney or
20 commissioner may elect to pursue its claim through any alternate
21 remedy available to the district attorney or commissioner.

22 (g) (1) (A) (i) If the district attorney proceeds with an action
23 brought by a person under subdivision (e), that person shall, subject
24 to subparagraph (B), receive at least 30 percent but not more than
25 40 percent of the proceeds of the action or settlement of the claim,
26 depending upon the extent to which the person substantially
27 contributed to the prosecution of the action.

28 (ii) If the commissioner has brought an action or has proceeded
29 with an action brought by another person under this section on or
30 after January 1, 2006, the commissioner shall be entitled to
31 attorney's fees and costs in addition to any judgment, regardless
32 of the date that judgment is entered. The court shall determine and
33 award the commissioner the amount of reasonable attorney's fees,
34 including, but not limited to, reasonable fees for time expended
35 by attorneys employed by the department and for costs incurred.
36 Any attorney's fees or costs awarded to the commissioner and
37 collected shall be deposited in the Insurance Fund. In cases in
38 which the commissioner has intervened, the commissioner and the
39 person bringing the claim may stipulate to an allocation. The court
40 may allocate the funds pursuant to the stipulation if, after the

1 court’s ruling on objection by the district attorney, if any, the court
2 finds it is in the interests of justice to follow the stipulation.

3 (iii) If the commissioner has proceeded with an action, if there
4 is no stipulation regarding allocation, and if a judgment has been
5 obtained or a settlement has been reached with the defendants, the
6 court shall determine the allocation, upon motion of the
7 commissioner or the person bringing the action, according to the
8 following priority:

9 (I) The person bringing the action, regardless of whether that
10 person paid money to the defendants as part of the acts alleged in
11 the complaint, shall first receive the amount the court determines
12 is reasonable for attorney’s fees, costs, and expenses that the court
13 determines to have been necessarily incurred.

14 (II) The commissioner shall receive the amount the court
15 determines for reasonable attorney’s fees and costs.

16 (III) If the person bringing the suit has paid moneys to the
17 defendants as part of the acts alleged in the complaint, that person
18 shall receive the amount paid to the defendants.

19 (IV) At least 30 percent, but not more than 40 percent, of the
20 remaining assets or moneys, shall be allocated to the person
21 bringing the action, depending upon the extent to which the person
22 substantially contributed to the prosecution of the action.

23 (iv) Those portions of a judgment or settlement not distributed
24 pursuant to this subdivision shall be paid to the General Fund of
25 the state and, upon appropriation by the Legislature, shall be
26 apportioned between the Department of Justice and the Department
27 of Insurance for enhanced fraud investigation and prevention
28 efforts.

29 (B) Where the action is one that the court finds to be based
30 primarily on disclosures of specific information, other than
31 information provided by the person bringing the action, relating
32 to allegations or transactions in a criminal, civil, or administrative
33 hearing, in a legislative or administrative report, hearing, audit, or
34 investigation, or from the news media, the court may award those
35 sums that it considers appropriate, but in no case more than 10
36 percent of the proceeds, taking into account the significance of the
37 information and the role of the person bringing the action in
38 advancing the case to litigation.

39 (C) Any payment to a person under subparagraph (A) or under
40 subparagraph (B) shall be made from the proceeds. The person

1 shall also receive an amount for reasonable expenses that the court
2 finds to have been necessarily incurred, plus reasonable attorney's
3 fees and costs. All of those expenses, fees, and costs shall be
4 awarded against the defendant.

5 (2) (A) If the district attorney or commissioner does not proceed
6 with an action under this section, the person bringing the action
7 or settling the claim shall receive an amount that the court decides
8 is reasonable for collecting the civil penalty and damages. Except
9 as provided in subparagraph (B), the amount shall not be less than
10 40 percent and not more than 50 percent of the proceeds of the
11 action or settlement and shall be paid out of the proceeds. That
12 person shall also receive an amount for reasonable expenses that
13 the court finds to have been necessarily incurred, plus reasonable
14 attorney's fees and costs. All of those attorney's fees and costs
15 shall be imposed against the defendant. The parties shall serve the
16 commissioner and the local district attorney with complete copies
17 of any and all settlement agreements, and terms and conditions,
18 for actions brought under this article at least 10 days prior to filing
19 any motion for allocation with the court under this paragraph. The
20 court may allocate the funds pursuant to the settlement agreement
21 if, after the court's ruling on objection by the commissioner or the
22 local district attorney, if any, the court finds it is in the interests
23 of justice to follow the settlement agreement.

