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AB-2046 Workers' compensation insurance fraud reporting. (2017-2018)

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Date Published: 09/24/2018 09:00 PM

Assembly Bill No. 2046

CHAPTER 709

An act to amend Sections 1872.83 and 1877.3 of the Insurance Code, relating to insurance.

[Approved by Governor September 23, 2018. Filed with Secretary of State September 23, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2046, Daly. Workers' compensation insurance fraud reporting.

Existing law requires the Insurance Commissioner to aggressively pursue all reported incidents of probable workers' compensation fraud, as defined. Existing law requires that an annual assessment be imposed on workers' compensation insurers for purposes related to workers' compensation fraud, and requires the Fraud Assessment Commission, as specified, to establish the amount of the assessment. Existing law requires that, for each fiscal year, the total amount of revenues derived from the assessment, together with amounts collected pursuant to fines imposed for unlawful acts, be not less than \$3,000,000. Existing law requires that funds appropriated by the Legislature that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated to district attorneys, be applied to satisfy for the immediately following fiscal year the minimum total amount required.

This bill would instead authorize, rather than require, funds appropriated by the Legislature that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated to the district attorneys, to be applied to satisfy for the immediately following fiscal year the minimum total amount required, or, subject to appropriation by the Legislature, to be used to augment funding in the immediately following fiscal year.

Existing law requires the California State Auditor's Office to evaluate the effectiveness of the efforts of the Fraud Assessment Commission, the Fraud Division, the Department of Insurance, and the Department of Industrial Relations, as well as local law enforcement agencies, including district attorneys, in identifying, investigating, and prosecuting workers' compensation fraud and the willful failure to secure payment of workers' compensation. Existing law also includes a related, obsolete provision requiring the office to submit a related report.

This bill would delete those provisions.

Existing law makes it a misdemeanor or a felony to engage in specified acts of fraud or material misrepresentation for the purpose of obtaining or denying workers' compensation, as specified. Existing law, the Workers' Compensation Insurance Fraud Reporting Act (the act), requires insurers and licensed rating organizations to release upon request to an authorized governmental agency, as defined, relevant information deemed important to the authorized governmental agency that the insurer or licensed rating organization may possess relating to any specific workers' compensation insurance fraud investigation. The act requires, under specified circumstances, an insurer or licensed rating organization to notify the local district attorney's office and the Fraud Division of the Department of Insurance, and authorizes that entity to notify any other authorized governmental agency, of suspected fraud, as specified. The act also requires the Employment Development Department to release, upon written

request, to an authorized governmental agency, relevant information that the Employment Development Department may possess relating to any specific workers' compensation insurance fraud investigation. The act authorizes the governmental agency that is provided with information pursuant to those provisions to release or provide that information in a confidential manner to any other authorized governmental agency for purposes of investigation, prosecution, or prevention of insurance fraud or workers' compensation fraud.

This bill would require an authorized governmental agency that is provided with information pursuant to those provisions to release or provide that information, upon request, as described above, unless it would violate federal law or otherwise compromise an investigation. The bill would also require an authorized governmental agency that seeks to disclose this information to any other governmental agency that is not authorized to receive that information to obtain Employment Development Department approval prior to disclosure, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1872.83 of the Insurance Code is amended to read:

1872.83. (a) The commissioner shall ensure that the Fraud Division aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880, and in subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Fraud Division shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, and of willful failure to secure payment of workers' compensation, in violation of Section 3700.5 of the Labor Code, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of seven members consisting of two representatives of organized labor, two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing organized labor, self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars (\$100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Fraud Division and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced investigation and prosecution of workers' compensation fraud and of willful failure to secure payment of workers' compensation as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, not be less than three million dollars (\$3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), may be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision or, subject to appropriation by the Legislature, may be used to augment funding in the immediately following fiscal year. The money shall not be transferred to the General Fund.

(d) After incidental expenses, at least 40 percent of the funds to be used for the purposes of this section shall be provided to the Fraud Division of the Department of Insurance for enhanced investigative efforts, and at least 40 percent of the funds shall be distributed to district attorneys, pursuant to a determination by the commissioner with the advice and consent of the division and the Fraud Assessment Commission, as to the most effective distribution of moneys for purposes of the investigation and prosecution of workers' compensation fraud cases and cases relating to the willful failure to secure the payment of workers' compensation. Each district attorney seeking a portion of the funds shall submit to the commissioner an application setting forth in detail the proposed use of any funds provided. A district attorney receiving funds pursuant to this subdivision shall submit an annual report to the commissioner with respect to the success of his or her efforts. Upon receipt, the commissioner shall provide copies to the Fraud Division and the Fraud Assessment Commission of any application, annual report, or other documents with respect to the allocation of money pursuant to this subdivision. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning criminal investigations, whether active or inactive, shall be confidential.

(e) If a district attorney is determined by the commissioner to be unable or unwilling to investigate and prosecute workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation, the commissioner shall discontinue distribution of funds allocated for that county and may redistribute those funds according to this subdivision.

