

1996

## Limitation on Recovery to Felons, Uninsured Motorists, Drunk Drivers.

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## **Limitation on Recovery to Felons, Uninsured Motorists, Drunk Drivers. Initiative Statute.**

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**Official Title and Summary Prepared by the Attorney General**

### **LIMITATION ON RECOVERY TO FELONS, UNINSURED MOTORISTS, DRUNK DRIVERS. INITIATIVE STATUTE.**

- Denies all recovery of damages to a convicted felon whose injuries were proximately caused during the commission of the felony or immediate flight therefrom.
- Denies recovery for noneconomic damages (e.g., pain, suffering, disfigurement) to drunk drivers, if subsequently convicted, and to uninsured motorists who were injured while operating a vehicle.
- Provides exception when an uninsured motorist is injured by a subsequently convicted drunk driver. With this one exception, provides that insurer is not liable for noneconomic damages.

#### **Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:**

- Probably minor annual savings in state and local government court-related costs.
  - Reduction in insurance tax revenue to the state of probably less than \$5 million annually.
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## Analysis by the Legislative Analyst

### PROPOSAL

This measure would limit the ability of certain people to sue to recover losses suffered in accidents.

#### Limits on Uninsured Motorists and Drunk Drivers

Under existing law, someone who has suffered an injury in a car accident may sue the person, business, or government at fault for the injury in order to recover related losses. These losses can include both *economic* losses (such as lost wages, medical expenses, and property damage) and *noneconomic* losses (such as pain and suffering).

This measure would prohibit the recovery of *noneconomic* losses in certain car accidents. Specifically, an uninsured driver or a driver subsequently convicted of driving under the influence of alcohol or drugs (“drunk drivers”) at the time of an accident could not sue someone at fault for the accident for noneconomic losses. (These drivers could still sue for economic losses.) If, however, an uninsured motorist is injured by a drunk driver in an accident, the uninsured motorist could still sue to recover noneconomic losses from the drunk driver.

#### Limits on Convicted Felons

Currently, in certain cases a person who is injured while breaking the law may sue on the basis of another person’s negligence to recover any losses resulting from the injury. For example, a person convicted of a robbery who was injured because he or she slipped and fell while fleeing the scene of the crime can sue to recover losses resulting from the injury.

This measure prohibits a person convicted of a felony from suing to recover any losses suffered while committing the crime or fleeing from the crime scene if these losses resulted from another person’s negligence. Convicted felons, however, would still be able to sue to recover losses for some injuries suffered while committing or fleeing a crime—for instance those resulting from the use of “excessive force” during an arrest.

### FISCAL EFFECT

Restricting the ability of people to sue for injury losses in the above situations would reduce the number of lawsuits handled by the courts. This would reduce annual court-related costs to state and local governments by an unknown but probably minor amount. These restrictions would also result in fewer lawsuits filed against state and local governments. Thus, there would be an unknown savings to state and local governments as a result of avoiding these lawsuits.

In addition, the restrictions placed on uninsured motorists and drunk drivers could result in somewhat lower costs, or “premiums,” for auto insurance. Under current law, insurance companies doing business in California pay a tax of 2.35 percent of “gross premiums.” This tax is called the gross premiums tax and its revenues are deposited in the state’s General Fund. Any reduction in insurance premiums would also reduce gross premiums tax revenue to the state. We estimate that any revenue loss would probably be less than \$5 million annually.

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For text of Proposition 213 see page 102

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## Limitation on Recovery to Felons, Uninsured Motorists, Drunk Drivers. Initiative Statute.

### Argument in Favor of Proposition 213

#### PROPOSITION 213 WILL FIX A SYSTEM THAT REWARDS PEOPLE WHO BREAK THE LAW.

It's *AGAINST THE LAW TO DRIVE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS* in California. In most cases it's also against the law to drive without insurance. Unfortunately, thousands of people ignore these laws and get rewarded for it. Drunk drivers and uninsured motorists can sue law-abiding citizens for huge monetary awards in addition to being compensated for medical and other expenses.

