

AMENDED IN SENATE MAY 1, 2001

SENATE BILL

No. 708

Introduced by Senator Speier

February 23, 2001

An act to amend Sections 790.035, 10089.70, 10089.71, 10089.72, 10089.73, 10089.74, 10089.75, 10089.77, 10089.78, 10089.79, 10089.82, 10089.83, 10089.84, and 12921.3 of, and to add Sections 10089.3, 12921.9, and 12926.2 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 708, as amended, Speier. Insurance.

(1) Existing law provides for regulation of the business of insurance by the Insurance Commissioner. Existing law prohibits trade practices defined or determined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance, imposes specified civil penalties for violations, and provides discretion to the commissioner to establish what constitutes an act for these purposes.

This bill would provide for penalties ~~of unspecified~~ *in specified* amounts, would delete the discretion of the commissioner to establish what constitutes an act for these purposes, and would authorize the commissioner to order an insurer to pay a claim associated with those violations.

(2) Existing law requires the Department of Insurance to establish a program for the mediation of disputes between insureds and insurers arising out of the 1994 Northridge earthquake. This program is authorized to continue through January 1, 2005.

This bill would expand the mediation program to disputes arising out of an event for any insured peril that involves personal lines of insurance

for residential and automobile coverage. The bill would make other changes to the mediation program.

(3) Existing law requires the commissioner to receive, investigate, and respond to complaints and inquiries relative to the handling of insurance claims by insurers.

This bill would provide that the commissioner may not decline to investigate complaints on various grounds, including that the insured is represented by an attorney or is involved in a civil action against an insurer, or that the complaint is from an attorney. The bill would also require the department to make certain information concerning these complaints public.

(4) Existing law sets forth various other duties and responsibilities of the commissioner and the department.

This bill would require the department to make public any letters and legal opinions of the department prepared in response to an inquiry from an insured or other person or entity. The bill would define the term “extraordinary circumstances” for the purpose of the department determining noncompliance with the insurance laws and regulations and determining appropriate penalties. The bill would impose limitations on the authority of the department to enter into settlement agreements referencing the existence of extraordinary circumstances for a period of more than 6 months. The bill would also require the department to adopt regulations relative to the training and accreditation of insurance adjusters in the evaluation of earthquake damage.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 790.035 of the Insurance Code is
2 amended to read:
3 790.035. (a) Any person who engages in any unfair method
4 of competition or any unfair or deceptive act or practice defined
5 in Section 790.03 is liable to the state for a civil penalty to be fixed
6 by the commissioner, not to exceed ~~_____~~ *seven thousand five*
7 *hundred* dollars ~~(\$_____)~~ *(\$7,500)* for each act, or, if the act or
8 practice was willful, a civil penalty not to exceed ~~_____~~ *fifteen*
9 *thousand* dollars ~~(\$_____)~~ *(\$15,000)* for each act. An act for these
10 purposes is a _____. However, when the issuance, amendment, or



1 servicing of a policy or endorsement is inadvertent, all of those acts
2 shall be a single act for the purpose of this section.

3 (b) The penalty imposed by this section shall be imposed by
4 and determined by the commissioner as provided by Section
5 790.05. The penalty imposed by this section is appealable by
6 means of any remedy provided by Section 12940 or by Chapter 5
7 (commencing with Section 11500) of Part 1 of Division 3 of Title
8 2 of the Government Code.

9 (c) In addition to the penalty provided in this section, the
10 commissioner may order an insurer to pay a claim. However, it
11 shall not be a defense in a private civil action that the commissioner
12 did not order an insurer to pay a claim pursuant to this subdivision.

13 SEC. 2. Section 10089.3 is added to the Insurance Code, to
14 read:

15 10089.3. The department shall adopt regulations setting forth
16 standards governing the training of insurance adjusters in
17 evaluating damage caused by earthquakes. On or before December
18 31, 2004, insurers shall train and accredit adjusters in accordance
19 with these standards. Thereafter, an insurer using one or more
20 adjusters who are not trained and accredited in accordance with
21 those standards shall submit the names of those adjusters to the
22 department, along with information concerning earthquake claims
23 those persons have adjusted.

