AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 1578

Introduced by Assembly Member ~~Parra~~ *Vargas*

February 21, 2003

An act to add Section ~~791.135~~ *1871.4* to the Insurance Code, relating to ~~property~~ *workers' compensation* insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1578, as amended, ~~Parra~~ *Vargas*. ~~Property insurance: rates: claims~~ *Workers' compensation: fraud penalties*.

Existing law makes it a crime for any person to make false or fraudulent statements, or take certain other actions, with respect to any claim under the workers' compensation system. Existing law specifies the penalties for violating these provisions, including a fine up to $50,000 or twice the amount of the fraud, whichever is greater.

This bill would increase this maximum fine to $150,000 or twice the amount of the fraud, whichever is greater.

~~Existing law prohibits an insurance institution from disclosing any personal or privileged information about an individual received in connection with an insurance transaction, unless, among other permitted disclosures, the disclosure is to an insurance institution, insurance-support organization, or other specified person or entity and the information is reasonably necessary for the person or entity receiving it to perform its function in connection with an insurance transaction involving the individual.~~

~~This bill would prohibit an insurer from reporting a claim to a database accessed by or available to other insurers unless it (1) obtains~~

~~written verification from the insured that a claim has been made, and (2) provides specified notice to the insured regarding its reporting of information to a database of this type. These requirements would not apply to a claim that an insurer suspects to be fraudulent.~~

~~The bill would allow the Insurance Commissioner to adopt regulations effectuating the intent of these provisions.~~

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

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

~~SECTION 1. Section 791.135 is added to the Insurance Code,~~

SECTION 1. Section 1871.4 of the Insurance Code is amended to read:

1871.4. (a) It is unlawful to do any of the following:

(1) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(2) Present or cause to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(3) Knowingly assist, abet, conspire with, or solicit any person in an unlawful act under this section.

(4) Make or cause to be made any knowingly false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

For the purposes of this subdivision, ‘‘statement’’ includes, but is not limited to, any notice, proof of injury, bill for services, payment for services, hospital or doctor records, X-ray, test results, medical-legal expense as defined in Section 4620 of the Labor Code, other evidence of loss, injury, or expense, or payment.

(5) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(6) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of discouraging an employer from claiming any of the benefits or reimbursement provided in the Return-to-Work Program established under Section 139.48 of the Labor Code.

(b) Every person who violates subdivision (a) shall be punished by imprisonment in county jail for one year, or in the state prison, for two, three, or five years, or by a fine not exceeding *one hundred* fifty thousand dollars ~~($50,000)~~ *($150,000)* or double the value of the fraud, whichever is greater, or by both imprisonment and fine. Restitution shall be ordered, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.

(c) Any person who violates subdivision (a) and who has a prior felony conviction of that subdivision, of former Section 556, of former Section 1871.1, or of Section 548 or 550 of the Penal Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (b).

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.

(d) This section shall not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to any transaction.

~~to read:~~

~~791.135. (a) Except as provided in subdivision (b), an insurer may not report a claim to a database accessed by or available to other insurers unless it does both of the following:~~

~~(1) Obtains written verification from the insured that a claim has been made.~~

~~(2) Notifies the insured that the insurer reports claims to a database available to other insurers, and that other insurers may rely on reported claims when determining whether to offer insurance, and the premium to be charged, to an applicant.~~

~~(b) Subdivision (a) shall not apply to any claim that an insurer suspects to be fraudulent.~~

~~(c) The commissioner may adopt regulations necessary to effectuate the intent of this section.~~

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