

10-22-1999

Referendum Petition To Overturn "The Fair Insurance Responsibility Act."

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Referendum Petition To Overturn "The Fair Insurance Responsibility Act." California Initiative 857 (1999).
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State of California



#857

SECRETARY OF STATE

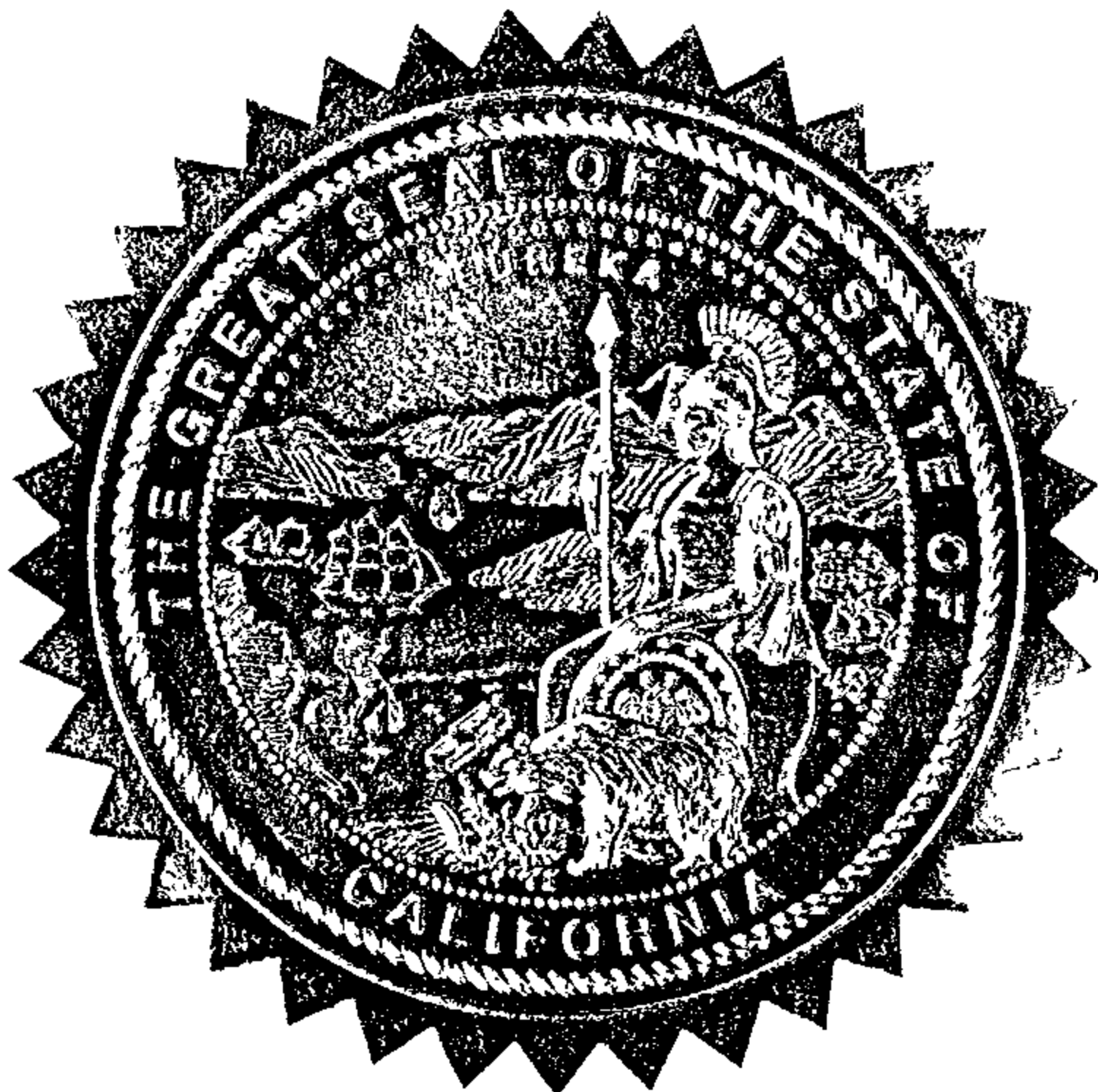
December 6, 1999

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (99288)

Pursuant to Section 9033 of the Elections Code, I hereby certify that on December 6, 1999 the certificates received from the County Clerks or Registrars of Voters by the Secretary of State established that the REFERENDUM PETITION TO OVERTURN AMENDMENTS TO "THE FAIR INSURANCE RESPONSIBILITY ACT." has been signed by the requisite number of qualified electors needed to declare the petition sufficient. The REFERENDUM PETITION TO OVERTURN AMENDMENTS TO "THE FAIR INSURANCE RESPONSIBILITY ACT." is, therefore, qualified for the March 7, 2000 statewide primary.