These huge awards cost Californians who play by the rules and obey the law \$327 million every year! That's not fair!

*Proposition 213 will prevent drunk drivers, convicted felons and uninsured motorists from collecting these huge monetary awards*, while still protecting their right to be compensated for medical and out-of-pocket expenses. That is fair.

*Further, if Proposition 213 becomes law, convicted felons would be prohibited from collecting any damages if they're accidentally injured while fleeing from their crime.*

#### PROPOSITION 213 SAYS PEOPLE WHO BREAK THE LAW SHOULD NOT BE REWARDED, WHILE LAW ABIDING CITIZENS PICK UP THE TAB.

Law-abiding citizens already pay higher insurance premiums to cover uninsured motorists. Law-abiding citizens should *not* be punished for living responsibly! *The system needs to be fixed. Illegal behavior shouldn't be rewarded. People who break the law must be held accountable for their actions.*

#### PROPOSITION 213 SAYS DRUNK DRIVERS WHO INJURE AND EVEN KILL PEOPLE SHOULD NOT BE REWARDED.

Drunk drivers in California cost all of us in terms of lost lives, serious injuries to family members and friends and higher insurance premiums.

- In 1994, 1,488 people were killed in crashes caused by drunk drivers.
- 39,437 people were injured in collisions involving drunk drivers during 1994.
- These victims and their families shouldn't be forced to suffer a second time through huge lawsuits.
- Proposition 213 will stop drunk drivers from being rewarded for breaking the law.

#### PROPOSITION 213 SAYS CONVICTED FELONS SHOULD NOT BE ALLOWED TO PROFIT FROM THEIR CRIMES.

- *Proposition 213 takes the "profit" out of crime* by closing a legal loophole that allows convicted felons to sue law-abiding citizens, businesses and governments to pay for "accidental injuries" incurred while running from their crime.

#### PROPOSITION 213 SAYS NO TO UNINSURED DRIVERS BY SAYING NO TO HUGE MONETARY AWARDS FOR "PAIN AND SUFFERING!"

- On average, nearly 30% of all drivers on the road in California are uninsured.
- In some parts of California, the percent of uninsured drivers is as high as 93%.
- Proposition 213 will stop uninsured motorists from being rewarded for breaking the law, while still covering medical and out-of-pocket expenses.

*JOIN THE CALIFORNIA ASSOCIATION OF HIGHWAY PATROLMEN, DORIS TATE CRIME VICTIMS BUREAU, THE CALIFORNIA PEACE OFFICERS' ASSOCIATION, PEACE OFFICERS RESEARCH ASSOCIATION OF CALIFORNIA, CALIFORNIA POLICE CHIEFS' ASSOCIATION, THE ASSOCIATION FOR CALIFORNIA TORT REFORM, AND MANY OTHERS WHO SUPPORT THE PERSONAL RESPONSIBILITY ACT OF 1996.*

- *STOP LAWBREAKERS FROM PROFITING FROM THEIR CRIMES.*
- *VOTE YES FOR PERSONAL RESPONSIBILITY.*
- *VOTE YES ON PROPOSITION 213.*

#### LINDA OXENREIDER

*California President, Mothers Against Drunk Driving (MADD)*

#### CHUCK QUACKENBUSH

*California Insurance Commissioner*

#### D. O. "SPIKE" HELMICK

*California Highway Patrol Commissioner*

### Rebuttal to Argument in Favor of Proposition 213

#### Political give and take.

Insurance companies gave over \$1 million to Chuck Quackenbush's political campaign for Insurance Commissioner.

Now, Insurance Commissioner Chuck Quackenbush's initiative allows insurance companies to take \$327 million more every year out of our pockets.

