

AMENDED IN SENATE APRIL 6, 1995

SENATE BILL

No. 465

Introduced by Senator Rosenthal

February 17, 1995

An act to amend Section 1871.7 of, and to repeal Section 1879.1 of, the Insurance Code, and to amend Section 550 of, and to repeal Section 550 of, the Penal Code, relating to insurance fraud.

LEGISLATIVE COUNSEL'S DIGEST

SB 465, as amended, Rosenthal. Insurance: fraud.

Under existing law, it is unlawful to knowingly employ runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain workers' compensation services or benefits or for purposes of engaging in certain insurance fraud activities.

This bill would provide that it is unlawful to knowingly employ runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain workers' compensation services or benefits 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.

Under existing law, a person who violates any of the above-mentioned provisions of existing law is subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than \$5,000 nor more than \$10,000, plus an assessment of not more than 3 times the amount of each claim for compensation, or fraudulent claim.

This bill would make those civil penalties applicable to the revised violations of law, as set forth above, and to specified acts of insurance fraud. It would also provide that the court has the power to grant other equitable relief, including temporary injunctive relief, as is necessary to prevent the transfer, concealment, or dissipation of illegal proceeds, or to protect the public. It would authorize these actions to be brought by the Insurance Commissioner, as well as the Attorney General and district attorneys.

Under existing law, if an alternate remedy is pursued, a finding of fact or conclusion of law made in the other proceeding that has become final is conclusive.

This bill would delete that provision. It would provide that if a civil action and a criminal action are both pending, the civil action shall be stayed, as specified.

Under existing law, if the Attorney General or district attorney demonstrates that certain actions of discovery would interfere with an investigation or prosecution, the court may stay discovery for no more than 60 days.

This bill would increase the stay period to a maximum of 180 days.

Existing law provides for the allocation of penalties collected under the above provision.

This bill would increase the maximum that an individual bringing an action to recover penalties may recover from 30 percent of the proceeds to provide that if the person has paid money to the defendant as a result of a violation, that person is entitled to up to double the amount paid. This bill would provide for the payment of $\frac{1}{2}$ of penalties not awarded to a private party as well as costs to the treasurer of a county if a local district attorney has proceeded with the action. It would provide that remaining funds shall go to the state and be deposited in the General Fund, and, when appropriated, be apportioned between the Department of Justice and the Department of Insurance for enhanced fraud investigation and prevention efforts.

The bill would eliminate a provision for awarding attorney's fees to a prevailing defendant.

The bill would eliminate another provision for the award of a civil penalty of \$250,000 per violation for certain insurance



fraud violations, and a provision permitting civil penalties of up to \$5,000 per violation for certain insurance fraud violations.

Under existing law, it is unlawful to commit certain acts of insurance fraud, and to knowingly assist, abet, solicit, or conspire with any person to commit certain violations. Under existing law, a violation of the prohibition against certain acts of insurance fraud is, in some circumstances a public offense, and in some circumstances a felony, and a violation of the prohibition against knowingly assisting, abetting, soliciting, or conspiring to commit certain violations is a felony.

This bill would recast these provisions to make the penalty for knowingly assisting, abetting, soliciting, or conspiring to commit certain violations a misdemeanor or a felony, with the penalty being the same as the underlying violation.

The bill would make related changes.

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 1871.7 of the Insurance Code is
2 amended to read:

3 1871.7. (a) It is unlawful to knowingly employ
4 runners, cappers, steerers, or other persons to procure
5 clients or patients to perform or obtain services or
6 benefits pursuant to Division 4 (commencing with
7 Section 3200) of the Labor Code or to procure clients or
8 patients to perform or obtain services or benefits under
9 a contract of insurance or that will be the basis for a claim
10 against an insured individual or his or her insurer.

11 (b) Every person who violates any provision of this
12 section or Section 549, 550, or 551 of the Penal Code shall
13 be subject, in addition to any other penalties that may be
14 prescribed by law, to a civil penalty of not less than five
15 thousand dollars (\$5,000) nor more than ten thousand
16 dollars (\$10,000), plus an assessment of not more than
17 three times the amount of each claim for compensation,
18 as defined in Section 3207 of the Labor Code or pursuant
19 to a contract of insurance. The court shall have the power



1 to grant other equitable relief, including temporary
2 injunctive relief, as is necessary to prevent the transfer,
3 concealment, or dissipation of illegal proceeds, or to
4 protect the public.

