

AMENDED IN SENATE MARCH 28, 1995

**SENATE BILL**

**No. 247**

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**Introduced by Senator Peace**

February 7, 1995

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An act to amend Section 1872.83 of the Insurance Code, relating to insurance fraud.

LEGISLATIVE COUNSEL'S DIGEST

SB 247, as amended, Peace. Insurance fraud.

Existing law provides for an annual assessment on employers to fund increased investigation and prosecution of workers' compensation fraud. The aggregate amount of the assessment is determined by the Fraud Assessment Commission and that amount, together with the fines collected for specified violations, is deposited in the Workers' Compensation Fraud Account in the Insurance Fund. Existing law provides for each fiscal year, the total revenues shall not be less than \$3,000,000, and that any funds appropriated that are not expended in a fiscal year shall be applied to satisfy the minimum total amount for the next fiscal year. Under existing law, 50% of that money allocated to the Bureau of Fraudulent Claims and 50% is allocated to district attorneys.

This bill would provide that if in any fiscal year, the Bureau of Fraudulent Claims does not use all of the funds made available to it, the unexpended funds—~~shall~~ *may* be distributed to district attorneys. It would provide that the money may not be transferred to the General Fund.

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 1872.83 of the Insurance Code is  
2 amended to read:  
3 1872.83. (a) The commissioner shall ensure that the  
4 Bureau of Fraudulent Claims aggressively pursues all  
5 reported incidents of probable workers' compensation  
6 fraud, as defined in subdivision (a) of Section 1871.4 and  
7 Section 549 of the Penal Code, and forwards to the  
8 appropriate disciplinary body the names, along with all  
9 supporting evidence, of any individuals licensed under  
10 the Business and Professions Code who are suspected of  
11 actively engaging in fraudulent activity. The Bureau of  
12 Fraudulent Claims shall forward to the Insurance  
13 Commissioner or the Director of Industrial Relations, as  
14 appropriate, the name, along with all supporting  
15 evidence, of any insurer, as defined in subdivision (c) of  
16 Section 1877.1, suspected of actively engaging in the  
17 fraudulent denial of claims.  
18 (b) To fund increased investigation and prosecution of  
19 workers' compensation fraud, there shall be an annual  
20 assessment as follows:  
21 (1) The aggregate amount of the assessment shall be  
22 determined by the Fraud Assessment Commission, which  
23 is hereby established. The commission shall be composed  
24 of five members consisting of two representatives of  
25 self-insured employers, one representative of insured  
26 employers, one representative of workers' compensation  
27 insurers, and the President of the State Compensation  
28 Insurance Fund, or his or her designee.  
29 The Governor shall appoint members representing  
30 self-insured employers, insured employers, and insurers.  
31 The term of office of members of the commission shall be  
32 four years, and a member shall hold office until the  
33 appointment of a successor. However, the initial terms of  
34 three of the members appointed by the Governor shall  
35 expire, respectively, on December 31, 1992, December



1 31, 1993, and December 31, 1994. The President of the  
2 State Compensation Insurance Fund shall be an ex officio,  
3 voting member of the commission. Members of the  
4 commission shall receive one hundred dollars (\$100) for  
5 each day of actual attendance at commission meetings  
6 and other official commission business, and shall also  
7 receive their actual and necessary traveling expenses  
8 incurred in the performance of commission duties.  
9 Payment of per diem and travel expenses shall be made  
10 from the Workers' Compensation Fraud Account in the  
11 Insurance Fund, established in paragraph (4), upon  
12 appropriation by the Legislature.

13 (2) In determining the aggregate amount of the  
14 assessment, the Fraud Assessment Commission shall  
15 consider the advice and recommendations of the Bureau  
16 of Fraudulent Claims and the commissioner.

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

23 (4) The amount collected, together with the fines  
24 collected for violations of the unlawful acts specified in  
25 Section 1871.4 and Section 549 of the Penal Code, shall be  
26 deposited in the Workers' Compensation Fraud Account  
27 in the Insurance Fund, which is hereby created, and may  
28 be used, upon appropriation by the Legislature, only for  
29 enhanced workers' compensation fraud investigation and  
30 prosecution as provided in this section.