REFERENDUM PETITION TO OVERTURN AMENDMENTS TO "THE FAIR INSURANCE RESPONSIBILITY ACT." If signed by required number of electors and filed with Secretary of State within 90 days of enactment, this petition will prevent implementation of specified sections of Chapter 721, Statutes of 1999, unless approved by the majority of voters. Chapter 721, previously approved by the Legislature and the Governor, limits rights of injured persons to sue another's insurer for damages for unfair handling of claims, exempts professional liability insurers from such suits, and requires state auditor to report on the "Fair Insurance Responsibility Act" (Chapter 720, Statutes of 1999).

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of California this 6th day of December, 1999.



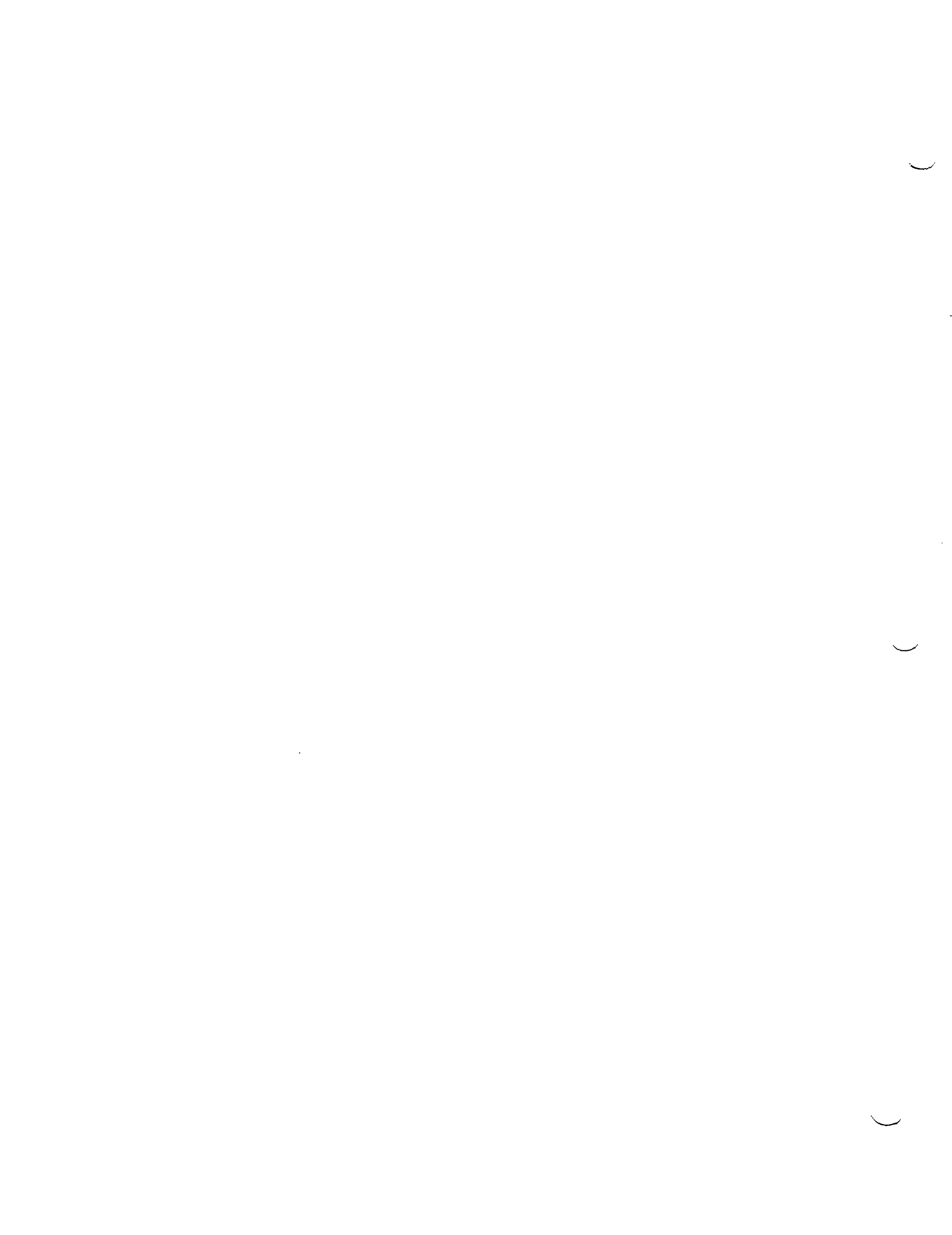
Bill Jones

BILL JONES
Secretary of State

RECEIVED

DEC 17 1999

DEWBY
112500 100 100000



State of California



857

SECRETARY OF STATE

December 6, 1999

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (99287)

Pursuant to Section 9033 of the Elections Code, I hereby certify that on December 6, 1999 the certificates received from the County Clerks or Registrars of Voters by the Secretary of State established that the REFERENDUM PETITION TO OVERTURN "THE FAIR INSURANCE RESPONSIBILITY ACT." has been signed by the requisite number of qualified electors needed to declare the petition sufficient. The REFERENDUM PETITION TO OVERTURN "THE FAIR INSURANCE RESPONSIBILITY ACT." is, therefore, qualified for the March 7, 2000 statewide primary.

