2000

Title Insurance Claims Practices.

Insurance Claims Practices. Civil Remedies. Referendum.

Official Title and Summary Prepared by the Attorney General

INSURANCE CLAIMS PRACTICES. CIVIL REMEDIES. REFERENDUM.

A "Yes" vote approves, a "No" vote rejects legislation that:

- restores right to sue another person's insurer for insurer's unfair claims settlement practices;
- allows such lawsuits only if insurer rejects a settlement demand and injured party obtains a larger judgment or award against insured party;
- bars such lawsuits against public entities; workers' compensation insurers; and professional liability insurers under certain circumstances; or if convicted of driving under the influence;
- authorizes requests for consensual binding arbitration of claims under $50,001 against parties covered by insurance. Insurers agreeing to arbitration cannot be sued for unfair practices.

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

- Increase in state insurance gross premiums tax revenue, potentially several millions of dollars each year.
- Unknown net impact on state court costs.

Analysis by the Legislative Analyst

Background

Insurance Claims

Under current law, an insurance company must handle claims from a policyholder in a fair manner. It is illegal for an insurance company to engage in "unfair" claims practices, such as:

- Failing to promptly explain the reason for denying a claim or offering a compromise settlement.
- Failing to act in "good faith" to settle a claim in which liability is reasonably clear.

If an insurance company unfairly handles a claim (typically referred to as the "underlying claim"), the policyholder has two ways to respond: (1) file a complaint with the Department of Insurance (DOI), which is responsible for enforcing state law regarding unfair claims practices; and/or (2) sue his or her insurance company in civil court. These lawsuits by individuals against their own insurance companies are referred to as "first-party" actions.

There are many insurance claims—especially those involving auto accidents—that involve two individuals. For instance:

> Driver X runs a red light and hits Driver Y, causing both bodily injury to Driver Y and damage to her car. Driver X's insurance company is willing to pay Driver Y $20,000 for her injury and damages, but not the $30,000 Driver Y feels is reasonable. Driver Y can either accept the $20,000 or reject it and sue Driver X in court.

If Driver Y feels that Driver X's insurance company did not deal with her fairly throughout the process, Driver Y—as a "third-party" claimant—has only one way to respond. She can file a complaint with DOI for an investigation. She cannot sue Driver X's insurance company for unfairly handling the claim (a so-called third-party lawsuit). These third-party lawsuits were possible in California during the 1980s but are not now. See nearby box for a brief legal history.

Legal History on Third-Party Lawsuits in California

Prior to 1979	Third-party lawsuits were not allowed.
March 1979	The California Supreme Court ruled in *Royal Globe Ins. Co. v. Superior Court* that a third party could sue an insurance company for unfair claims practices.
August 1988	In *Moradi-Shalal v. Fireman's Fund Ins. Co.*, the California Supreme Court overturned its *Royal Globe* decision. The court held that state law did *not* include a right for a third-party claimant to sue an insurance company for unfair claims practices.
October 1999	The Governor signed two laws specifically allowing third-party lawsuits in certain situations. These measures were to have gone into effect January 1, 2000. In December 1999, however, referenda on the two laws qualified for the March 2000 ballot (Propositions 30 and 31). Thus, the provisions of the two laws are "on hold" until after the vote on the propositions.

Recent Legislation

In the fall of 1999, the Legislature approved and the Governor signed SB 1237 (Chapter 720) and AB 1309 (Chapter 721). These laws allow third-party claimants to sue insurance companies under certain conditions. The two laws would have gone into effect January 1, 2000. In December 1999, however, referenda on the two laws qualified for the March 2000 ballot (Propositions 30 and 31). Once these propositions qualified, SB 1237 and AB 1309 were put "on hold" until the vote at the March 2000 election.

Proposal

If approved, this proposition would allow the provisions of SB 1237 to go into effect. Senate Bill 1237 (1) gives third-party claimants the right to sue an insurance company for unfair claim practices in certain liability cases and (2) creates an alternative, binding arbitration system for settling these liability cases.

Third-Party Lawsuits

This proposition allows an individual or a business to file a third-party lawsuit against an insurance company for unfair claims practices in handling liability claims. (Liability insurance provides financial protection to individuals and businesses for harm that occurs to others.) This insurance generally provides compensation for bodily harm, wrongful death, and economic losses. A third-party lawsuit could be filed, however, only if:

- The third party was not driving under the influence of alcohol or drugs at the time of the accident that caused injury.
- The third party sends a written final request to the insurance company to settle the claim for an amount within the insurance policy limits.
- The third party is awarded an amount larger than the final written request.

