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Official Title and Summary Prepared by the Attorney General

INSURANCE CLAIMS PRACTICES. CIVIL REMEDY AMENDMENTS. REFERENDUM.

A “Yes” vote approves, a “No” vote rejects statutory provisions that:

• limit conditions under which injured party may sue another person’s insurer for damages resulting from insurer’s unfair claims settlement practices;
• limit emotional distress claims;
• limit property damage claims to those caused by motor vehicle incident;
• exempt professional liability insurers from unfair claims settlement practices suit if professional’s consent is required for settlement and professional withholds consent;
• provide that an insurer requesting arbitration is presumed to act in good faith;
• add requirement that state auditor report on effect of Proposition 30, as amended.

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

• If the voters approve Proposition 30, this proposition would slightly reduce the fiscal impact that Proposition 30 would have on state revenues and have an unknown impact on state court costs.
• If the voters disapprove Proposition 30, this measure would have no fiscal impact on state and local governments.

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 AB 1309 to go into effect. By itself, however, this proposition does not change existing law. It becomes law only if Proposition 30 on this ballot is also approved by the voters. Proposition 31 would amend parts of Proposition 30, limiting to some extent when a third-party claimant can sue an insurance company for unfair claims practices. Figure 1 shows the major changes that this proposition would make to Proposition 30.

Figure 1

Major Changes That Proposition 31 Makes to Proposition 30

<table>
<thead>
<tr>
<th>Provision</th>
<th>Proposition 30</th>
<th>Proposition 31</th>
</tr>
</thead>
<tbody>
<tr>
<td>Who can sue</td>
<td>Individuals and businesses can sue.</td>
<td>Only individuals can sue.</td>
</tr>
<tr>
<td>Economic loss claim</td>
<td>No restrictions on claim.</td>
<td>Claim for property damage must result from car accident.</td>
</tr>
<tr>
<td>Bodily injury claim</td>
<td>No restrictions on claim.</td>
<td>Claim cannot include emotional distress resulting from economic loss (such as lost wages), but can include emotional distress resulting from other causes if there are physical signs of the distress.</td>
</tr>
<tr>
<td>Binding arbitration system</td>
<td>In specified cases, if an insurance company agrees to arbitration, the third-party claimant cannot sue the company.</td>
<td>In specified cases, if an insurance company requests or agrees to arbitration, the third-party claimant cannot sue the company.</td>
</tr>
</tbody>
</table>

FISCAL EFFECT
This proposition would have a fiscal effect only if the voters also approve Proposition 30 on this ballot.
As noted above, this proposition changes portions of Proposition 30. We estimated that Proposition 30 would result in somewhat higher insurance gross premiums tax revenues and an unknown net impact on state court costs. If this proposition also passes, state revenues would be slightly less, and the impact on state court costs is unknown.

For Text of Proposition 31 see Page 14

Argument in Favor of Proposition 31

Why did Governor Gray Davis and both Houses of the Legislature enact the Fair Insurance Responsibility Act? Because too many insurance companies unfairly delay paying what they owe you and making your life miserable. Here is another example: A woman in a crosswalk was hit by a reckless driver. The reckless driver's insurance company delayed paying her medical bills for years. Without the Fair Insurance Responsibility Act, she has no right to sue the bad driver's insurance company.

The Sacramento Bee editorial entitled: "Bad Faith. What happens when insurers refuse to pay?" described the problem this way: "Some bozo driving the wrong way down a one-way street hits you. He's clearly in the wrong. Your car is totaled and you're gravely injured. Under the rules, his insurance company is supposed to pay you for the damages and injuries you've suffered."

What happens when the insurance company refuses to pay? Without the Fair Insurance Responsibility Act you can't sue the insurance company.

In supporting the new law, the Bee went on to summarize how the Fair Insurance Responsibility Act addresses this consumer problem: "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".

Consumers Union (the publisher of Consumer Reports), the Congress of California Seniors, the Consumer Federation, and United Policyholders—all supported the Governor and Legislature enacting the Fair Insurance Responsibility Act.

The insurance companies' campaign ads falsely accuse Governor Gray Davis and the Legislature of giving drunk drivers the right to sue—and cost taxpayers millions.

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."

The Fair Insurance Responsibility Act specifically prohibits drunk drivers from suing and does not give uninsured motorists the right to sue you.