Here is a partial list of the political money Chuck Quackenbush has taken from the Insurance Lobby for his Insurance Commissioner campaign:

Association of California Insurance Companies	\$335,500
CA Casualty Management	\$75,000
Zenith Insurance Co.	\$63,000
CA Life Underwriters PAC	\$50,100
TIG Insurance	\$52,500
Alfa Mutual Insurance	\$40,000
Arrowhead General Insurance Agency	\$30,000
Surety Company of the Pacific	\$28,000
Fremont Compensation Insurance	\$65,500
Liberty Mutual	\$25,000
Pacific Employers Insurance	\$25,000
California Casualty Indemnity Exchange	\$25,000
Zenith-Calfarm Inc.	\$25,000
Kramer-Wilson Company Insurance	\$17,500
Farmers Insurance Group of Companies	\$18,950
Western Pioneer Insurance	\$13,500
Fireman's Fund Insurance	\$12,500
National Insurance Group	\$10,500
Argonaut Insurance	\$10,000
Progressive Casualty	\$11,000
Transamerica	\$20,000
Farmers Group Inc.	\$9,000
CA Indemnity Insurance	\$9,500

Government Employees Insurance Company	\$11,500
The Pacific Rim Assurance	\$8,500
Travelers PAC	\$8,500
Inso Insurance Services	\$25,000
CNA Financial	\$7,000
Farmers Employees and Agents PAC	\$27,877
Amwest Insurance Group	\$9,500
Chubb-Pacific Indemnity	\$6,000
Financial Pacific Insurance	\$6,000
Fireman's Fund	\$6,500
Interline Insurance Services	\$6,000
Alliance of American Insurance Co.	\$5,500
Independent Insurance Agents	\$5,000
Nationwide Mutual Insurance	\$5,000
Pacific Pioneer Insurance	\$5,000
Property Managers Insurance Service	\$10,000
Safeco Insurance	\$5,000
Scottsdale Insurance	\$5,000
Zurich Insurance	\$5,000
Fidelity National Title Insurance	\$7,500
The Zenith	\$15,000

Vote "No" on Proposition 213. It's "No-Fault" for Reckless Drivers.

#### KEN McELDOWNEY

*Executive Director, Consumer Action*

#### INA DeLONG

*Executive Director, United Policyholders*

#### ROY ULRICH

*Campaign Finance Reform Advocate*

# Limitation on Recovery to Felons, Uninsured Motorists, Drunk Drivers. Initiative Statute.

# 213

## Argument Against Proposition 213

SAY "NO" TO NO-FAULT FOR RECKLESS DRIVERS . . .  
VOTE "NO" ON PROPOSITION 213

In March, 3/5 of California's voters said "NO" to Proposition 200—No-Fault auto insurance. We don't want a law that allows reckless drivers to avoid responsibility for their actions.

But Proposition 213 says that if a reckless driver who can afford insurance hits an innocent person who cannot . . . the reckless driver gets off without paying for all the injuries and damage they've done.

That's wrong.

The high cost of insurance makes it impossible for many poor and working people to buy insurance. If insurance companies won't sell affordable insurance, it is completely unfair to deny people full compensation for a car accident that is not even their fault.

YOU CAN SAY "NO" TO FELONS AND STILL . . .

VOTE "NO" ON PROPOSITION 213

Courts won't allow convicted felons to get damages for injuries they cause. So why are "felons" included in the title of Proposition 213?

The insurance companies pushing No-Fault want to divert your attention from their real agenda: boosting their profits to excessive levels.

Insurance companies make money anytime a reckless driver they insure is not held at fault.

The insurance companies couldn't get us to swallow No-Fault in one big gulp, so they're trying to feed it to us in little bites.

YOU CAN SAY "NO" TO DRUNK DRIVERS AND STILL . . .

VOTE "NO" ON PROPOSITION 213

California laws already say drunk drivers can't recover damages if they cause an accident. So why are they included in the title of Proposition 213?

The insurance companies have failed twice to get No-Fault insurance started in California. In Proposition 213 they are hiding the No-Fault idea behind wild talk about felons and drunk drivers.