If the lawsuit goes forward, the third-party claimant needs to prove in court that the insurance company unfairly handled the claim. If the third party wins the lawsuit, the claimant could receive an amount that is higher than the insurance policy limits.

An Example. In the earlier example, Driver Y had one way of responding to the insurance company's handling of her case—filing a complaint with DOI. Under this proposition, she could also pursue a third-party lawsuit against Driver X's insurance company. To do so, an award in the underlying claim would have to exceed her final written request. (For instance, if her final request was the $30,000 she thought was reasonable, the award would have to be more than that amount.)

Arbitration

This proposition also creates a binding arbitration system to settle certain disputed underlying claims (generally those of $50,000 or less where the claimant is represented by a lawyer). Either a third-party claimant or an insurance company can request arbitration, but both sides must agree before the case goes to arbitration. If a case goes to arbitration, the third-party claimant cannot sue the company. In all cases, an arbitration award cannot exceed policy limits or include damages not covered by the policy.

Interaction With Proposition 31

Proposition 31 would modify portions of this proposition *if* both are approved by the voters. In general, Proposition 31 would place some limits on when a third-party lawsuit could be filed. Please see the analysis of Proposition 31 for more details.

Fiscal Effect

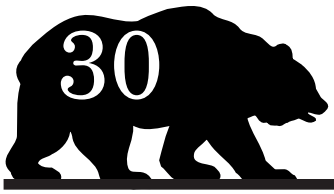
The fiscal impact of this proposition on state and local governments would depend on the future behavior of individuals, insurance companies, and other businesses in response to its provisions. The proposition, however, would likely increase liability insurance costs in California. These higher costs would occur because (1) in many cases, insurance companies will settle or arbitrate claims for somewhat higher amounts to avoid third-party lawsuits; and (2) when there are such lawsuits, insurance companies will incur greater costs. These higher costs could be offset in part by savings from other provisions in the proposition. For instance, some arbitration awards might be *lower* than what the insurance companies otherwise would have paid.

The net increase in liability insurance costs, however, presumably would result in insurance premiums that were higher than they otherwise would have been. In order for an insurance company to increase premiums, DOI must review and approve proposed premium increases.

Insurance Gross Premiums Tax. The state currently taxes insurance companies on the basis of gross premiums. (This tax is instead of the corporate income tax.) The current tax is 2.35 percent of gross premiums. Any increase in insurance premiums would increase state revenue from this tax. We estimate, for example, that for each 1 percent increase in liability premiums, state tax revenues would increase by about $2 million each year.

State Court Costs. The proposition could affect the number of civil cases taken to court. On the one hand, some provisions of the proposition could *reduce* court costs (by shifting cases to arbitration). Other provisions, however, could *increase* court costs (by allowing third-party lawsuits). We cannot estimate the net effect of these provisions on state costs.

For Text of Proposition 30 see Page 12



Insurance Claims Practices. Civil Remedies. Referendum.

Argument in Favor of Proposition 30

Governor Gray Davis and *both* Houses of the Legislature enacted the Fair Insurance Responsibility Act—restoring your right to sue a bad driver's insurance company if it illegally delays paying what they owe you and making your life miserable.

Here's one example of thousands of cases:

A reckless driver talking on a cell phone runs through a red light and smashes into a woman driving her child to school. The reckless driver's insurance company delays paying her medical bills for years. The innocent driver does not have the right to sue the reckless driver's insurance company—unless voters approve the Fair Insurance Responsibility Act.

To protect your newly restored right to hold insurance companies responsible, *voters must approve* the Fair Insurance Responsibility Act.

Seven out-of-state and foreign insurance companies oppose this law. The *Los Angeles Times* calls their campaign "a $50 million corporate effort . . . playing a complicated game with voters . . . hiding behind a consumer veil."

Proposition 30 *prohibits drunk drivers* from suing and does *not* give uninsured motorists the right to sue you. In fact, if you're injured by a drunk driver, Proposition 30 requires the drunk driver's insurance company to pay your claim on time.

The insurance companies' campaign ads falsely accuse Governor Gray Davis and the Legislature of giving drunk drivers the right to sue under this new law.

Governor Davis' office responded: "That's certainly not what the legislation does. Governor Davis signed measures that are good public policy and protect individuals from being treated unfairly."

And Proposition 30 does not change Proposition 213 which *prohibits uninsured drivers* from suing for pain and suffering.