24 SEC. 3. Section 10089.70 of the Insurance Code is amended
25 to read:

26 10089.70. The department shall maintain a program for the
27 mediation of the disputes between insured complainants and
28 insurers arising out of an event related to any insured peril. The
29 program shall apply only to personal lines of insurance related to
30 residential coverage, as defined in paragraphs (1) and (2) of
31 subdivision (a) of Section 675, and automobile coverage, as
32 defined in subdivisions (c) and (d) of Section 660. The goal of the
33 program shall be to favorably resolve a statistically significant
34 number of disputes sent to mediation under the program. This
35 chapter does not apply to any dispute that turns on a question of
36 major insurance coverage or a purely legal interpretation, or
37 disputes involving the actions of an agent or broker in which the
38 insurer is not alleged to have been responsible for the conduct, or
39 any complaint the commissioner finds to be frivolous, or any
40 dispute in which a party is alleged to have committed fraud.



1 SEC. 4. Section 10089.71 of the Insurance Code is amended
2 to read:

3 10089.71. Any insured having a dispute with an insurer under
4 a policy of residential or automobile insurance arising out any
5 qualifying event pursuant to Section 10089.70 may file a written
6 complaint with the department. The complaint shall indicate that
7 the complainant has not been able to reach a satisfactory settlement
8 of a claim with the insurer.

9 SEC. 5. Section 10089.72 of the Insurance Code is amended
10 to read:

11 10089.72. (a) The department shall notify the insurer of the
12 claim or dispute. To avoid referral to mediation, the insurer shall
13 have 28 days to resolve the dispute following notice of the dispute
14 from the department, unless the department, for good cause,
15 extends the period by an additional 7 days.

16 (b) The department may not refer an automobile claim to
17 mediation unless the claimant's bid is five thousand dollars
18 (\$5,000) or more, and the amount in dispute exceeds one thousand
19 dollars (\$1,000).

20 SEC. 6. Section 10089.73 of the Insurance Code is amended
21 to read:

22 10089.73. If the dispute is not resolved within the time period
23 prescribed by Section 10089.72, the insurer shall notify the
24 department of the failure, and may include the reason for the
25 failure. The insurer shall, within the time period prescribed by
26 Section 10089.72, notify the department of its position if it
27 believes that the dispute is not eligible for the mediation program.

28 SEC. 7. Section 10089.74 of the Insurance Code is amended
29 to read:

30 10089.74. (a) If the insurer notifies the department of the
31 failure to resolve the dispute, the department shall notify the
32 insured of the insured's ability to request mediation and ask the
33 insured whether the insured requests mediation. If the insured
34 responds affirmatively, the department shall refer the dispute to
35 mediation.

36 (b) If the insurer fails to give the required notice to the
37 department prior to the expiration of the time limits set forth in
38 Section 10089.72, the department shall notify the insured of the
39 insured's ability to request mediation and ask the insured whether
40 the insured requests mediation. If the insured responds



1 affirmatively, the department shall refer the dispute to mediation.
2 The department may not refer a dispute to mediation if the matter
3 turns upon any of the reasons or conditions set forth in Section
4 10089.70, relative to applicability, or if for other good cause the
5 commissioner determines that mediation of the dispute is
6 inappropriate.

7 (c) If the insured has filed a civil complaint, the insurer is
8 excused from mediating under this chapter any claims or disputes
9 involved in the civil action.

10 SEC. 8. Section 10089.75 of the Insurance Code is amended
11 to read:

12 10089.75. (a) Any insurer may inform an insured who has
13 filed a complaint with the department concerning a dispute arising
14 out of ~~an~~ a qualifying event of the existence of the mediation
15 program and may ask the insured to seek mediation under this
16 chapter jointly with the insurer. Any insurer may notify the
17 department of any dispute arising out of a qualifying event that it
18 believes may be appropriately resolved through the mediation
19 program. The department, with respect to that notification, shall
20 proceed as provided in subdivision (a) of Section 10089.74.

21 (b) Notwithstanding Section 10089.82, if the commissioner
22 makes a finding that an individual insurer has engaged in
23 unreasonable or arbitrary refusals to mediate, the commissioner
24 shall have the authority to require that insurer to participate in
25 mediation in all cases deemed by the commissioner appropriate for
26 mediation under this chapter.

27 (c) Any insurer who has been ordered to participate in
28 mediation on a mandatory basis may seek a review of the order by
29 filing in a court of competent jurisdiction within 30 days of the
30 order. The commissioner's order to participate in mediation,
31 however, may not be stayed during the pendency of any judicial
32 proceeding for any period beyond 60 days after the initial date of
33 the order to participate. The basis for the commissioner's decision
34 to require an insurer to participate in the mediation program shall
35 not be made public unless review is sought. The commissioner's
36 decision not to require an insurer to participate, including the basis
37 for the decision, shall be made public.

38 (d) Any insured whose request to mediate his or her claim
39 under this chapter was declined by an insurer may request the
40 commissioner to require the insurer to participate in the mediation



1 program and may seek review in a court of competent jurisdiction
2 of the commissioner's decision not to require the insurer to
3 participate in the mediation program. The review shall be required
4 to be sought within 30 days after the commissioner's decision.