31 (c) For each fiscal year, the total amount of revenues  
32 derived from the assessment pursuant to subdivision (b)  
33 shall, together with amounts collected pursuant to fines  
34 imposed for unlawful acts described in Section 1871.4 and  
35 Section 549 of the Penal Code, not be less than three  
36 million dollars (\$3,000,000). Any funds appropriated by  
37 the Legislature pursuant to subdivision (b) that are not  
38 expended in the fiscal year for which they have been  
39 appropriated, and that have not been allocated under  
40 subdivision (f), shall be applied to satisfy for the



1 immediately following fiscal year the minimum total  
2 amount required by this subdivision. In no case may that  
3 money be transferred to the General Fund.

4 (d) After incidental expenses, 50 percent of the funds  
5 to be used for the purposes of this section shall be  
6 provided to the Bureau of Fraudulent Claims of the  
7 Department of Insurance for enhanced investigative  
8 efforts and 50 percent of the funds shall be distributed to  
9 district attorneys, pursuant to a determination by the  
10 commissioner with the advice and consent of the bureau  
11 and the Fraud Assessment Commission, as to the most  
12 effective distribution of moneys for purposes of the  
13 investigation and prosecution of workers' compensation  
14 insurance fraud cases. Each district attorney seeking a  
15 portion of the funds shall submit to the commissioner an  
16 application setting forth in detail their proposed use of  
17 any funds provided. Any district attorney receiving funds  
18 pursuant to this subdivision shall submit an annual report  
19 to the commissioner with respect to the success of their  
20 efforts. Upon receipt, the commissioner shall provide  
21 copies to the bureau and the Fraud Assessment  
22 Commission of any application, annual report, or other  
23 documents with respect to the allocation of money  
24 pursuant to this subdivision. These documents shall be  
25 public records.

26 (e) If any district attorney is determined by the  
27 commissioner to be unable or unwilling to investigate and  
28 prosecute workers' compensation fraud claims, the  
29 commissioner shall discontinue distribution of funds  
30 allocated for that county and may redistribute those funds  
31 according to this subdivision.

32 (1) The commissioner shall promptly determine  
33 whether any other county could assert jurisdiction to  
34 prosecute the fraud claims that would have been brought  
35 in the nonparticipating county, and if so, the  
36 commissioner may award funds to conduct the  
37 prosecutions redirected pursuant to this subdivision,  
38 which funds may be in addition to any other fraud  
39 prosecution funds otherwise awarded under this section.  
40 Any district attorney receiving funds pursuant to this



1 subdivision shall first agree that the funds shall be used  
2 solely for investigating and prosecuting those cases of  
3 workers' compensation fraud redirected pursuant to this  
4 subdivision and submit an annual report to the  
5 commissioner with respect to the success of the district  
6 attorney's efforts. The commissioner shall keep the Fraud  
7 Assessment Commission fully informed of all  
8 reallocations of funds under this paragraph.

9 (2) If the commissioner determines that no district  
10 attorney is willing or able to investigate and prosecute the  
11 workers' compensation fraud claims arising in the  
12 nonparticipating county, the commissioner, with the  
13 advice and consent of the Fraud Assessment Commission,  
14 may award to the Attorney General some or all of the  
15 funds previously awarded to the nonparticipating county.  
16 Before the commissioner may award any funds, the  
17 Attorney General shall submit to the commissioner an  
18 application setting forth in detail his or her proposed use  
19 of any funds provided and agreeing that any funds  
20 awarded shall be used solely for investigating and  
21 prosecuting those cases of workers' compensation fraud  
22 redirected pursuant to this subdivision. The Attorney  
23 General shall submit an annual report to the  
24 commissioner with respect to the success of the fraud  
25 prosecution efforts of his or her office.

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

32 (4) No county that has become a nonparticipating  
33 county due to the inability or unwillingness of its district  
34 attorney to investigate and prosecute workers'  
35 compensation fraud shall become eligible to receive  
36 funding under this section until it has submitted a new  
37 application that meets the requirements of subdivision  
38 (d) and the applicable regulations.

39 (f) If in any fiscal year the Bureau of Fraudulent  
40 Claims does not use all of the funds made available to it



1 under subdivision (d), the unexpended funds ~~shall~~ *may*  
2 be distributed to district attorneys pursuant to a  
3 determination by the commissioner in accordance with  
4 the same procedures set forth in subdivision (d).

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