5 (c) The penalties set forth in subdivision (b) are
6 intended to be remedial rather than punitive, and shall
7 not preclude, nor be precluded by, a criminal prosecution
8 for the same conduct. If the court finds, after considering
9 the goals of disgorging unlawful profit, restitution,
10 compensating the state for the costs of investigation and
11 prosecution, and alleviating the social costs of increased
12 insurance rates due to fraud, that such a penalty would be
13 ~~clearly punitive~~ *punitive and would preclude, or be*
14 *precluded by, a criminal prosecution,* the court shall
15 reduce that penalty appropriately.

16 (d) The Attorney General, district attorney, or
17 commissioner may bring a civil action under this section.
18 Before the commissioner may bring that action, the
19 commissioner shall be required to present the evidence
20 obtained to the appropriate local district attorney for
21 possible criminal or civil filing. If the district attorney
22 elects not to pursue the matter due to insufficient
23 resources, then the commissioner may proceed with the
24 action.

25 (e) (1) Any interested persons may bring a civil
26 action for a violation of this section for the person and for
27 the State of California. The action shall be brought in the
28 name of the state. The action may be dismissed only if the
29 court and the Attorney General, the district attorney, or
30 the commissioner, whichever is participating, give
31 written consent to the dismissal and their reasons for
32 consenting.

33 (2) A copy of the complaint and written disclosure of
34 substantially all material evidence and information the
35 person possesses shall be served on the state. The
36 complaint shall be filed in camera, shall remain under seal
37 for at least 60 days, and shall not be served on the
38 defendant until the court so orders. The Attorney
39 General, local district attorney, or commissioner may
40 elect to intervene and proceed with the action within 60



1 days after he or she receives both the complaint and the
2 material evidence and information. If more than one
3 governmental entity elects to intervene, the Attorney
4 General shall have precedence, followed by the district
5 attorney.

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

15 (4) Before the expiration of the 60-day period or any
16 extensions obtained under paragraph (3), the Attorney
17 General, district attorney, or commissioner shall either:

18 (A) Proceed with the action, in which case the action
19 shall be conducted by the Attorney General, district
20 attorney, or commissioner.

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

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

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

37 (2) (A) The Attorney General, district attorney, or
38 commissioner may dismiss the action notwithstanding
39 the objections of the person initiating the action if the
40 person has been notified by the Attorney General, district



1 attorney, or commissioner of the filing of the motion, and
2 the court has provided the person with an opportunity for
3 a hearing on the motion.

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

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

20 (i) Limiting the number of witnesses the person may
21 call.

22 (ii) Limiting the length of the testimony of ~~such~~ *those*
23 witnesses.

24 (iii) Limiting the person's cross-examination of
25 witnesses.

26 (iv) Otherwise limiting the participation by the
27 person in the litigation.

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

34 (3) If the Attorney General, district attorney, or
35 commissioner elects not to proceed with the action, the
36 person who initiated the action shall have the right to
37 conduct the action. If the Attorney General, district
38 attorney, or commissioner so requests, he or she shall be
39 served with copies of all pleadings filed in the action and
40 shall be supplied with copies of all deposition transcripts,



1 at the Attorney General's, district attorney's, or
2 commissioner's expense. When a person proceeds with
3 the action, the court, without limiting the status and
4 rights of the person initiating the action, may
5 nevertheless permit the Attorney General, district
6 attorney, or commissioner to intervene at a later date
7 upon a showing of good cause.

8 (4) If at any time both a civil action for penalties and
9 equitable relief *pursuant to this section* and a criminal
10 action are pending against a defendant for substantially
11 the same conduct, whether brought by the government
12 or a private party, the civil action shall be stayed until the
13 criminal action has been concluded at the trial court
14 level. The stay shall not preclude the court from granting
15 or enforcing temporary equitable relief during the
16 pendency of the actions. Whether or not the Attorney
17 General, district attorney, or commissioner proceeds
18 with the action, upon a showing by the Attorney General,
19 district attorney, or commissioner that certain actions of
20 discovery by the person initiating the action would
21 interfere with a law enforcement or governmental
22 agency investigation or prosecution of a criminal or civil
23 matter arising out of the same facts, the court may stay
24 ~~such~~ discovery for a period of not more than 180 days. A
25 hearing on a request for the stay shall be conducted in
26 camera. The court may extend the 180-day period upon
27 a further showing in camera that the agency has pursued
28 the criminal or civil investigation or proceedings with
29 reasonable diligence and any proposed discovery in the
30 civil action will interfere with the ongoing criminal or
31 civil investigation or proceedings.