Proposition 30 will *reduce* the number of lawsuits in California: *If an insurance company agrees to resolve your claim through arbitration or simply decides to treat your valid claim fairly, there is no lawsuit.*

Insurance companies are falsely accusing Governor Gray Davis of signing a law that allows insurance companies to raise your premiums.

Under California law, insurance companies penalized for violating this law *cannot* pass on those penalties to consumers by raising your premiums. The California Code of Regulations says: "*Bad faith judgments and associated loss adjustment expenses" are "excluded expenses" for setting insurance company premiums.*

The Sacramento Bee editorial summarized the issue: "On balance, SB 1237 (the Fair Insurance Responsibility Act) offers fair and needed protections to injured innocent victims and reasonable incentives for insurance companies to do the right and lawful thing."

You pay your premiums on time. The bad driver's insurance company should pay *your* valid claim on time.

Consumers Union (the publishers of *Consumer Reports*), the Congress of California Seniors and the Consumer Federation support the Fair Insurance Responsibility Act enacted by both Houses of the Legislature and signed by Governor Davis. Give yourself a fighting chance. Protect your rights. Vote "Yes" on Proposition 30.

SENATOR MARTHA ESCUTIA

KAY McVAY, RN
President, California Nurses Association

LOIS WELLINGTON
President, Congress of California Seniors

Rebuttal to Argument in Favor of Proposition 30

Ask yourself: If Propositions 30 and 31 are such good laws, why did the personal injury lawyers who wrote them specifically exempt their own insurance companies from their provisions?

They did it to protect themselves against higher insurance rates, pure and simple. Even though they created these proposals, they don't want to pay the price. *And that says it all.*

Their so-called "Fair Insurance Responsibility Act" is neither fair nor responsible. It's simply a way for them to file more lawsuits and make more money at your expense.

California's retired Legislative Analyst warns that measures like Propositions 30 and 31 will increase insurance rates up to 15% and, "could cost taxpayers millions." The California Organization of Police and Sheriffs says, "insurance fraud will thrive."

The facts are: Propositions 30 and 31 will drive insurance rates significantly higher, double the number of lawsuits in accident cases and cost taxpayers millions—which is why these propositions are opposed by so many respected taxpayer, consumer, senior, business and public safety groups in California.

Proponents claim these Propositions don't give drunk drivers new power to sue. But after careful analysis, Mothers Against Drunk Driving concluded "because these measures do not exclude all drunk drivers, many will get new rights to sue . . . even when drunk at the time of the collision."

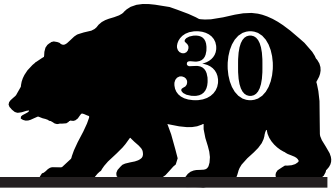
Don't reward drunk drivers and uninsured motorists for breaking the law. Say NO to higher insurance costs and personal injury lawyers who want to profit at your expense. Vote NO on 30 and 31.

REBECCA M. BEARDEN
Mothers Against Drunk Driving (MADD),
Chairperson, California Public Policy Committee

MICHAEL JOHNSON
Executive Director, Voter Revolt

JIM CONRAN
President, Consumers First

Insurance Claims Practices. Civil Remedies. Referendum.



Argument Against Proposition 30

DON'T BE FOOLED

Proposition 30 (and its companion, Proposition 31), sponsored by personal injury lawyers, is a trick to allow two lawsuits for the same accident. That means billions in higher lawyer fees, but consumers pay. No wonder the personal injury lawyers' association president told the *LA Times* that Proposition 30 (with Prop. 31) was, "our biggest victory in 40 or 50 years."

This "victory" for personal injury lawyers will dramatically increase insurance premiums for all Californians. Respected former Legislative Analyst William Hamm estimates *Proposition 30 could cost consumers up to 15% more for auto insurance*, over $1 billion more each year. Small businesses also pay millions more.

Under Proposition 30, if your insurer refuses to pay an unreasonable settlement demand made against you, it risks a separate multi-million dollar lawsuit.

PROPOSITION 30 MEANS:

- Insurance rates for average consumers increase $200–300 per year.
- Personal injury lawyers can file thousands of frivolous lawsuits aimed at you and your insurer.
- *Drunk drivers can sue and collect punitive damages that current law prevents.*
- *Lawbreakers who drive without insurance can sue for huge punitive damages.*
- Taxpayers pay tens of millions more in court costs for frivolous lawsuits.
- Insurance fraud skyrockets.