REFERENDUM PETITION TO OVERTURN "THE FAIR INSURANCE RESPONSIBILITY ACT." If signed by required number of electors and timely filed with Secretary of State, this petition will prevent implementation of the Fair Insurance Responsibility Act, Chapter 720, Statutes of 1999, previously approved by the Legislature and the Governor, unless and until the Act is approved by a majority of voters. The Act restores the rights of injured persons to sue insurers of parties who caused injury, under specified circumstances, for unfair handling of insurance claims. Permits binding arbitration where amount recoverable is \$50,000 or less and claimant is represented by counsel.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of California this 6th day of December, 1999.



Bill Jones

BILL JONES
Secretary of State

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BILL JONES
Secretary of State
State of California

ELECTIONS DIVISION
(916) 657-2166
1500 - 11th STREET
SACRAMENTO, CA 95814
Voter Registration Hotline
1-800-345-VOTE
For Hearing and Speech Impaired
Only
1-800-833-8683
e-mail: comments@ss.ca.gov

October 22, 1999

TO: All County Elections Officials and Proponents (99235)

FROM:


Waldeep Singh
Initiative & Ballot Pamphlet Coordinator

SUBJECT: REFERENDUM #857

Pursuant to Elections Code section 9002 we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed referendum measure entitled:

#857

**REFERENDUM PETITION TO OVERTURN
"THE FAIR INSURANCE RESPONSIBILITY ACT."**

The proponents of the above-named measure are:

Mr. Kirk West,
Mr. William P. Campbell,
Mr. John H. Sullivan,
Mr. Martyn B. Hopper,
Mr. Michael S. Johnson,
Ms. Betty Jo Toccoli
ATTN: Richard D. Martland, Esq.
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
770 L Street, Suite 800
Sacramento, CA 95814
(916) 446-6752

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NOV 02 1999

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#857
REFERENDUM PETITION TO OVERTURN
"THE FAIR INSURANCE RESPONSIBILITY ACT."

1. Minimum number of signatures required: 419,260
California Constitution, Article II, Section 9(b)
2. Enactment Date:..... Sunday, 10/10/99
SB 1237, Chapter 720, Statutes of 1999
3. Official Summary Date:..... Friday, 10/22/99
(EC§ 9002)
4. Last day proponent can circulate and file with the county. All
sections are to be filed at the same time within each county..... Monday, 01/10/00¹
(EC §9014; §9030; California Constitution, Article II, Section 9(B))

Verification Procedures:

- a. The county elections official shall determine the total number of signatures affixed to the petition and transmit that information to the Secretary of State within eight working days after the filing of the petition (EC § 9030(b)).
- b. Secretary of State determines whether the total number of signatures filed with all county clerks/registrars of voters meets the minimum number of required signatures, and notifies the counties (EC §9030(c)).
- c. Within 30 working days of notification, county election officials determine total number of qualified voters who signed the petition. If more than 500 names have been signed on sections, the elections official shall use a random sampling technique for verification of signatures, as determined by the Secretary of State. Upon completion of this examination the official shall immediately transmit the certificate, showing the result of the examination and a blank copy of the petition to the Secretary of State (EC §9030 (d), (e)).
- d. Secretary of State calculates whether the total number of signatures determined by all county clerks/registrars of voters meets the minimum number of required signatures, and notifies the counties. If the signature count is more than 110 percent or less than 95 percent then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 95 percent and 110 percent, then the Secretary of State notifies the counties to determine the validity of all signatures (EC §9030 (f), (g)).
- e. Within 30 working days of notification, county election officials determine total number of qualified voters who signed the petition, and transmit certificate with a blank copy of the petition to the Secretary of State (EC §9031(a), (b), (c)).
- f. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (EC §9031(d); 9033).

¹ Date adjusted for official deadline which falls on Saturday (EC §15).