NO MONEY-BACK GUARANTEE . . .

VOTE "NO" ON PROPOSITION 213

The No-Faulters argue that Proposition 213 will save Californians \$323 million per year.

We've heard that line before.

There is nothing in Proposition 213 that says Californians will see their insurance rates go down. In No-Fault states, auto insurance premiums have increased an average of 40% in recent years.

No insurance rate reductions. No savings for consumers. The only people who benefit from this No-Fault scheme are reckless drivers . . . and the insurance companies who paid to put it on the ballot.

Insurance companies win, you lose.

SAY "NO" TO RECKLESS DRIVER NO-FAULT . . .

VOTE "NO" ON PROPOSITION 213.

**HARVEY ROSENFELD**

*Proposition 103 Enforcement Project*

**KEN McELDOWNY**

*Executive Director, Consumer Action*

**INA DeLONG**

*Executive Director, United Policyholders*

## Rebuttal to Argument Against Proposition 213

PROPOSITION 213 STOPS REWARDING  
DANGEROUS FELONS

California law allows felons convicted of resisting a peace officer *and causing serious injury or death to the peace officer to sue* a city, county or anyone else who gets in their way and accidentally injures the felon fleeing from that crime. The same goes for crimes such as carjacking, "drive-by" shooting resulting in murder, multiple hate crimes and many others. *Proposition 213 stops rewarding criminal behavior.*

PROPOSITION 213 REFORMS AN UNFAIR SYSTEM  
THAT REWARDS LAWBREAKERS AND PUNISHES  
THOSE WHO PLAY BY THE RULES

*Under Proposition 213, every driver involved in an accident could recover their medical and out-of-pocket expenses. Proposition 213 says "NO" to additional big money awards that drunk drivers, uninsured motorists and their attorneys go after when these lawbreakers are in an accident with an insured driver—even if they also cause the accident!*

PROPOSITION 213 TAKES AWAY TRIAL LAWYERS'  
INCENTIVE TO SUE FOR OUTRAGEOUS  
AWARDS TO LINE THEIR OWN POCKETS

One-third of every dollar awarded for "pain and suffering" goes to attorneys, *and they want to ensure the most lucrative of all injury awards isn't taken from them.*

PROPOSITION 213 BENEFITS CONSUMERS  
BY MAKING INSURANCE MORE  
AFFORDABLE FOR EVERYONE

Law-abiding drivers pay additional premiums to protect themselves from uninsured drivers. Eliminating huge monetary awards for irresponsible drivers will save \$327 million each year!

- VOTE YES FOR PERSONAL RESPONSIBILITY.
- VOTE YES FOR CRITICAL REFORMS.
- VOTE YES FOR PROPOSITION 213.

**RONALD E. LOWENBERG**

*President, California Police Chiefs' Association*

**JAN MILLER**

*Chairman, Doris Tate Crime Victims Bureau*

**STEVEN H. CRAIG**

*President, Peace Officers Research Association of California*

(2) The parties have determined to compromise and enter into a settlement of some or all of the disputed claims and the court, after hearing, determines that the settlement is in the public interest. Any settlement or compromise approved by the court shall be deemed to be a finding of violation for purposes of subdivision (c) of Section 91002 and Section 91009.

SEC. 26. Section 91012 of the Government Code is amended to read:

91012. The court may shall award to a plaintiff or defendant other than an agency, who prevails in any action authorized by this title his or her costs of litigation, including reasonable attorney's fees. On motion of any party, a court shall require a private plaintiff to post a bond in a reasonable amount at any stage of the litigation to guarantee payment of costs. The court may award to a defendant other than an agency who prevails in any action authorized by this title his or her costs of litigation, including reasonable attorney's fees, only if the court finds, on the record, that the matter was frivolous, or brought in bad faith or for some other improper purpose. The provisions of Section 425.16 of the Code of Civil Procedure shall not apply to any action filed pursuant to Section 91004, 91005, or 91005.5.