5 SEC. 9. Section 10089.77 of the Insurance Code is amended
6 to read:

7 10089.77. The department shall contract with a diverse pool
8 of mediators for the provision of mediation services. The
9 contractors shall be qualified mediators who meet standards
10 established by the commissioner. The commissioner shall
11 establish standards in consultation with consumer groups,
12 policyholder groups, mediators, alternative dispute resolution
13 groups, insurers, and the State Bar. These standards shall include:

14 (a) Mandatory training that may be provided by the
15 department, which shall include, at a minimum, the legal rules for
16 insurance policy interpretation and the rights of insureds under
17 California law, and methods of determining costs of construction
18 and reconstruction and costs of automobile repair in given
19 geographical areas.

20 (b) A requirement that no mediator participating in this
21 program may have business, familial, contractual, or other
22 affiliation with, or financial interest in, the insured, or in any
23 insurer, insurance agent, or agency. For purposes of this
24 subdivision, an investment in a mutual fund that holds insurer
25 stocks is not a financial interest. Financial interest does not include
26 prior representation of, or an employment or contractual
27 relationship with a law firm or lawyer who represents, one or more
28 insurers or who represents insurance agents in connection with
29 their business affairs, provided the law firm or lawyer has not
30 previously represented any of the parties to the mediation.

31 However, any prior representation, employment, or contractual
32 relationship shall be disclosed to the parties to the mediation. If any
33 party objects to the mediator because of the prior representation,
34 employment, or contractual relationship, the department shall
35 dismiss that mediator and select a new mediator. An objection
36 under this subdivision does not limit a party's right to object once
37 under subdivision (d).

38 (c) A requirement that no mediator participating in this
39 program may be either a lawyer or an employee of a lawyer or law
40 firm that has represented any party to the mediation in the previous



1 36 months, or a person who has a business, familial, contractual,
2 or other affiliation with a lawyer or law firm that has represented
3 any party to the mediation in a lawsuit against the insurer in the last
4 36 months.

5 (d) Each party to the mediation may object once to the mediator
6 assigned by the department. If a party objects to the mediator, the
7 department shall dismiss the mediator and assign another
8 mediator.

9 SEC. 10. Section 10089.78 of the Insurance Code is amended
10 to read:

11 10089.78. Upon receipt of a complaint, the mediation service,
12 to the extent possible, shall issue a notice to the insured and the
13 insurer setting a date and time within 21 days of the date of the
14 notice for commencement of a mediation conference. The
15 mediator shall make all reasonable efforts to schedule the
16 mediation at a time agreeable to both parties. The notice shall
17 inform the parties that the cost of mediation will be borne by the
18 insurer, except to the extent provided in Section 10089.81. The
19 notice shall also state that in the event of a proposed settlement the
20 insured may have three business days in which to rescind the
21 agreement, as specified in subdivision (c) of Section 10089.82.

22 SEC. 11. Section 10089.79 of the Insurance Code is amended
23 to read:

24 10089.79. The costs of mediation shall be reasonable, and
25 shall be borne by the insurer, except as provided in Section
26 10089.81. The commissioner may set a fee not to exceed seven
27 hundred dollars (\$700) for each dispute mediated.

28 SEC. 12. Section 10089.82 of the Insurance Code is amended
29 to read:

30 10089.82. (a) An insured may not be required to use the
31 department's mediation process. An insurer may not be required
32 to use the department's mediation process, except as provided in
33 Section 10089.75.

34 (b) Neither the insurer nor the insured is required to accept an
35 agreement proposed during the mediation.

36 (c) If the parties agree to a settlement agreement, the insured
37 will have three business days to rescind the agreement.
38 Notwithstanding Chapter 2 (commencing with Section 1115) of
39 Division 9 of the Evidence Code, if the insured rescinds the
40 agreement, it may not be admitted in evidence or disclosed unless



1 the insured and all other parties to the agreement expressly agree
2 to its disclosure. If the agreement is not rescinded by the insured,
3 it is binding on the insured and the insurer, and acts as a release of
4 all specific claims for damages known at the time of the mediation
5 presented and agreed upon in the mediation conference. If counsel
6 for the insured is present at the mediation conference and a
7 settlement is agreed upon that is signed by the insured’s counsel,
8 the agreement is immediately binding on the insured and may not
9 be rescinded.

10 (d) This section does not affect rights under existing law for
11 claims for damage that were undetected at the time of the
12 settlement conference.