(1) The commissioner shall promptly determine whether any other county could assert jurisdiction to prosecute the fraud claims or claims relating to the willful failure to secure the payment of workers' compensation that would have been brought in the nonparticipating county, and, if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds or claims relating to the willful failure to secure the payment of workers' compensation prosecution otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision. The Attorney General shall submit an annual report to the commissioner with respect to the success of the fraud prosecution efforts of his or her office.

(3) Neither the Attorney General nor any district attorney shall be required to relinquish control of any investigation or prosecution undertaken pursuant to this subdivision unless the commissioner determines that satisfactory progress is no longer being made on the case or the case has been abandoned.

(4) A county that has become a nonparticipating county due to the inability or unwillingness of its district attorney to investigate and prosecute workers' compensation fraud or the willful failure to secure the payment of workers' compensation shall not become eligible to receive funding under this section until it has submitted a new application that meets the requirements of subdivision (d) and the applicable regulations.

(f) If in any fiscal year the Fraud Division does not use all of the funds made available to it under subdivision (d), any remaining funds may be distributed to district attorneys pursuant to a determination by the commissioner in accordance with the same procedures set forth in subdivision (d).

(g) The commissioner shall adopt rules and regulations to implement this section in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Included in the rules and regulations shall be the criteria for redistributing funds to district attorneys and the Attorney General. The adoption of the rules and regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

(h) The department shall report to the Governor, the Legislature, to the committees of the Senate and Assembly having jurisdiction over insurance, and the Fraud Assessment Commission on the activities of the Fraud Division and district attorneys supported by the funds provided by this section in the annual report submitted pursuant to Section 12922.

The annual report shall include, but is not limited to, all of the following information for the department and each district attorney's office:

- (1) All allocations, distributions, and expenditures of funds.
- (2) The number of search warrants issued.
- (3) The number of arrests and prosecutions, and the aggregate number of parties involved in each.
- (4) The number of convictions and the names of all convicted fraud perpetrators.
- (5) The estimated value of all assets frozen, penalties assessed, and restitutions made for each conviction.
- (6) Any additional items necessary to fully inform the Fraud Assessment Commission and the Legislature of the fraud-fighting efforts financed through this section.

(i) In order to meet the requirements of subdivision (g), the department shall submit a biannual information request to those district attorneys who have applied for and received funding through the annual assessment process under this section.

(j) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the state to fight fraud and the willful failure to secure the payment of workers' compensation by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.

SEC. 2. Section 1877.3 of the Insurance Code is amended to read:

1877.3. (a) Upon written request to an insurer or a licensed rating organization by an authorized governmental agency, an insurer, an agent authorized by that insurer, or a licensed rating organization to act on behalf of the insurer, shall release to the requesting authorized governmental agency any or all relevant information deemed important to the authorized governmental agency that the insurer or licensed rating organization may possess relating to any specific workers' compensation insurance fraud investigation.

(b) (1) When an insurer or licensed rating organization knows or reasonably believes it knows the identity of a person or entity whom it has reason to believe committed a fraudulent act relating to a workers' compensation insurance claim or a workers' compensation insurance policy, including any policy application, or has knowledge of such a fraudulent act that is reasonably believed not to have been reported to an authorized governmental agency, then, for the purpose of notification and investigation, the insurer, or agent authorized by an insurer to act on its behalf, or licensed rating organization shall notify the local district attorney's office and the Fraud Division of the Department of Insurance, and may notify any other authorized governmental agency of that suspected fraud and provide any additional information in accordance with subdivision (a). The insurer or licensed rating organization shall state in its notice the basis of the suspected fraud.

(2) Insurers shall use a form prescribed by the department for the purposes of reporting suspected fraudulent workers' compensation acts pursuant to this subdivision.

(3) This section does not abrogate or impair the rights or powers created under subdivision (a).

(c) The authorized governmental agency provided with information pursuant to subdivision (a), (b), or (e) shall, upon request, unless it would violate federal law or otherwise compromise an investigation, release or provide that information in a confidential manner to any other authorized governmental agency for purposes of investigation, prosecution, or prevention of insurance fraud or workers' compensation fraud.

(d) An insurer or licensed rating organization providing information to an authorized governmental agency pursuant to this section shall provide the information within a reasonable time, but not exceeding 60 days from the day on which the duty arose.

(e) Upon written request by an authorized governmental agency, as specified in subdivision (o) of Section 1095 of the Unemployment Insurance Code, the Employment Development Department shall release to the requesting agency any or all relevant information that the Employment Development Department may possess relating to any specific workers' compensation insurance fraud investigation. If an authorized governmental agency seeks to disclose this information to any other governmental agency that is not authorized to receive that information pursuant to subdivision (o) of Section 1095 of the Unemployment Insurance Code or subdivision (c) of Section 603.9 of Title 20 of the Code of Federal Regulations, that agency shall submit a request to the Employment Development Department for approval prior to disclosure. Relevant information may include, but is not limited to, all of the following:

(1) Copies of unemployment and disability insurance application and claim forms and copies of any supporting medical records, documentation, and records pertaining thereto.

(2) Copies of returns filed by an employer pursuant to Section 1088 of the Unemployment Insurance Code and copies of supporting documentation.

(3) Copies of benefit payment checks issued to claimants.

(4) Copies of any documentation that specifically identifies the claimant by social security number, residence address, or telephone number.