SEC. 27. Section 91015 of the Government Code is repealed.

91015. The provisions of this chapter shall not apply to violations of Section 83116.5.

#### MISCELLANEOUS PROVISIONS

SEC. 28. There is hereby appropriated annually from the General Fund the sum of three cents (\$0.03) per individual of the voting age population in the state, to be adjusted to reflect changes in the Cost of Living Index in January of each even-numbered year after the operative date of this act, for expenditures to support the operations of the Fair Political Practices Commission in administering and enforcing this title. The Franchise Tax Board shall, as soon as possible after the end of the first calendar year in which Sections 17221 and 24335 of the Revenue and Taxation Code have been in effect, calculate the amount of the increased tax revenues to the state as a result of these sections. From the amount so calculated, the Controller shall, for each fiscal year, transfer to the commission, from the General Fund, the amount necessary to meet the appropriation to the commission set forth above. In any event, regardless of whether the increased revenue from Sections 17221 and 24335 of the Revenue and Taxation Code is sufficient, the Legislature shall provide the appropriation to the commission set forth above. To the extent the Legislature provides budgetary support for local agencies for administration and enforcement of this title, the amount of increased tax revenues to the state as a result of Section 86102 of the Government Code shall also be provided for this purpose. If any provision of this title is challenged successfully in court, any attorney's fees and costs awarded shall be paid from the General Fund and shall not be assessed or otherwise offset against the Fair Political Practices Commission budget. Any savings or revenues derived from this title shall be applied to the Anti-Corruption Act of 1996 Enforcement Fund to pay costs related to the administration and enforcement of the title, with the remainder to be placed in the General Fund for general purposes.

SEC. 29. If any provision of this law, or the application of that provision to any person or circumstances, shall be held invalid, the remainder of this law to the extent that it can be given effect, or the application of that provision to persons or circumstances other than those as to which it was held invalid, shall not be affected thereby, and to this extent the provisions of this law are severable. In addition, if the expenditure limitations of Section 85401 of this act shall not be in effect, the contribution limits of Sections 85301, 85302, 85303, and 85 shall remain in effect.

SEC. 30. This law shall become effective November 6, 1996. In the event that this measure and another measure or measures relating to campaign finance reform in this state shall appear on the statewide general election ballot on November 5, 1996, the provisions of these other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void in their entirety. In the event that the other measure or measures shall receive a greater number of affirmative votes, the provisions of this measure shall take effect to the extent permitted by law.

SEC. 31. It is the sense of the people of California that candidates for the United States House of Representatives and the United States Senate seeking to represent the people in the Congress of the United States should comply with the contribution limits and expenditure limits, prescribed herein for candidates for the State Senate and Governor, respectively. The people recognize that the limitations prescribed in this law may not be mandated by the people for candidates for federal office. However, it is the sense of the people that these limitations are necessary to prevent corruption and the appearance thereof and to preserve the fairness and integrity of the electoral process in California. The people, therefore, suggest that candidates for federal office seeking to represent the people in the Congress of the United States comply voluntarily with the limitations prescribed herein until such time as comparable limitations are adopted by the Congress of the United States or through a constitutional amendment.

It is also the sense of the people of California that the broadcast licensees, as public trustees, have a special obligation to present voter information broadcasts. For the privilege of using scarce radio and television frequencies, the broadcasters are public trustees with an obligation to provide at no cost and no profit time for candidates to appear and use the station, whether radio or television, for the presentation of candidates' views for some brief period during prime viewing or listening time in the 30-day period prior to an election. The people of California recognize that the federal government has jurisdiction for such a mandate, and strongly urge the Congress of the United States to require the Federal Communications Commission to enforce these requirements upon broadcasters as a condition of holding a public broadcast license and fulfilling the broadcaster's public service obligation.

### Proposition 213: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds sections to the Civil Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

#### PROPOSED LAW

##### SECTION 1. Title

This measure shall be known and may be cited as "The Personal Responsibility Act of 1996."