No matter what the insurance company campaign says, the truth is Governor Davis did not change Proposition 213 which prohibits uninsured drivers from suing for pain and suffering.

The insurance companies are also falsely accusing Governor Davis of signing a law which raises your premiums.

The truth is that insurance companies penalized for violating this law cannot pass on those penalties to consumers by raising your premiums. Read California's law yourself: "Bad faith judgments and associated loss adjustment expenses" are "excluded expenses" for setting insurance company premiums.

The Los Angeles Times calls the insurance companies' campaign "...a $50 million corporate effort ... playing a complicated game with voters ... hiding behind a consumer veil."

Support your rights. Support what Governor Gray Davis signed. He did the right thing. Vote "Yes" to approve the Fair Insurance Responsibility Act.

HOWARD L. OWENS
Executive Director, Consumer Federation of California

ROSEMARY SHAHAN
President, Consumers for Auto Reliability and Safety

KAY McVAY, RN
President, California Nurses Association

Rebuttal to Argument in Favor of Proposition 31

PROPOSITIONS 30 and 31 ARE SPONSORED BY PERSONAL INJURY LAWYERS BUT OPPOSED BY RESPECTED TAXPAYER, CONSUMER, SENIOR, BUSINESS AND PUBLIC SAFETY LEADERS

Make no mistake. Personal injury lawyer-sponsored Propositions 30 and 31 will drive up insurance rates and fraud, allow two lawsuits for every auto accident claim, reward uninsured and drunk drivers with incentives for insurance companies to do the right and lawful thing.

Consumers Union (the publisher of Consumer Reports), the Congress of California Seniors, the Consumer Federation, and United Policyholders—all supported the Governor and Legislature enacting the Fair Insurance Responsibility Act.

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

California State Firefighters' Association
Latin Business Association
California Mexican-American Chamber of Commerce
Black Business Association
US-Mexico Chamber of Commerce
California Black Chamber of Commerce
Hmong American Political Association
Schools Excess Liability Fund (SELF)
California Business Properties Association
U.S. Chamber of Commerce
American Association of Business Persons with Disabilities
Small Business Survival Committee
California Building Industry Association
California Grocers Association
Citizens for a Sound Economy
Citizens Against Lawsuit Abuse (Los Angeles, San Diego, Orange County, Silicon Valley)

JOHN H. SULLIVAN
President, Civil Justice Association of California

LARRY McCARTHY
President, California Taxpayers' Association

JOHN POWELL
C.O.O., Seniors Coalition
Argument Against Proposition 31

Personal injury lawyers wrote Proposition 31 (and Prop. 30) so they could file more lawsuits that will increase insurance rates.

The Contra Costa Times says "...we can expect more litigation, increased transaction costs and higher insurance rates ... hardly the consumer-friendly bill its proponents claim."

If Propositions 31 or 30 pass, fee-seeking personal injury lawyers reap billions of dollars from new lawsuits. Unfortunately, your insurance premiums will skyrocket.

Under these laws, your insurer is threatened by a separate lawsuit for huge punitive damages whenever it refuses to pay a bloated settlement demand in a claim filed against you. When a law like Propositions 31 and 30 existed in the 1980s, auto injury lawsuits filed in California nearly doubled and insurance rates skyrocketed. When the Supreme Court prohibited these abusive lawsuits, insurance rates dropped substantially.

- Prop. 31, like Prop. 30, is unnecessary. If an injured consumer believes that a settlement offer from an insurance company is too low, he or she can already take that case to court for a jury to decide the appropriate payment.
- Additionally, if treated unfairly, consumers can file a complaint with the state Insurance Commissioner's Enforcement Division.
- Propositions 31 and 30 add a whole new lawsuit on top of the first one. That means higher rates for consumers.
- The former state Legislative Analyst predicts Proposition 31 could raise your insurance premiums up to 15%—about $300 a year for a typical consumer.
- Prop. 31 and 30 will result in more fraud, giving unscrupulous personal injury lawyers a powerful tool to force insurance companies to pay suspect claims.
- Worse, Proposition 31 changes the law so lawbreakers—like drunk drivers and people who drive without insurance—can file new multi-million dollar lawsuits for punitive damages.

PROPOSITION 31 EXEMPTS LAWYERS

Proposition 31 is a scam. When political problems emerged in Proposition 30, personal injury lawyers wrote Proposition 31, and passed it the same day without a public hearing.

But they made things worse. They wrote provisions to protect their own insurers from these bad laws so their own insurance rates would not increase!

