

AMENDED IN SENATE MAY 18, 2011
AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 631

Introduced by Senator Evans

February 18, 2011

An act to add Section 12926.15 to the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 631, as amended, Evans. Insurance Commissioner: violations: remedies.

Existing law requires the Insurance Commissioner to perform all duties imposed upon him or her by the provisions of the Insurance Code and other laws regulating the business of insurance in this state, and to enforce the execution of those provisions and laws.

This bill would additionally authorize the commissioner, in the exercise of his or her discretion to take enforcement action, to impose upon an insurer, licensee, or other entity or person subject to the commissioner's authority specified remedies, either by way of settlement or following a hearing, whenever the commissioner finds that there has been a violation of an applicable insurance provision, as prescribed.

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 12926.15 is added to the Insurance Code,
2 to read:

1 12926.15. (a) The Legislature finds and declares all of the
2 following:

3 (1) Existing law permits the commissioner to order restitution
4 only in limited circumstances.

5 (2) The commissioner regularly finds that, as a result of legal
6 violations, Californians are entitled to refunds or restitution, but
7 in many circumstances, the commissioner has no specific authority
8 to order refunds or restitution.

9 (3) This section is intended to provide the commissioner the
10 authority to order refunds or restitution in all instances where he
11 or she finds that an insurer, licensee, or other entity or person has
12 violated the code.

13 (b) In addition to any other remedy provided in this code, ~~and~~
14 ~~notwithstanding Sections 12921, 12926.1, and 12975.7,~~ in the
15 exercise of his or her discretion to take enforcement action, the
16 commissioner may impose upon an insurer, licensee, or other entity
17 or person subject to the commissioner's authority the remedies
18 provided in this section. Whenever the commissioner finds, either
19 by way of settlement or following a hearing, that an insurer,
20 licensee, or other entity or person subject to this code has violated
21 any of the provisions of this code, he or she may order the
22 following remedies:

23 (1) The commissioner may order an insurer, licensee, or other
24 entity or person subject to this code to pay restitution to a person.
25 Restitution shall mean quantifiable monetary sums that an insurer,
26 licensee, or other entity or person owes to a person, but did not
27 pay, in violation of a law or regulation enforced by the
28 commissioner. Restitution, as defined herein, shall also include
29 out-of-pocket expenses incurred or economic harm suffered by a
30 person because of an insurer's, licensee's, or other entity's or
31 person's violation of a law or regulation enforced by the
32 commissioner.

33 (2) In matters where the commissioner finds a violation of the
34 provisions of this code, the commissioner may order an insurer,
35 licensee, or other entity or person to pay attorney's fees and costs
36 of the department and future costs of the department to ensure
37 compliance with the settlement, or order requiring restitution or
38 other remedies.

39 (c) Where restitution is ordered and paid to a person pursuant
40 to the provisions of this section, the amount paid shall be credited

1 to any subsequent judgment obtained by that person in a civil
2 action arising from the same facts and circumstances.

3 (d) Nothing in this section is intended to limit or restrict actions,
4 remedies, or procedures otherwise available to the department or
5 any person pursuant to any other provision of law.

6 (e) It shall not be a defense in an administrative or private civil
7 action that the commissioner did not order an insurer, licensee, or
8 other entity or person to pay restitution.

9 (f) For proceedings not required to be conducted in accordance
10 with the Administrative Procedure Act (Chapter 5 (commencing
11 with Section 11500) of Part 1 of Division 3 of Title 2 of the
12 Government Code), the following provisions shall apply:

13 (1) An order requiring restitution shall become effective 45 days
14 after it is delivered or mailed to the insurer, licensee, or other entity
15 or person unless a stay of execution is granted.

16 (2) Judicial review of an order requiring restitution may be had
17 by filing a petition for a writ of mandate in accordance with the
18 provisions of the Code of Civil Procedure. Notwithstanding those
19 provisions, the petition shall be filed within 45 days after the
20 delivery or mailing of the order requiring restitution.

21 (g) If restitution is not paid to a person within 10 days after an
22 order becomes effective, the commissioner shall proceed in
23 accordance with Section 12976 for the purpose of recovering those
24 moneys due to that person.

25 (h) As used in this section, “person” shall have the same
26 meaning as set forth in Section 19.