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on petitions for any purpose other than to qualify the measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuse constitutes a crime under California law. (Elections Code §18650; *Bilofsky v. Deukmejian* (1981) 123 Cal. App. 3d 825, 177 Cal. Rptr. 621; 63 Ops. Cal. Atty. Gen. 37 (1980)).
- Please refer to Elections Code sections 100,104, 9010, 9011, 9020, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq. For further information contact: The Secretary of State's Political Reform Division at (916) 653-6224 or The Fair Political Practices Commission at (916) 322-5660.
- When writing or calling state or county elections officials, provide the official title of the measure that was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When someone presents a petition to the county elections official for filing other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

Enclosures

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
Public: (916) 445-9555

Facsimile: (916) 323-2137
(916) 324-5490

October 22, 1999

FILED
In the office of the Secretary of State
of the State of California

OCT 22 1999

Bill Jones
Secretary of State
1500 - 11th Street, 5th Floor
Sacramento, California 95814

BILL JONES, Secretary of State

By 
Deputy Secretary of State

RE: REFERENDUM TITLE AND SUMMARY
SUBJECT: REFERENDUM PETITION TO OVERTURN "THE FAIR
INSURANCE RESPONSIBILITY ACT."
FILE NO: SA1999RF0046

Dear Mr. Jones:

Pursuant to the provisions of the Elections Code, you are hereby notified that on this day we mailed to the proponents of the above-identified referendum our title and summary.

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of service thereof, and a copy of the proposed measure.

According to information available in our records, the names and address of the proponents are as stated on the declaration of service.

Sincerely,



DIANE CALKINS
Initiative Coordinator

For BILL LOCKYER
Attorney General

DC:tk

Enclosures

Date: October 22, 1999
File No.: SA1999RF0046

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

REFERENDUM PETITION TO OVERTURN "THE FAIR INSURANCE RESPONSIBILITY ACT." If signed by required number of electors and timely filed with Secretary of State, this petition will prevent implementation of The Fair Insurance Responsibility Act, Chapter 720, Statutes of 1999, previously approved by the Legislature and the Governor, unless and until the Act is approved by a majority of voters. The Act restores the rights of injured persons to sue insurers of parties who caused injury, under specified circumstances, for unfair handling of insurance claims. Permits binding arbitration where amount recoverable is \$50,000 or less and claimant is represented by counsel.

SA1999BF0046

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OCT 12 1999

October 12, 1999

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

VIA PERSONAL DELIVERY

The Honorable Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, CA 95814

Re: Request for Referendum Title & Summary

Dear Mr. Lockyer:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request a title and summary be prepared for a referendum on Chapter 720, Statutes of 1999 (Senate Bill 1237). A copy of the text of the bill is attached.

My residence address is 5873 Wedgewood Drive, Granite Bay, CA 95746.

All inquires or correspondence relative to this referendum should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 770 L Street, Suite 800, Sacramento, California, 95814, (916) 446-6752, ATTN: Richard D. Martland.

Thank you for your assistance.

Sincerely,



Kirk West
Co-Proponent

Enclosure: Proposed Referendum

RECEIVED
OCT 12 1999

October 12, 1999

VIA PERSONAL DELIVERY

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

The Honorable Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, CA 95814

Re: Request for Referendum Title & Summary

Dear Mr. Lockyer:

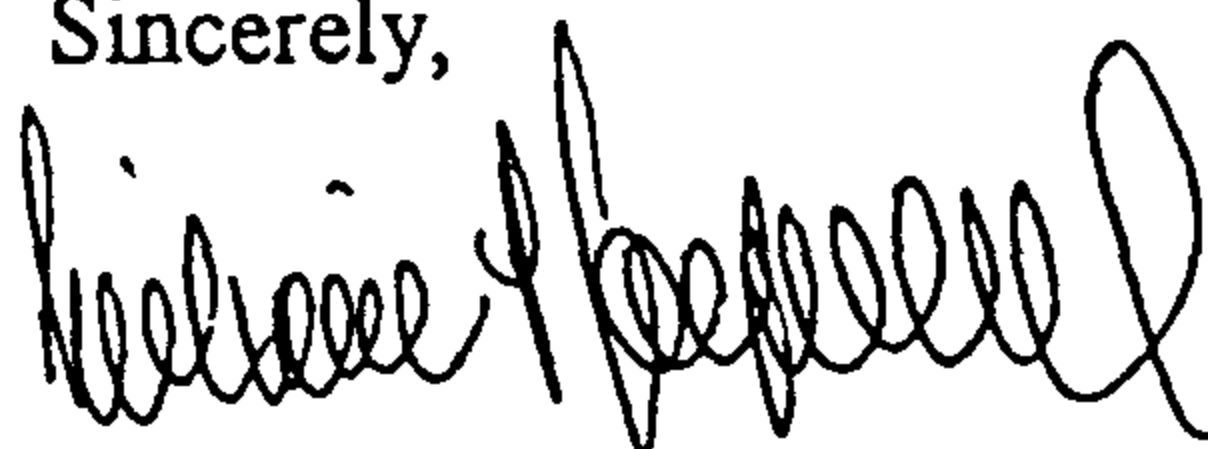
Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request a title and summary be prepared for a referendum on Chapter 720, Statutes of 1999 (Senate Bill 1237). A copy of the text of the bill is attached.

My residence address is 9944 Villa Granito Lane, Granite Bay, CA 95746.

All inquires or correspondence relative to this referendum should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 770 L Street, Suite 800, Sacramento, California, 95814, (916) 446-6752, ATTN: Richard D. Martland.