"People who can least afford higher insurance premiums are hurt most. While $300 may not seem like a lot to some, too many seniors on fixed incomes and low-income families cannot afford the insurance increase from Proposition 31."

—The Seniors Coalition

"To enrich themselves, personal injury lawyers seem willing to pick the pockets of working men and women. We urge a No vote on Props. 31 and 30."

—California Mexican American Chamber of Commerce

"Propositions 31 and 30 could easily cost taxpayers millions of dollars annually in higher insurance costs for schools, cities and other local government."

—William Hamm
Former State Legislative Analyst

Schools are especially hard-hit. We should not be forced by higher insurance and lawsuit settlement costs to spend money that should be used to improve classroom instruction."

—Schools Excess Liability Fund (SELF)

PROPOSITION 31 AND 30 HURT AVERAGE PEOPLE TO ENRICH PERSONAL INJURY LAWYERS. SAY NO TO A BAD LAW.

HARRIET C. SALARNO
President, Crime Victims United of California
JEFF SEDIVEC
President, California State Firefighters' Association
BETTY JO TOCCOLI
Chair, California Small Business Roundtable

Rebuttal to Argument Against Proposition 31

Fair is fair. You pay your premiums on time—insurance companies should pay your valid claim on time.

The insurance companies say Propositions 30 and 31 will double the number of lawsuits. That's false.

If an insurance company agrees to resolve your claim through arbitration, there is no lawsuit. A lawsuit is only allowed if the bad driver's insurance company won't pay what they owe you.

The insurance companies say Propositions 30 and 31 will allow drunk drivers to sue. That's false.

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

The insurance companies suggest Propositions 30 and 31 will allow uninsured drivers to sue you. That's false.

Consumer Federation of California says: "The Fair Insurance Responsibility Act does not give uninsured drivers the right to sue you'.

The insurance companies say Propositions 30 and 31 will raise premiums. That's false.

The insurance companies oppose Propositions 30 and 31 because state law does not allow insurance companies to raise premiums to pay their penalties for violating the law.

The insurance companies say Propositions 30 and 31 will take money from our schools. That's false.

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

On your ballot Propositions 30 and 31 are accurately and simply described as "legislation restoring rights to sue insurers for unfair practices."

Protect your rights. Vote "Yes" on 30 and 31.

HOWARD L. OWENS
Executive Director, Consumer Federation of California
ROSEMARY SHAHAN
President, Consumers for Auto Reliability and Safety
KAY McVAY, R.N.
President, California Nurses Association
## Ballot Measure Summary

### PROPOSITION 30

**SUMMARY**

“Yes” vote approves, “No” vote rejects legislation restoring right to sue another person’s insurer for unfair claims settlement practices following judgment or award against other person; barring lawsuit if insurer agrees to arbitrate original claim against insured party. Fiscal Impact: Increase in state insurance gross premiums tax revenue, potentially several millions of dollars each year. Unknown net impact on state court costs.

**WHAT YOUR VOTE MEANS**

**YES**

A **YES** vote on this measure means: An individual or business could sue another individual’s or business’s insurance company for unfair practices in handling their claim resulting from an event such as an accident. A person would continue to be able to file a complaint with the Department of Insurance regarding such practices.

**ARGUMENTS**

**PRO**

Governor Davis, and both Houses of the Legislature, restored your right to sue a bad driver’s insurance company which illegally delays your valid claim. If you pay your premiums on time, insurance companies should pay your claims on time. Protect your right. Vote “Yes.” Approve the Fair Insurance Responsibility Act.

**CON**

Proposition 30 will drive your insurance rates higher, dramatically increase the number of frivolous lawsuits in accident cases, cost taxpayers millions of dollars, reward lawbreaking uninsured and drunk drivers with new rights to sue—that’s why respected taxpayer, consumer, senior, labor, business and public safety leaders urge **No** on 30.

**FOR ADDITIONAL INFORMATION**

**FOR**

Consumers and their Attorneys, Yes on Proposition 30 (916) 491-4691 www.yes30.org

**AGAINST**

Consumers Against Fraud and Higher Insurance Costs 591 Redwood Highway, Building 4000, Mill Valley, CA 94941 1-800-952-0530 info@cafhic.org www.NO30and31.org

### PROPOSITION 31

**SUMMARY**

A “Yes” vote approves, a “No” vote rejects statutory amendments limiting right of injured party to sue another’s insurer for unfair claims practices and exempting specified insurers under certain circumstances. Fiscal Impact: This proposition would have a fiscal impact only if Proposition 30 is approved. In this case, the proposition would not significantly affect the state and local fiscal impacts of Proposition 30.