32 (5) Notwithstanding subdivision (e), the Attorney
33 General, district attorney, or commissioner may elect to
34 pursue its claim through any alternate remedy available
35 to the Attorney General, district attorney, or
36 commissioner.

37 (g) (1) If the Attorney General, district attorney, or
38 commissioner proceeds with an action brought by a
39 person under subdivision (e), that person shall, subject to
40 the second sentence of this paragraph, receive at least 15



1 percent but not more than 25 percent of the proceeds of
2 the action or settlement of the claim, depending upon the
3 extent to which the person substantially contributed to
4 the prosecution of the action. Where the action is one that
5 the court finds to be based primarily on disclosures of
6 specific information, other than information provided by
7 the person bringing the action, relating to allegations or
8 transactions in a criminal, civil, or administrative hearing,
9 in a legislative or administrative report, hearing, audit, or
10 investigation, or from the news media, the court may
11 award ~~such sums as~~ *those sums that* it considers
12 appropriate, but in no case more than 10 percent of the
13 proceeds, taking into account the significance of the
14 information and the role of the person bringing the action
15 in advancing the case to litigation. Any payment to a
16 person under the first or second sentence of this
17 paragraph shall be made from the proceeds. Any such
18 person shall also receive an amount for reasonable
19 expenses that the court finds to have been necessarily
20 incurred, plus reasonable attorneys' fees and costs. All of
21 those expenses, fees, and costs shall be awarded against
22 the defendant.

23 (2) If the Attorney General, district attorney, or
24 commissioner does not proceed with an action under this
25 section, the person bringing the action or settling the
26 claim shall receive an amount that the court decides is
27 reasonable for collecting the civil penalty and damages.
28 Except as provided in this paragraph, the amount shall
29 not be less than 25 percent and not more than 30 percent
30 of the proceeds of the action or settlement and shall be
31 paid out of the proceeds. If the person bringing the action
32 has paid money to the defendant as a result of a violation
33 of this section, then he or she shall be entitled to up to
34 double the amount paid to the defendant if that amount
35 is greater than 30 percent of the proceeds. That person
36 shall also receive an amount for reasonable expenses that
37 the court finds to have been necessarily incurred, plus
38 reasonable attorneys' fees and costs. All of those expenses,
39 fees, and costs shall be awarded against the defendant.



1 (3) If a local district attorney has proceeded with an
2 action under this section, one-half of the penalties not
3 awarded to a private party, as well as any costs awarded
4 shall go to the treasurer of the appropriate county. Those
5 funds shall be used to investigate and prosecute fraud,
6 augmenting existing budgets rather than replacing them.
7 All remaining funds shall go to the state and be deposited
8 in the General Fund and, when appropriated by the
9 Legislature, shall be apportioned between the
10 Department of Justice and the Department of Insurance
11 for enhanced fraud investigation and prevention efforts.

12 (4) Whether or not the Attorney General, district
13 attorney, or commissioner proceeds with the action, if the
14 court finds that the action was brought by a person who
15 planned and initiated the violation of this section, that
16 person shall be dismissed from the civil action and shall
17 not receive any share of the proceeds of the action. The
18 dismissal shall not prejudice the right of the Attorney
19 General, district attorney, or commissioner to continue
20 the action on behalf of the state.

21 (5) If the Attorney General, district attorney, or
22 commissioner does not proceed with the action, and the
23 person bringing the action conducts the action, the court
24 may award to the defendant its reasonable attorneys' fees
25 and expenses if the defendant prevails in the action and
26 the court finds that the claim of the person bringing the
27 action was clearly frivolous, clearly vexatious, or brought
28 primarily for purposes of harassment.

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

35 (2) (A) No court shall have jurisdiction over an action
36 under this section based upon the public disclosure of
37 allegations or transactions in a criminal, civil, or
38 administrative hearing in a legislative or administrative
39 report, hearing, audit, or investigation, or from the news
40 media, unless the action is brought by the Attorney



1 General or the person bringing the action is an original
2 source of the information.

3 (B) For purposes of this paragraph, “original source”
4 means an individual who has direct and independent
5 knowledge of the information on which the allegations
6 are based and has voluntarily provided the information to
7 the Attorney General, district attorney, or commissioner
8 before filing an action under this section which is based
9 on the information.

