



Insurance Claims Practices. Civil Remedy Amendments. Referendum.

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

Provision	Proposition 30	Proposition 31
Who can sue	Individuals and businesses can sue.	Only individuals can sue.
Economic loss claim	No restrictions on claim.	Claim for property damage must result from car accident.
Bodily injury claim	No restrictions on claim.	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.
Binding arbitration system	In specified cases, if an insurance company agrees to arbitration, the third-party claimant cannot sue the company.	In specified cases, if an insurance company <i>requests</i> or agrees to arbitration, the third-party claimant cannot sue the company.

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



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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 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."

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 a new right to sue—and cost taxpayers millions.

THAT'S WHY PROPOSITIONS 30 AND 31 ARE OPPOSED BY:

- Mothers Against Drunk Driving (MADD)
- California Taxpayers' Association
- Howard Jarvis Taxpayers Association
- National Taxpayer Alliance
- California Chamber of Commerce
- California Manufacturers Association
- National Federation of Independent Business
- California Small Business Roundtable
- Seniors Coalition
- 60 Plus Association
- Voter Revolt
- Consumers First
- Consumers Coalition of California
- California Alliance for Consumer Protection
- Civil Justice Association of California
- California Organization of Police and Sheriffs
- Crime Victims United of California
- California Correctional Peace Officers Association

- 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

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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