**WHAT YOUR VOTE MEANS**

**YES**

A **YES** vote on this measure means: Certain provisions of Proposition 30, if also approved by the voters, would be changed, limiting to some extent when a person could sue another person’s insurance company over unfair claims practices.

**ARGUMENTS**

**PRO**

A woman in a crosswalk was hit by a reckless driver. The reckless driver’s insurance company delayed paying her medical bills for years. She has no right to sue the bad driver’s insurance company. The Fair Insurance Responsibility Act restores that right when your legitimate claims are unfairly delayed.

**CON**

Propositions 31 and 30 are linked: written by and for personal injury lawyers—opposed by respected organizations: Mothers Against Drunk Driving, California Taxpayers Association, Seniors Coalition, Voter Revolt, California Organization of Police and Sheriffs, plus dozens of other taxpayer, consumer, senior, business, public safety leaders. Say **No** to Proposition 31.

**FOR ADDITIONAL INFORMATION**

**FOR**

Consumers Against Fraud and Higher Insurance Costs 591 Redwood Highway, Building 4000, Mill Valley, CA 94941 1-800-952-0530 info@cafhic.org www.NO30and31.org

**AGAINST**

Consumers and their Attorneys, Yes on Proposition 30 (916) 491-4691 www.yes31.org

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**Note:** The content provided is a summary of the measures and includes key points and arguments for and against each proposition. For more detailed information, please refer to the original document or websites provided.
Proposition 31: Text of Proposed Law

Text of Proposed Laws—Continued

Sections 2, 3, 4, 6, 8, and 9 of this law proposed by Assembly Bill 1309 of the 1999–2000 Regular Session (Chapter 721, Statutes of 1999) are 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 amends and adds sections to various codes; therefore, existing provisions proposed to be deleted are printed in \*italic* type and new provisions proposed to be added are printed in \*bold* type to indicate that they are new.

**PROPOSED LAW**

SEC. 2. Section 2870 of the Civil Code, as added by Senate Bill 1237 of the 1999–2000 Regular Session, is amended to read:

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

(1) “Third-party claimant” or “claimant” shall mean each person individual 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 bodily injury or wrongful death; or other economic loss, or both property damage resulting from an incident sustained by a person including death resulting from “bodily damage” resulting from loss of consortium or loss of care, comfort, society and the like resulting from wrongful death.

(2) “Insured” shall mean a natural person or entity named as an insured in a liability insurance policy or a private self-funded liability protection program, fund, or plan; a natural 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 natural 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; or an additional insured under an insurance policy or a self-funded liability protection program, fund, or plan.

(3) “Insurer” shall mean any liability insurer licensed pursuant to, or subject to regulation under, the Insurance Code who provides liability coverage to an insured against whom the a third-party claimant makes a claim for personal bodily injury, wrongful death, or other economic loss, or for property damage resulting from an incident involving a motor vehicle, 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.

(4) “Liability insurance” shall mean that portion of a personal or commercial insurance policy or a private self-funded liability protection program, fund, or plan, which provides liability coverage for bodily injury, or for property damage resulting from an incident involving a motor vehicle.

(5) “Bodily injury” shall mean actual physical injury, sickness, or disease to a natural person or entity that results from an incident involving a motor vehicle.

(6) “Disease” shall mean a disease sustained by a person, including death therefrom.

(7) “Bodily damage” shall not mean emotional distress, of any kind, resulting from economic loss, or emotional distress resulting from a cause other than economic loss unless accompanied by actual physical manifestations of such emotional distress.

SEC. 3. Section 2871 of the Civil Code, as added by Senate Bill 1237 of the 1999–2000 Regular Session, is amended to read:

2871. (a) Every insurer, as defined in paragraph (3) of subsection (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 practices as set forth in paragraph (1), (2), (3), (5), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) of Section 790.03 of the Insurance Code as it relates to a third-party claimant.

(2) (A) In considering a third-party claim an insurer shall make an honest, intelligent and knowledgeable evaluation of the claim on its merits. However, an insurer shall not be considered to have violated its obligation to act in good faith and deal fairly with a third-party claimant because of the insurer’s honest mistake in judgment in connection with the settlement of a claim.