24 (B) If the person bringing the action, as a result of a violation
25 of this section has paid money to the defendant or to an attorney
26 acting on behalf of the defendant in the underlying claim, then he
27 or she shall be entitled to up to double the amount paid to the
28 defendant or the attorney if that amount is greater than 50 percent
29 of the proceeds. That person shall also receive an amount for
30 reasonable expenses that the court finds to have been necessarily
31 incurred, plus reasonable attorney's fees and costs. All of those
32 expenses, fees, and costs shall be awarded against the defendant.

33 (3) If a local district attorney has proceeded with an action under
34 this section, one-half of the penalties not awarded to a private
35 party, as well as any costs awarded shall go to the treasurer of the
36 appropriate county. Those funds shall be used to investigate and
37 prosecute fraud, augmenting existing budgets rather than replacing
38 them. All remaining funds shall go to the state and be deposited
39 in the General Fund and, when appropriated by the Legislature,
40 shall be apportioned between the Department of Justice and the

1 Department of Insurance for enhanced fraud investigation and
2 prevention efforts.

3 (4) Whether or not the district attorney or commissioner
4 proceeds with the action, if the court finds that the action was
5 brought by a person who planned and initiated the violation of this
6 section, that person shall be dismissed from the civil action and
7 shall not receive any share of the proceeds of the action. The
8 dismissal shall not prejudice the right of the district attorney or
9 commissioner to continue the action on behalf of the state.

10 (5) If the district attorney or commissioner does not proceed
11 with the action, and the person bringing the action conducts the
12 action, the court may award to the defendant its reasonable
13 attorney's fees and expenses if the defendant prevails in the action
14 and the court finds that the claim of the person bringing the action
15 was clearly frivolous, clearly vexatious, or brought primarily for
16 purposes of harassment.

17 (h) (1) In no event may a person bring an action under
18 subdivision (e) that is based upon allegations or transactions that
19 are the subject of a civil suit or an administrative civil money
20 penalty proceeding in which the Attorney General, district attorney,
21 or commissioner is already a party.

22 (2) (A) No court shall have jurisdiction over an action under
23 this section based upon the public disclosure of allegations or
24 transactions in a criminal, civil, or administrative hearing in a
25 legislative or administrative report, hearing, audit, or investigation,
26 or from the news media, unless the action is brought by the
27 Attorney General or the person bringing the action is an original
28 source of the information.

29 (B) For purposes of this paragraph, "original source" means an
30 individual who has direct and independent knowledge of the
31 information on which the allegations are based and has voluntarily
32 provided the information to the district attorney or commissioner
33 before filing an action under this section that is based on the
34 information.

35 (i) Except as provided in subdivision (j), the district attorney or
36 commissioner is not liable for expenses that a person incurs in
37 bringing an action under this section.

38 (j) In civil actions brought under this section in which the
39 commissioner or a district attorney is a party, the court shall retain
40 discretion to impose sanctions otherwise allowed by law, including

1 the ability to order a party to pay expenses as provided in Sections
2 128.5 and 1028.5 of the Code of Civil Procedure.

3 (k) Any employee who is discharged, demoted, suspended,
4 threatened, harassed, or in any other manner discriminated against
5 in the terms and conditions of employment by his or her employer
6 because of lawful acts done by the employee on behalf of the
7 employee or others in furtherance of an action under this section,
8 including investigation for, initiation of, testimony for, or assistance
9 in, an action filed or to be filed under this section, shall be entitled
10 to all relief necessary to make the employee whole. That relief
11 shall include reinstatement with the same seniority status the
12 employee would have had but for the discrimination, two times
13 the amount of backpay, interest on the backpay, and compensation
14 for any special damages sustained as a result of the discrimination,
15 including litigation costs and reasonable attorney's fees. An
16 employee may bring an action in the appropriate superior court
17 for the relief provided in this subdivision. The remedies under this
18 section are in addition to any other remedies provided by existing
19 law.

20 (l) (1) An action pursuant to this section may not be filed more
21 than three years after the discovery of the facts constituting the
22 grounds for commencing the action.

23 (2) Notwithstanding paragraph (1) no action may be filed
24 pursuant to this section more than eight years after the commission
25 of the act constituting a violation of this section or a violation of
26 Section 549, 550, or 551 of the Penal Code.

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