Thank you for your assistance.

Sincerely,



William P. Campbell
Co-Proponent

Enclosure: Proposed Referendum



October 12, 1999

VIA PERSONAL DELIVERY

The Honorable Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, CA 95814

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OCT 15 1999

INITIALS COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Referendum Title & Summary

Dear Mr. Lockyer:


Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request a title and summary be prepared for a referendum on Chapter 720, Statutes of 1999 (Senate Bill 1237). A copy of the text of the bill is attached.

My residence address is 5024 Verdant Lane, Carmichael, CA 95608.

All inquires or correspondence relative to this referendum should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 770 L Street, Suite 800, Sacramento, California, 95814, (916) 446-6752, ATTN: Richard D. Martland.

Thank you for your assistance.

Sincerely,


John H. Sullivan
Co-Proponent

Enclosure: Proposed Referendum

October 12, 1999

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OCT 15 1999

VIA PERSONAL DELIVERY

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

The Honorable Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, CA 95814

Re: Request for Referendum Title & Summary

Dear Mr. Lockyer:

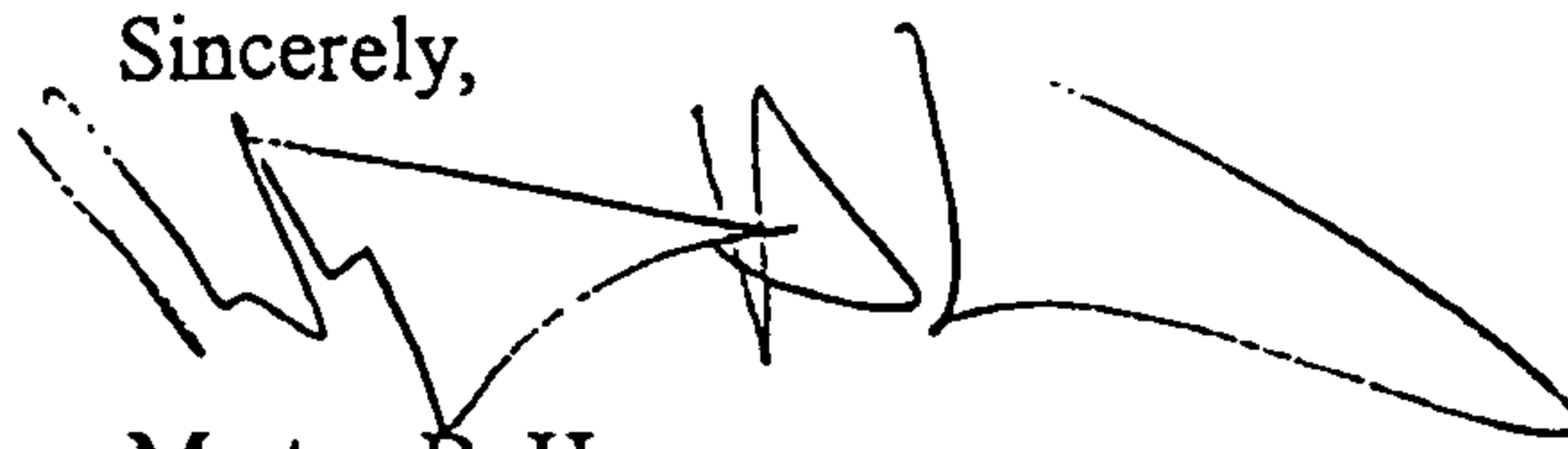
Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request a title and summary be prepared for a referendum on Chapter 720, Statutes of 1999 (Senate Bill 1237). A copy of the text of the bill is attached.

My residence address is 914 Pine Lane, Davis, CA 95616.

All inquires or correspondence relative to this referendum should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 770 L Street, Suite 800, Sacramento, California, 95814, (916) 446-6752, ATTN: Richard D. Martland.

Thank you for your assistance.

Sincerely,



Martyn B. Hopper
Co-Proponent

Enclosure: Proposed Referendum

October 12, 1999

RECEIVED
OCT 15 1999

VIA PERSONAL DELIVERY

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

The Honorable Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, CA 95814

Re: Request for Referendum Title & Summary

Dear Mr. Lockyer:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request a title and summary be prepared for a referendum on Chapter 720, Statutes of 1999 (Senate Bill 1237). A copy of the text of the bill is attached.

My residence address is 2715 Jalmia Drive, Los Angeles, CA 90046.

All inquires or correspondence relative to this referendum should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 770 L Street, Suite 800, Sacramento, California, 95814, (916) 446-6752, ATTN: Richard D. Martland.

Thank you for your assistance.

Sincerely,



Michael S. Johnson
Co-Proponent

Enclosure: Proposed Referendum

October 12, 1999

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VIA PERSONAL DELIVERY

The Honorable Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, CA 95814

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Referendum Title & Summary

Dear Mr. Lockyer:

Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request a title and summary be prepared for a referendum on Chapter 721, Statutes of 1999 (Senate Bill 1237). A copy of the text of the bill is attached.