(B) The fact that an insurer did not settle a claim is not necessarily proof of bad faith.

(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 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 The 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 (b) 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 for medical, health care, or legal malpractice is not liable under this title if both all of 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 policyholder withholds consent to settlement.

(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, 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 other 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 duty under this title to provide liability insurance.

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

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

(j) (2) To conduct by any insurer, its agents or employees concerning accidents, events, or occurrences covered by the applicable insurance policy that occur on or after January 1, 2000. The provisions of this title are prospective and are only applicable as follows:

(1) To accidents, events, occurrences, or losses that occur on or after January 1, 2000.

(2) To conduct by any insurer, its agents or employees concerning accidents, events, occurrences, or losses that occur on or after January 1, 2000.

SEC. 4. Section 1778 of the Code of Civil Procedure, as added by Senate Bill 1237 of the 1999–2000 Regular Session, is amended to read:

1778. If the insurer requests or 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.
SEC. 6. Section 1872.91 is added to the Insurance Code, to read:

1872.91. (a) The State Auditor shall prepare a report analyzing and evaluating the effect of the Fair Insurance Responsibility Act of 2000 (FAIR) on California insurance claims practices and rates. The report shall identify changes in claim practices and patterns caused by the enactment of FAIR. The report shall be delivered to the Governor and the Legislature on or before January 1, 2005. The report shall be funded from existing resources of the State Auditor. The report shall include, but not be limited to, an analysis of the following:

1. The number of complaints to the Department of Insurance regarding unfair claims settlement practices.
2. The number and type of actions taken by the Department of Insurance in response to those complaints.
3. The number of cases in which the parties enter into voluntary binding arbitration under Title 11.65 (commencing with Section 1776) of Part 3 of the Code of Civil Procedure, and the disposition of those cases, including whether the use of retired judges as arbitrators has provided an adequate pool of arbitrators.
4. The number of cases that proceed to trial and the disposition of these cases, including appeals.
5. The number of actions filed under Title 13.7 (commencing with Section 2870) of Part 4 of Division 3 of the Civil Code, and the disposition of these cases, including appeals.
6. An analysis of the disposition of cases of third-party claimants who are not eligible to file a bad faith action and whether these claimants have been subject to unfair claims settlement practices.
7. The part of the study required in subdivision (b) shall include the following items, shown separately by coverage:
   1. Number of claims.
   2. Amount of losses or claim payouts, including both economic damages shown separately by category and noneconomic damages.
   3. Punitive damages or bad faith awards, when applicable.
   5. Other claim or loss adjustment expenses.
   6. Time period between filing of claim and final settlement.

(b) As part of the study, the State Auditor shall conduct a statistical closed claim study to compare auto insurance claims closed in 1999 and 2003. The study shall provide at least the same kinds of information as the August 1990 study, “Automobile Claims, A study of Closed Claim Payments Patterns in California,” prepared by the Statistical Analysis Bureau. The Insurance Commissioner shall cooperate with the State Auditor in this study, and shall provide information requested by the State Auditor. The study shall identify the component costs of claims, including, but not limited to, the items listed in subdivision (c) by coverage for major settlement methods, including each of the following:

1. Closed without payment, no litigation.
2. Closed with payment, no litigation.
3. Closed without payment, litigated.
4. Closed with payment after mediation.
5. Closed with payment after judicial arbitration.
6. Closed with payment after voluntary binding arbitration.
7. Closed with payment after trial, including appeals.

(c) The part of the study required in subdivision (b) shall include the following items, shown separately by coverage:

1. Number of claims.
2. Amount of losses or claim payouts, including both economic damages shown separately by category and noneconomic damages.
3. Punitive damages or bad faith awards, when applicable.
5. Other claim or loss adjustment expenses.
6. Time period between filing of claim and final settlement.

SEC. 8. The provisions of Sections 2, 3, and 5 of this act, the provisions of Title 13.7 (commencing with Section 2870) of Part 4 of Division 3 of the Civil Code, and the provisions of Title 11.65 (commencing with Section 1776) of Part 3 of the Code of Civil Procedure, are severable. If any of those provisions or any of their applications is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. Sections 2, 3, 5, and 7 of this act shall not become operative unless Senate Bill 1237 of the 1999–2000 Regular Session is enacted, becomes operative, and this act is chaptered after Senate Bill 1237.