##### SECTION 2. Findings and Declaration of Purpose

(a) Insurance costs have skyrocketed for those Californians who have taken responsibility for their actions. Uninsured motorists, drunk drivers, and criminal felons are law breakers, and should not be rewarded for their irresponsibility and law breaking. However, under current laws, uninsured motorists and drunk drivers are able to recover unreasonable damages from law-abiding citizens as a result of drunk driving and other accidents, and criminals have been able to recover damages from law-abiding citizens for injuries suffered during the commission of their crimes.

(b) Californians must change the system that rewards individuals who fail to take essential personal responsibility to prevent them from seeking unreasonable damages or from suing law-abiding citizens.

(c) Therefore, the People of the State of California do hereby enact this measure to restore balance to our justice system by limiting the right to sue of criminals, drunk drivers, and uninsured motorists.

##### SECTION 3. Civil Justice Reform

Section 3333.3 is added to the Civil Code, to read:

3333.3. *In any action for damages based on negligence, a person may not recover any damages if the plaintiff's injuries were in any way proximately caused by the plaintiff's commission of any felony, or immediate flight therefrom, and the plaintiff has been duly convicted of that felony.*

Section 3333.4 is added to the Civil Code, to read:

3333.4. *(a) Except as provided in subdivision (c), in any action to recover damages arising out of the operation or use of a motor vehicle, a person shall not recover non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages if any of the following applies:*

*(1) The injured person was at the time of the accident operating the vehicle in violation of Section 23152 or 23153 of the Vehicle Code, and was convicted of that offense.*

*(2) The injured person was the owner of a vehicle involved in the accident and the vehicle was not insured as required by the financial responsibility laws of this state.*

*(3) The injured person was the operator of a vehicle involved in the accident and the operator can not establish his or her financial responsibility as required by the financial responsibility laws of this state.*

*(b) Except as provided in subdivision (c), an insurer shall not be liable, directly or indirectly, under a policy of liability or uninsured motorist insurance to indemnify for non-economic losses of a person injured as described in subdivision (a).*

*(c) In the event a person described in paragraph (2) of subdivision (a) was injured by a motorist who at the time of the accident was operating his or her vehicle in violation of Section 23152 or 23153 of the Vehicle Code, and was convicted of that offense, the injured person shall not be barred from recovering non-economic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement, and other nonpecuniary damages.*

##### SECTION 4. Effective Date

This act shall be effective immediately upon its adoption by the voters. Its provisions shall apply to all actions in which the initial trial has not commenced prior to January 1, 1997.

##### SECTION 5. Severability

If any provision of this measure, or the application to any person or circumstances is held invalid or void, such invalidity or voidness shall not affect other provisions or applications that can be given effect without the invalid or void provision or application, and to this end, all of the provisions of this measure are declared to be severable.

##### SECTION 6. Conflicting Measures

In the event another measure to be voted on by the voters at the same election as this measure, and which constitutes a comprehensive regulatory scheme, receives more affirmative votes than this measure, the electors intend that any provision or provisions of this measure not in direct and apparent conflict with any provision or provisions of that other measure shall not be deemed to be in conflict therewith, and shall be severed from any other provision or provisions of this measure that are in direct and apparent conflict with the provision or provisions of the other measure. In that event, the provision or provisions not deemed in conflict shall be severed according to Section 5 of this measure upon application to any court of competent jurisdiction.

### Proposition 214: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

#### PROPOSED LAW

SECTION 1. Chapter 2.25 (commencing with Section 1399.900) is added to Division 2

of the Health and Safety Code, to read:

##### CHAPTER 2.25. THE HEALTH CARE PATIENT PROTECTION ACT OF 1996

##### Article 1. Purpose and Intent

1399.900. *(a) This chapter shall be known as the "Health Care Patient Protection Act of 1996." The people of California find and declare all of the following:*

*(1) No health maintenance organization (HMO) or other health care business should be*