My residence address is 13878 Sunset Boulevard, Pacific Palisades, CA 90272.

All inquiries or correspondence relative to this referendum should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 770 L Street, Suite 800, Sacramento, California, 95814, (916) 446-6752, ATTN: Richard D. Martland.

Thank you for your assistance.

Sincerely,



Betty Jo Toccoli
Co-Proponent

REFERENDUM AGAINST AN ACT PASSED BY THE LEGISLATURE

This law proposed by Chapter 720, Statutes of 1999 (Senate Bill 1237) is submitted to the people as a referendum in accordance with the provisions of Article II, Section 9 of the California Constitution.

PROPOSED LAW

CHAPTER 720

An act to add Title 13.7 (commencing with Section 2870) to Part 4 of Division 3 of the Civil Code and to add Title 11.65 (commencing with Section 1776) to Part 3 of the Code of Civil Procedure, relating to resolution of claims.

SECTION 1. This act shall be known and may be cited as the "Fair Insurance Responsibility Act of 2000" or as "FAIR."

SEC. 2. Title 13.7 (commencing with Section 2870) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 13.7. OBLIGATION TO SETTLE INSURANCE CLAIMS FAIRLY

2870. (a) For purposes of this title, the following definitions shall apply:

(1) "Third-party claimant" or "claimant" shall mean each person seeking recovery of benefits against an insured under a liability insurance policy or a self-funded liability protection program, fund, or plan, whether for personal injury or wrongful death, or other economic loss, or both including, without limitation, damages resulting from loss of consortium or loss of care, comfort, society and the like resulting from wrongful death.

(2) "Insured" shall mean a person or entity named as an insured in a liability insurance policy or a private self-funded liability protection program, fund, or plan; a person or entity who is identified as an additional insured under a liability insurance policy or a private self-funded liability protection program, fund, or plan; a person or entity who is an additional insured under the definitions of insured persons set forth in a liability insurance policy or a private self-funded liability protection program, fund, or plan; a person or entity who is defined, by law, as an insured under a liability insurance policy or a private self-funded liability protection program, fund, or plan; or cooperative corporations or interindemnity arrangements provided for under Section 1280.7 of the Insurance Code.

(3) "Insurer" shall include any liability insurer licensed, pursuant to, or subject to regulation under, the Insurance Code who provides liability coverage to an insured against whom the third-party claimant makes a

SB 1237

claim for personal injury, wrongful death, or other economic loss, and the third-party administrator of any private self-funded liability protection program, fund, or plan; or cooperative corporations or interindemnity arrangements provided for under Section 1280.7 of the Insurance Code. However, "insurer" does not include the self-funded liability protection program, fund, or plan, itself, an insurer named as the insurer under a policy of workers' compensation insurance, nor a self-insured public entity, a private administrator for a public entity, or a public entity insured by a private insurer or carrier. For purposes of this section, "public entity" has the meaning set forth in Section 811.2 of the Government Code.

2871. (a) Every insurer, as defined in paragraph (3) of subdivision (a) of Section 2870, doing business in the State of California shall act in good faith toward and deal fairly with third-party claimants. A third-party claimant may bring an action against an insurer doing business in the State of California to recover damages, including general, special, and exemplary damages, for commission of any unfair claims settlement practice specified in subdivision (h) of Section 790.03 of the Insurance Code as it relates to a third-party claimant.

(b) A third-party claimant shall not be entitled to assert the remedies set forth in subdivision (a) unless the third-party claimant (1) obtains in the underlying action a final judgment after trial, a judgment after default, or an arbitration award arising from a contractual predispute binding arbitration clause or agreement, and (2) the third-party claimant makes a written demand by certified mail to settle the claim in the underlying action, and the claimant's judgment or arbitration award in that prior proceeding exceeded the amount of the final written demand on all claims by the third-party claimant made before the trial, entry of default or arbitration listed above. A final written demand sent by certified mail may not exceed the applicable policy limits and shall be deemed rejected if not responded to within 30 days of receipt of the final written demand. Subject to

subdivision (h) of Section 790.03 of the Insurance Code, the verdict's amount may be considered as evidence of bad faith, but shall not be the sole consideration.

(c) The remedies set forth in this title shall apply to any insurer who violates the standards set forth in subdivision (a) in its handling, processing, or settlement of the claims made by a third-party claimant under the insured's insurance protection.

(d) A professional liability insurer is not liable under this title if all the following conditions apply:

(1) The consent of the policyholder to settlement is a prerequisite to settlement under the terms of the insurance policy or by statute.

(2) The insurance company has assessed the case against the policyholder as to potential liability and damages known at that time and has fully informed the policyholder of that assessment.