THE LESSONS OF RECENT HISTORY ARE CLEAR!

During the 1980s, the California Supreme Court allowed second lawsuits if an inflated settlement demand was not met. According to California Judicial Council records, auto injury lawsuits filed every year almost doubled. Settlements from insurers zoomed. Since personal injury lawyers often receive 40%, they made millions. As a result, consumer's insurance rates skyrocketed. Finally, the Supreme Court outlawed these second lawsuits. Since then, the number of auto injury lawsuits is back to normal. According to the Department of Insurance, insurance rates are down over 20%.

PROP. 30 IS COMPLETELY UNNECESSARY.

If someone thinks a settlement offer is too low, they can already take the dispute to court. They can also file a complaint with the state Department of Insurance.

Proposition 30 invites more frivolous lawsuits, more fraudulent claims and higher insurance rates.

HERE'S WHAT SOME OF THE MANY RESPECTED GROUPS OPPOSING PROP. 30 SAY:

"Proposition 30 would give drunk drivers new rights to sue and recover financial rewards against an insurance company, even if they are drunk at the time of the collision. Drunk drivers should be forced to pay, not BE PAID by their willful disregard for the law. MADD is vigorously opposed to Prop. 30."

—Mothers Against Drunk Driving

"Proposition 30 will cost taxpayers millions because hard-earned tax dollars will be diverted as government agencies are forced to pay for frivolous lawsuits and high insurance costs."

—California Taxpayers' Association

"Insurance fraud will thrive under Prop. 30."

—California Organization of Police and Sheriffs

"If Prop. 30 takes effect, money needed for classroom instruction will instead have to pay for higher school insurance costs."

—Marian Bergeson, Member, State Board of Education

JOIN TAXPAYERS, SENIORS, CONSUMERS, INSURERS, SMALL BUSINESS GROUPS, EDUCATORS AND LAW ENFORCEMENT.

VOTE NO ON PROPOSITION 30.

REBECCA M. BEARDEN
Chairperson, California Public Policy Committee, Mothers Against Drunk Driving (MADD)

LARRY McCARTHY
President, California Taxpayers Association

SHIRLEY KNIGHT
Deputy State Director, National Federation of Independent Business

Rebuttal to Argument Against Proposition 30

The insurance companies claim that Proposition 30 will double the number of lawsuits. That's false.

Ralph Nader says: "*Proposition 30 discourages lawsuits by requiring insurance companies to pay your claims fairly.*"

Insurance companies claim Proposition 30 will raise your premiums. That's false.

The California Department of Insurance rules *prohibit insurance companies from raising your premiums to pay their penalties for violating the law*.

The insurance companies accuse Governor Davis of signing a law that raises your premiums by giving new rights to drunk drivers and uninsured motorists. That's outrageous!

Governor Davis' office responded: "That's certainly not what the legislation does."

Candace Lightner, the Founder of MADD: "I am the founder of Mothers Against Drunk Driving and a supporter of Proposition 30 because it helps victims of drunk drivers."

The insurance companies even falsely claim that Proposition 30 will take money from our schools!

State Superintendent of Public Instruction Delaine Eastin: "Proposition 30 exempts public schools, police and fire departments and other public entities."

Seven out-of-state and foreign insurance companies are trying to kill Proposition 30 because they make more money every time they low-ball or stonewall paying your valid claim.

Proposition 30 restores a good driver's right to sue a bad driver's insurance company if it *illegally* delays paying *what they owe you*.

The California Department of Justice describes Proposition 30 as "*legislation restoring rights to sue insurers for unfair practices.*"

Ralph Nader says: "A 'Yes' vote protects your rights against insurance companies."

SENATOR MARTHA ESCUTIA

KAY McVAY, R.N.
President, California Nurses Association

LOIS WELLINGTON
President, Congress of California Seniors

 Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Proposition 30: Text of Proposed Law

This law proposed by Senate Bill 1237 of the 1999–2000 Regular Session (Chapter 720, Statutes of 1999) is submitted to the people as a referendum in accordance with the provisions of Section 9 of Article II of the California Constitution.

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

PROPOSED LAW

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 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 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.

(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 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.

Proposition 30: Text of Proposed Law

This law proposed by Senate Bill 1237 of the 1999–2000 Regular Session (Chapter 720, Statutes of 1999) is submitted to the people as a referendum in accordance with the provisions of Section 9 of Article II of the California Constitution.

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

PROPOSED LAW

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 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 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.

(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 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.