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On Behalf Of: Independent Premium Auditors
Committee: Senate Committee On Labor and Business
Measure: SB1580

I formerly was a worker's compensation premium auditor, and based upon my in-the-trenches experience, this bill is unnecessary and does not address the root cause of the perceived problem.

The reason many businesses knowingly get away with willful misclassification is because worker's comp carriers are very stingy on the time they allocate to their premium auditors to perform an audit, resulting in a rushed and incomplete job. I was often pressured to complete a premium audit of a business with 30 employees in 2.5 hours, which was never sufficient time to do an accurate and complete audit. If I charged the insurance company and its audit clearinghouse (who sits between the company and the carrier) the amount of time it actually would take to perform an accurate audit and go through employee job descriptions and verify their workspaces per the carrier's own auditing criteria, I would be threatened with termination, and in fact, I was eventually terminated by the clearinghouse for being thorough and taking the time to do accurate audits which cut into the clearinghouse's profits from the skim between my work and what the carrier paid the clearinghouse. In fact, worker's comp audit clearinghouses violate employment law by contracting with field premium auditors as independent contractors by paying them through an LLC they are forced to join, meaning field premium auditors have no job security - and BOLI and the state unemployment department does nothing about it. The state does perform audit integrity checks, but the flaw in the system is they don't have access to the job descriptions and site.

By enacting a felony, this bill is trying to create a chilling effect on policyholders, who can already be prosecuted under the fraud-theft statute and for fraud under common law. The true purpose of this bill is really about continuing to enable policymakers to be stingy on their premium auditing expense so as to increase profits. Hardworking business owners who pay premiums understand the advantage of the liability shield - they don't need to live under the fear of felony prosecution. Also, DA's do not want to take on these type of white-collar cases where it is very difficult to prove intent. Most of these cases are going to come from disgruntled employees who might even blackmail business owners.

I also have 4th amendment concerns. Because worker's compensation coverage is a government mandate, if the premium auditor discovers willful misclassification that gets referred to law enforcement or a DA, the auditor has effectively become an agent of the government. As an auditor, I toured many nonpublic facilities and observed many sensitive business records. In 2019, I was approached by the FBI to

spy on a San Francisco business owned by a subject of a pay-to-play investigation because as a premium auditor, I was going to be given access to business records I did not necessarily need for the audit and for which the FBI at the time did not have probable cause to obtain a search warrant. I got out of it by informing the carrier that the business was subject to a criminal investigation and that in lieu of an audit, I recommended the carrier drop the policy and force the business onto State Fund (the California equivalent of SAIF). This put me into conflict with the clearinghouse which had lost their profit from my auditing job.

Also misclassifying employees as clerical even though they sometimes do decidedly non-clerical jobs is a gray area where carriers want to push up classifications to make profit. For example, I audited a non-profit film festival that had year-round employees all classified clerical. For two weeks a year, they were on site in theaters but otherwise worked in an office. Reclassification to theatrical would have meant high premiums disproportionate to the risk and hurt their charitable mission. I let it slide, but under this bill, premium auditors could be prosecuted as an accessory to a felony for using discretion.