

SB 631 - Restitution Bill Update

5-13-2011 by Robert Hogeboom

On April 28, 2011, [Barger & Wolen](#) Senior Regulatory Counsel, [Robert W. Hogeboom](#), testified before the [Senate Insurance Committee](#) as an industry expert opposing [Senate Bill 631](#).

SB 631, as drafted, would give the [Insurance Commissioner](#) additional remedies of restitution and reimbursement of attorney's fees and costs in [California Department of Insurance](#) enforcement actions brought on behalf of consumers claiming wrongful conduct by insurers or other licensees, including producers. For more details, please see [New Restitution Remedy Proposed for Insurers and Licensees in California](#).

Immediately before the Senate Insurance Committee hearing, author [Senator Noreen Evans](#) (D-District 2) announced her decision to make SB 631 a two-year bill. Her decision is presumed to be the result of the Legislative Counsel's opinion to the Senate Insurance Committee raising California constitutional issues that the legislation may give the Commissioner remedies only available to the courts.

At the hearing, Hogeboom testified that the legislation would violate the separation of powers clause in the California Constitution. Restitution is only given to quasi-judicial entities such as the [California Workers' Compensation Appeals Board](#). Further, reimbursement of attorney's fees and costs would exceed even the power of the courts in most cases.

Hogeboom also testified that because the legislation would extend payment of restitution for violations of [Proposition 103](#)'s rating law, the bill would likely require a two-thirds vote of the Legislature to pass.

Based on his lengthy experience as an enforcement regulatory lawyer, Hogeboom testified that the measure would actually hinder due process rights from licensees because many producer licensees would not be able to afford an administrative hearing when they face the risk of having to pay both restitution and reimbursement of attorney's fees and costs. This would give the CDI more leverage in forcing licensees into settlements.

Following the April 28, 2011 hearing, the bill was put over for another year in order to more fully explore its legal issues.

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