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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (Division 2 enacted by Stats. 1935, Ch. 145.)

PART 3. LIABILITY, WORKERS' COMPENSATION, AND COMMON CARRIER LIABILITY INSURANCE [11550 - 11895] (

Heading of Part 3 amended by Stats. 1979, Ch. 373.)

CHAPTER 3. Regulation of Business of Workers' Compensation Insurance [11690 - 11761] (Heading of Chapter 3 amended by Stats. 1979, Ch. 373.)

ARTICLE 4. Penalties for Misrepresentation [11760 - 11760.1] (Article 4 added by Stats. 1991, Ch. 116, Sec. 20.)

11760. (a) It is unlawful to make or cause to be made any knowingly false or fraudulent statement, whether made orally or in writing, of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance, for the purpose of reducing the premium, rate, or cost of the insurance. Any person convicted of violating this subdivision shall be punished by imprisonment in a county jail for one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000), or double the value of the fraud, whichever is greater, or by both that imprisonment and fine.

(b) Any person who violates subdivision (a) and who has a prior felony conviction of the offense set forth in that subdivision shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (a). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(Amended by Stats. 2011, Ch. 15, Sec. 217. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

11760.1. (a) If an employer fails to provide for access by the insurer or its authorized representative to its records, to enable the insurer to perform an audit to determine the remuneration earned by the employer's employees and by any of its uninsured subcontractors and the employees of any of its uninsured subcontractors during the policy period, the employer shall be liable to pay to the insurer a total premium for the policy equal to three times the insurer's then-current estimate of the annual premium on the expiration date of the policy. The employer shall also be liable, in addition to the premium, for costs incurred by the insurer in its attempts to perform an audit, after the insured has failed upon the insurer's third request during at least a 90-day period to provide access, and the insured has provided no compelling business reason for the failure. This section shall only apply if the insurer elects to comply with the conditions set forth in subdivision (d).

(b) "Access" shall mean access at any time during regular business hours during the policy period and within three years after the policy period ends. "Access" may also include any other time mutually agreed upon by the employer and insurer.

(c) The insurer shall have and follow regular and reasonable rules and procedures to notify employers of their duty to provide for access to records, and to contact employers to make appointments during regular business hours for that purpose.

(d) Upon the employer's failure to provide access after the insurer's third request during at least a 90-day period, the insurer may notify the employer through its mailing of a certified, return-receipt, document of the increased premium and the total amount of the costs incurred by the insurer for its attempts to perform an audit as described under subdivision (a). Upon the expiration of 30 days after the delivery of the notice, collection by the insurer of the amount of premium and costs described under subdivision (a), less all premiums previously paid by the employer for the policy, shall be fully enforceable and executable.

(e) If the employer provides for access to its records after having received the notice described in subdivision (d), and if the insurer then succeeds in performing the audit to its satisfaction, the insurer shall revise the total premium and costs payable for the policy by the employer to reflect the results of its audit.

(Added by Stats. 2007, Ch. 615, Sec. 1. Effective January 1, 2008.)

