

# SB 631 (EVANS)

## INSURANCE COMMISSIONER RESTITUTION AUTHORITY

### THE GOAL

To provide the Insurance Commissioner express authority to order restitution to consumers who suffer financial loss because of an insurer's or other insurance licensee's violation of insurance law as part of an administrative enforcement action.

### BACKGROUND

Insurance consumers occasionally suffer monetary losses at the hands of their insurance providers. For example, they may be charged a higher premium that is allowed or receive less money than to which they are entitled on a claim. Or an insurer may rescind a health insurance policy, forcing a policyholder to pay out of pocket for medical treatment that should have been covered under the policy.

Current law allows the Insurance Commissioner to negotiate a settlement that includes restitution as a remedy for consumers who have suffered financial loss from an insurer or other licensee for violation of the Insurance Code. If an insurer or licensee does not settle, the Department of Insurance may pursue the violations through the administrative hearing process; however, the Commissioner's ability to right the wrong is limited to ordering the insurer or licensee to pay fines, leaving the consumer no other recourse than to sue the insurer in court, which is time-consuming, expensive, and stressful.

Compounding the situation, a recent court decision held that consumers cannot sue an insurer directly for activities that are part of a rate plan approved by the Commissioner, which in that case meant consumers could not turn to the courts to address potentially illegal premium overcharges. The court limited consumers to administrative remedies in such cases, which as noted above, often result in no restitution to the consumer.

Other California state agencies currently have the ability to order restitution in their enforcement actions. The Public Utilities Commission, the Department of Fair Employment and Housing, and the Workers'

Compensation Appeals Board are just a few of the state agencies with this express statutory authority.

Change is needed because while the Department of Insurance is charged with protecting consumers against insurer misconduct, the Insurance Commissioner is often unable to order the simple and fair remedy of restitution due to the lack of express authority to do so in current law. Given that department enforcement actions often involve multiple consumers who were wronged by an insurer's or licensee's systemic violation of the law, one order of restitution can help many.

### THIS BILL

Provides the express authority for the Insurance Commissioner to order restitution as part of an enforcement action to compensate a consumer for economic harm arising directly from a violation of insurance law.

This bill ensures any restitution order by the Commissioner may be open to judicial review before restitution is collected, and does not diminish a consumer's right to pursue direct civil action against an insurer or licensee when authorized by law.

This bill also authorizes the Insurance Commissioner, in cases where the Department of Insurance is the prevailing party, to order an insurer or licensee to pay the costs incurred by the department in bringing the enforcement action.

### SUPPORT

**Sponsor:** Insurance Commissioner Dave Jones

### OPPOSITION

None yet received.

### FOR MORE INFORMATION

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