(3) The policyholder's refusal to consent is not based on intentionally erroneous or misleading information provided by the insurer.

(e) A person injured in an accident arising out of the operation or use of a motor vehicle, who at the time of the accident was operating a motor vehicle in violation of Section 23152 or 23153 of the Vehicle Code, and was convicted of that offense, may not assert a cause of action under this section.

(f) Any time period within which an action must be commenced pursuant to any applicable statute of limitations shall not begin until the underlying claim has been resolved through a final judgment. In the event of an appeal by either party, resolution of the appeal shall be a prerequisite to a claim under this title.

(g) Nothing in this title shall abrogate or limit any theory of liability or remedy otherwise available at law including, but not limited to, tort remedies for the breach of implied covenant and fair dealing or any theory of liability or remedy based on *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654 or *Crisci v. Security Ins. Co.* (1967) 66 Cal.2d 425. Nothing in this section shall relieve an insurer of its obligation of good faith and fair

SB 1237

dealing to its own insured. However, the insurer cannot wrongfully use its obligation to its own insured to violate its duties under this section.

(h) The provisions of this title shall apply, prospectively, to events or accidents covered by the applicable insurance policy that occur on or after January 1, 2000.

SEC. 3. Title 11.65 (commencing with Section 1776) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 11.65. ALTERNATIVE DISPUTE
RESOLUTION ACT

1776. For the purposes of this title, the following definitions apply:

(a) "Claimant" means a person defined in paragraph (1) of subdivision (a) of Section 2870 of the Civil Code.

(b) "Insurer" shall include any liability insurer licensed pursuant to or subject to regulation under the Insurance Code, any private self-funded liability protection program, fund or plan, and any person or entity meeting the Vehicle Code definition of a permissible self-insured. However, "insurer" does not include a self-insured public entity, a private administrator for a public entity, or a public entity insured by a private insurer or carrier. For purposes of this section, "public entity" has the meaning set forth in Section 811.2 of the Government Code.

1777. (a) In a claim where the amount in controversy is for either a dollar amount that does not exceed fifty thousand dollars (\$50,000), or is within policy limits, exclusive of applicable uninsured or underinsured motorist coverage, if the policy limits do not exceed fifty thousand dollars (\$50,000), whichever is less, a claimant who is represented by counsel may request arbitration pursuant to this title.

(b) Notwithstanding subdivision (b) of Section 2017, prior to a request for arbitration, a claimant may demand and obtain insurance coverage policy limits information concerning all applicable, and potentially applicable,

policies of insurance, to decide whether to participate in arbitration as set forth in this title. The insurer shall respond within 10 days and verify in writing that the information about coverage and policies is true and correct. An insurer that releases such information shall not be subject to civil liability to the insured or any other insurer for release of the policy limits information.

(c) An insurer may request arbitration under this title where the claimant is represented by counsel under any of the following conditions:

(1) If a claimant makes a settlement demand against all responsible or potentially responsible persons or entities that does not exceed fifty thousand dollars (\$50,000) in total, and the arbitration request is made within 90 days of the settlement demand.

(2) In any action in which the policy limits applicable to the claimant do not exceed fifty thousand dollars (\$50,000), provided that the request for arbitration is made not later than 150 days after the service of the complaint.

(3) Subject to paragraphs (1) and (2), in an action involving more than one responsible party, an insurer may request arbitration under this title if all parties agree to arbitration or the insurer offers to settle the action for policy limits.

(d) The request for arbitration shall be in writing and sent by certified mail.

(e) (1) Within 30 days after receipt of a request for arbitration, the insurer or claimant shall respond to the request in writing, sent by certified mail, return receipt requested.

(2) The request shall be deemed rejected if not responded to within 30 days, unless the parties stipulate in writing to an extension of time.

(f) Nothing in this section shall relieve an insurer of its obligation of good faith and fair dealing to its own insured.

(g) An arbitration award pursuant to this section shall not exceed the available policy limits and shall not include damages that are not covered by the applicable insurance policies.

SB 1237

(h) A claimant or insurer requesting or agreeing to arbitration under this section shall at the same time send by certified mail a copy of each offer or agreement to arbitrate to all claimants and all insurers involved in the claim. Offers and agreements made by counsel under this section shall be deemed to be made with the authority of all clients represented by that counsel. The arbitration of all claims under this title shall be pursuant to a written arbitration agreement.

1778. If the insurer agrees to submit a claim to arbitration under Section 1777 the insurer shall be conclusively presumed to have complied with the duties under subdivision (a) of Section 2871 of the Civil Code.

1779. (a) Upon a showing of good cause in a petition before the court having jurisdiction over the amount in controversy, either side may request removal from arbitration under this title and to commence or continue a civil action, upon a showing of any of the following:

(1) Either party discovers new information regarding insurance coverage that creates aggregate coverage for the claim in excess of fifty thousand dollars (\$50,000).