10 (i) The Attorney General, district attorney, or
11 commissioner is not liable for expenses that a person
12 incurs in bringing an action under this section.

13 (j) Any employee who is discharged, demoted,
14 suspended, threatened, harassed, or in any other manner
15 discriminated against in the terms and conditions of
16 employment by his or her employer because of lawful acts
17 done by the employee on behalf of the employee or
18 others in furtherance of an action under this section,
19 including investigation for, initiation of, testimony for, or
20 assistance in an action filed or to be filed under this
21 section, shall be entitled to all relief necessary to make the
22 employee whole. That relief shall include reinstatement
23 with the same seniority status the employee would have
24 had but for the discrimination, two times the amount of
25 backpay, interest on the backpay, and compensation for
26 any special damages sustained as a result of the
27 discrimination, including litigation costs and reasonable
28 attorneys’ fees. An employee may bring an action in the
29 appropriate superior court for the relief provided in this
30 subdivision. The remedies under this section are in
31 addition to any other remedies provided by existing law.

32 SEC. 2. Section 1879.1 of the Insurance Code is
33 repealed.

34 SEC. 3. Section 550 of the Penal Code, as amended by
35 Section 3.1 of Chapter 1008 of the Statutes of 1994, is
36 amended to read:

37 550. (a) It is unlawful to do any of the following, or to
38 aid, abet, solicit, or conspire with any person to do any of
39 the following:



1 (1) Knowingly present or cause to be presented any
2 false or fraudulent claim for the payment of a loss,
3 including payment of a loss under a contract of insurance.

4 (2) Knowingly present multiple claims for the same
5 loss or injury, including presentation of multiple claims to
6 more than one insurer, with an intent to defraud.

7 (3) Knowingly cause or participate in a vehicular
8 collision, or any other vehicular accident, for the purpose
9 of presenting any false or fraudulent claim.

10 (4) Knowingly present a false or fraudulent claim for
11 the payments of a loss for theft, destruction, damage, or
12 conversion of a motor vehicle, a motor vehicle part, or
13 contents of a motor vehicle.

14 (5) Knowingly prepare, make, or subscribe any
15 writing, with the intent to present or use it, or to allow it
16 to be presented in support of any false or fraudulent
17 claim.

18 (6) Knowingly make or cause to be made any false or
19 fraudulent claim for payment of a health care benefit.

20 (7) Knowingly submit a claim for a health care benefit
21 which was not used by, or on behalf of, the claimant.

22 (8) Knowingly present multiple claims for payment of
23 the same health care benefit with an intent to defraud.

24 (9) Knowingly present for payment any undercharges
25 for health care benefits on behalf of a specific claimant
26 unless any known overcharges for health care benefits for
27 that claimant are presented for reconciliation at that
28 same time.

29 (10) For purposes of paragraphs (6) to (9), inclusive,
30 a claim or a claim for payment of a health care benefit also
31 means a claim or claim for payment submitted by or on
32 the behalf of a provider of any workers' compensation
33 health benefits under the Labor Code.

34 (b) It is unlawful to do, or to knowingly assist or
35 conspire with any person to do, any of the following:

36 (1) Present or cause to be presented any written or
37 oral statement as part of, or in support of or opposition to,
38 a claim for payment or other benefit pursuant to an
39 insurance policy, knowing that the statement contains



1 any false or misleading information concerning any
2 material fact.

3 (2) Prepare or make any written or oral statement that
4 is intended to be presented to any insurer or any
5 insurance claimant in connection with, or in support of or
6 opposition to, any claim or payment or other benefit
7 pursuant to an insurance policy, knowing that the
8 statement contains any false or misleading information
9 concerning any material fact.

10 (3) Conceal or knowingly fail to disclose the
11 occurrence of an event that affects any person's initial or
12 continued right or entitlement to any insurance benefit
13 or payment, or the amount of any benefit or payment to
14 which the person is entitled.

15 (4) Prepare or make any written or oral statement,
16 intended to be presented to any insurer or producer for
17 the purpose of obtaining a motor vehicle insurance
18 policy, that the person to be the insured resides or is
19 domiciled in this state when, in fact, that person resides
20 or is domiciled in a state other than this state.

21 (c) (1) Every person who violates paragraph (1), (2),
22 (3), (4), or (5) of subdivision (a) is guilty of a felony
23 punishable by imprisonment in the state prison for two,
24 three, or five years, and by a fine not exceeding fifty
25 thousand dollars (\$50,000), unless the value of the fraud
26 exceeds fifty thousand dollars (\$50,000), in which event
27 the fine may not exceed double of the value of the fraud.

