

Text of the Proposed Laws

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 31: Text of Proposed Law

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 ~~strikeout type~~ and new provisions proposed to be added are printed in *italic 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 involving a motor vehicle;~~ 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 *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; a *natural* 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 mean~~ any liability insurer licensed pursuant to, or subject to regulation under, the Insurance Code ~~who which~~ provides liability ~~coverage insurance~~ 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. 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.

(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 sustained by a person, including death therefrom. “Bodily injury” shall not mean (a) emotional distress, of any kind, resulting from economic loss, or (b) 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) (1) 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 *paragraph (1), (2), (3), (5), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (h) 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 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~~ *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 (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 *for medical, health care, or legal malpractice* is not liable under this title if ~~at~~ *both 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 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. .~~

(2) *The policyholder withholds consent to settlement.*

(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. 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.*

(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.*

(4) *Defense costs.*

(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.