(2) A change in the nature or extent of the claimant's injury or damages, which, despite reasonable inquiry, was not discovered prior to the acceptance of the offer to engage in alternative dispute resolution, and causes the claimant or attorney to believe that the reasonable value of the claim will exceed fifty thousand dollars (\$50,000).

(3) A party discovers new, additional, potentially responsible persons or entities who are not parties to the arbitration.

(4) The insurer discovers evidence that the claim is in violation of Section 550 of the Penal Code. The insurer shall document the basis for its finding and provide the information to the court. The court shall make the information available to the claimant or his or her counsel, if represented, unless the court determines that releasing the information would substantially impede the investigation or future prosecution of the claim for fraud.

(5) A change of law affects the remedies available to a claimant, or a change in law expands or contracts the claimant's legal right to recover.

(6) The interests of justice support permitting a party to commence a civil action.

(7) A party unreasonably interferes with the completion of the arbitration.

(b) Within 60 days of discovery of one of the conditions outlined in subdivision (a), and before commencement of the arbitration, the party seeking to remove the claim from arbitration under this title shall petition the court having jurisdiction over the amount in controversy, establishing good cause for the request.

(c) If a court finds good cause pursuant to a petition filed by a claimant to remove the claim from arbitration under subdivision (a), the presumption of good faith under Section 1778 shall not apply if the good cause arises from a misrepresentation, error or unreasonable interference in the conduct of the arbitration by the insurer.

(d) If the insurer removes the claim from arbitration pursuant to this title, the presumption of good faith under Section 1778 does not apply.

1780. (a) Any applicable period of limitations shall be tolled from the date of receipt of a request to participate in arbitration until 30 days after the insurer responds to the offer. If the request for arbitration is accepted, the period is tolled until settlement, satisfaction of judgment, or 30 days after a court order to remove a claim from arbitration under Section 1779.

(b) Any applicable case management rules are suspended upon agreement of the parties to arbitrate a claim under this title. Additionally, an agreement to participate in arbitration under this title relieves the parties of any obligation to participate in court-ordered arbitration or mediation.

1781. Except as otherwise provided by this title, arbitration shall be conducted under the same procedures as are applicable to other arbitration

SB 1237

agreements under Title 9 (commencing with Section 1280).

1782. The following additional and supplemental provisions govern arbitration under this title:

(a) The provisions of Section 1987 shall govern attendance of parties at arbitration.

(b) Arbitrators shall be paid at the prevailing rate for judicial arbitrators. The cost of the arbitrator will be borne equally between the insurers and the claimants. The obligation of the parties for the arbitrator's fee does not include preparation time, travel time, and postarbitration time, unless the parties agree otherwise.

(c) The parties shall select a single neutral arbitrator pursuant to Section 1281.6. Unless the parties agree otherwise, the arbitrator shall be a retired judge.

(d) The parties to the arbitration shall pay an arbitration filing fee of two hundred dollars (\$200). The fee shall be borne in equal portions by each party to the arbitration.

(e) If the parties cannot agree on a date to commence arbitration, the arbitrator shall set a date convenient to the parties.

(f) Disputes arising regarding discovery shall be resolved by motion before the arbitrator. The arbitration shall be deemed to be a proceeding and the hearing before the arbitrator shall be deemed to be the trial of an issue for those purposes.

(g) No party may introduce new or different information from that provided under subdivision (f) at the arbitration unless it is provided to the other side at least 30 days before the arbitration except when such evidence is offered solely for impeachment. Upon a showing of good cause under Section 9 of the Standards for Judicial Administration, the arbitrator may grant a continuance to permit the introduction of the new information.

(h) Each party shall exchange a list of all witnesses and all exhibits no later than 20 days before the arbitration. Witnesses and exhibits not listed shall not be considered

or relied upon by the arbitrator unless offered solely for impeachment.

(i) If more than one person or insurer may be liable for the injury, and if the actions against each are subject to this title, the arbitration proceedings with respect to each may be consolidated by agreement of the parties.

(j) The rules of evidence and rules for conduct of hearing set forth in Rules 1613 and 1614 of the California Rules of Court, shall apply to the arbitration.

(k) The arbitrator may continue the arbitration pursuant to Section 9 of the Standards of Judicial Administration.

1783. (a) The award shall be binding on all parties and upon the insurer and shall resolve all disputes between the parties, and may be reviewed only for the reasons set forth in Section 1286.2.

(b) The insurer shall satisfy the arbitration award within 20 days of conclusion of any postresolution motions or settlement. Interest shall accrue at the legal rate thereafter.

1784. A claimant and an insurer may agree in writing to submit any claim for personal injury or wrongful death to arbitration pursuant to this title, provided that the notice requirements set forth in Section 1777 are met. The agreement to, and subsequent participation in, binding arbitration by the parties provides the protections set forth in Section 1778.