28 (2) Every person who violates paragraph (6), (7), (8),
29 or (9) of subdivision (a) is guilty of a public offense.

30 (A) Where the claim or amount at issue exceeds four
31 hundred dollars (\$400), the offense is punishable by
32 imprisonment in the state prison for two, three, or five
33 years, by a fine not exceeding fifty thousand dollars
34 (\$50,000), or by both that imprisonment and fine, unless
35 the value of the fraud exceeds fifty thousand dollars
36 (\$50,000), in which event the fine may not exceed double
37 the value of the fraud, or by imprisonment in a county jail
38 not to exceed one year, by a fine of not more than one
39 thousand dollars (\$1,000), or by both that imprisonment
40 and fine.



1 (B) Where the claim or amount at issue is four
2 hundred dollars (\$400) or less, the offense is punishable
3 by imprisonment in a county jail not to exceed six months,
4 by a fine of not more than one thousand dollars (\$1,000),
5 or by both that imprisonment and fine unless the
6 aggregate amount of the claims or amount at issue
7 exceeds four hundred dollars (\$400) in any 12 consecutive
8 month period, in which case the claims or amounts may
9 be charged as in subparagraph (A).

10 (3) Every person who violates paragraph (1), (2), (3),
11 or (4) of subdivision (b) shall be punished by
12 imprisonment in the state prison for two, three, or five
13 years, by a fine not exceeding fifty thousand dollars
14 (\$50,000), unless the value of the fraud exceeds fifty
15 thousand dollars (\$50,000), in which event the fine may
16 not exceed double the value of the fraud, by both that
17 imprisonment and fine, or by imprisonment in a county
18 jail not to exceed one year, by a fine of not more than one
19 thousand dollars (\$1,000), or by both that imprisonment
20 and fine.

21 (d) Notwithstanding any other provision of law,
22 probation shall not be granted to, nor shall the execution
23 or imposition of a sentence be suspended for, any adult
24 person convicted of felony violations of this section who
25 previously has been convicted of felony violations of this
26 section as an adult under charges separately brought and
27 tried two or more times. The existence of any fact which
28 would make a person ineligible for probation under this
29 subdivision shall be alleged in the information or
30 indictment, and either admitted by the defendant in an
31 open court, or found to be true by the jury trying the issue
32 of guilt or by the court where guilt is established by plea
33 of guilty or nolo contendere or by trial by the court sitting
34 without a jury.

35 Except where the existence of the fact was not
36 admitted or found to be true or the court finds that a prior
37 felony conviction was invalid, the court shall not strike or
38 dismiss any prior felony convictions alleged in the
39 information or indictment.



1 This subdivision shall not prohibit the adjournment of
2 criminal proceedings pursuant to Division 3
3 (commencing with Section 3000) of, or Division 6
4 (commencing with Section 6000) of, the Welfare and
5 Institutions Code.

6 (e) Any person who violates subdivision (a) or (b) and
7 who has a prior felony conviction of an offense set forth
8 in either subdivision, in Section 548, in Section ~~1871.1~~
9 *1871.4 of the Insurance Code, or in former Section 1871.1*
10 *(as added by Chapter 1119 of the Statutes of 1989, and as*
11 *amended from time to time, until repealed by Chapter*
12 *1008 of the Statutes of 1991)* of the Insurance Code shall
13 receive a two-year enhancement for each prior felony
14 conviction in addition to the sentence provided in
15 subdivision (c). The existence of any fact which would
16 subject a person to a penalty enhancement shall be
17 alleged in the information or indictment and either
18 admitted by the defendant in open court, or found to be
19 true by the jury trying the issue of guilt or by the court
20 where guilt is established by plea of guilty or nolo
21 contendere or by trial by the court sitting without a jury.

22 (f) No portion of this section shall be construed to
23 preclude the applicability of any other provision of
24 criminal law that applies or may apply to any act
25 committed or alleged to have been committed by a
26 person.

27 (g) In order for a false statement to constitute a
28 violation of subdivision (a) or (b), it must be material. A
29 statement is material if it is reasonably relevant to the
30 claim or investigation of the claim and a reasonable
31 insurer would attach importance to it.

32 SEC. 4. Section 550 of the Penal Code, as added by
33 Section 3.2 of Chapter 1008 of the Statutes of 1994, is
34 repealed.