13 (e) All settlements reached as a result of department-referred
14 mediation shall address only those issues raised for the purpose of
15 resolution. Settlements and any accompanying releases are not
16 effective to settle or resolve any claim not addressed by the
17 mediator for the purpose of resolution, nor any claim that the
18 insured may have related to the insurer’s conduct in handling the
19 claim.

20 Referral to mediation or the pendency of a mediation under this
21 article is not a basis to prevent or stay the filing of civil litigation
22 arising in whole or in part out of the same facts. Any applicable
23 statute of limitations is tolled for the number of days beginning
24 from the notification date to the insurer until the date on which the
25 mediation is either completed or declined, or the date on which the
26 insured fails to appear for a scheduled mediation for the second
27 time, or, in the event that a settlement is completed, the expiration
28 of any applicable three business day cooling off period.

29 SEC. 13. Section 10089.83 of the Insurance Code is amended
30 to read:

31 10089.83. (a) On or before August 1, 1996, and on or before
32 August 1 of each year in which this program is in effect, the
33 commissioner shall issue a report on the status of the program in
34 the prior year, including statistics about the number of cases
35 suitable for mediation, the number sent to mediation, and the
36 number accepted, as well as declined, by the insurers, and other
37 similar information concerning the operation of the program.

38 (b) At six-month intervals, the department shall collect from
39 the mediators with which it contracts for this service the following
40 information: the number of persons to whom mediation was



1 offered, the number of insurers that accepted and declined
2 mediation, the number of settlements, and of those settlements, the
3 number rejected within the three business day cooling off period.
4 For each settlement, the mediation service shall also report the
5 amount initially claimed by the consumer and the amount agreed
6 to be paid, if any, by the insurer or other party.

7 (c) The department may adopt regulations, including reporting
8 requirements, in the commissioner's discretion, to implement this
9 chapter. The regulations shall be adopted as emergency
10 regulations pursuant to Chapter 3.5 (commencing with Section
11 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
12 The adoption of the regulations is deemed necessary for the
13 immediate preservation of the public peace, health or safety, or
14 general welfare.

15 SEC. 14. Section 10089.84 of the Insurance Code is amended
16 to read:

17 10089.84. This chapter shall remain in effect until January 1,
18 2005, and as of that date is repealed, unless a later enacted statute,
19 which is enacted before January 1, 2005, deletes or extends that
20 date. Any case referred to mediation by the department prior to
21 January 1, 2005, shall be mediated under this chapter whether or
22 not the mediation has been completed prior to January 1, 2005. No
23 later than August 1, 2004, the commissioner shall report to the
24 Governor and the Legislature on whether the program should be
25 extended, expanded, terminated, or otherwise modified and shall
26 include specific findings regarding the use of the program by
27 insureds and insurers.

28 SEC. 15. Section 12921.3 of the Insurance Code is amended
29 to read:

30 12921.3. (a) The commissioner, in person or through
31 employees of the department, shall receive complaints and
32 inquiries, investigate complaints, prosecute insurers when
33 appropriate and according to guidelines determined pursuant to
34 Section 12921.1, and respond to complaints and inquiries by
35 members of the public concerning the handling of insurance
36 claims, including but not limited to, violations of Article 10
37 (commencing with Section 1861) of Chapter 9 of Part 2 of
38 Division 1, by insurers, or alleged misconduct by insurers or
39 production agencies.



1 (b) The commissioner shall not decline to investigate
2 complaints for any of the following reasons:

3 (1) The insured is represented by an attorney in a dispute with
4 an insurer, or is in mediation or arbitration.

5 (2) The insured has a civil action against an insurer.

6 (3) The complaint is from an attorney, if the complaint is based
7 upon evidence or reasonable beliefs about violations of law known
8 to an attorney because of a civil action.

9 (c) In addition to the required summary report referenced in
10 subdivision (c) of Section 12921.1, and within 90 days of making
11 a finding that a complaint is justified pursuant to Section 12921.1,
12 the department shall release to the public the information set forth
13 in paragraphs (2), (3), and (4) of subdivision (c) of Section
14 12921.1, and any response by the insurer, but shall not include any
15 information that would identify the insured, including the name,
16 address, policy number, or other information that would tend to
17 identify the insured. An insurer shall have 30 days prior to release
18 of this information to provide a response to the department.

19 (d) The commissioner, as he or she deems appropriate, and
20 pursuant to Section 12921.1, shall provide for the education of,
21 and dissemination of information to, members of the general
22 public or licensees of the department concerning insurance
23 matters.

24 SEC. 16. Section 12921.9 is added to the Insurance Code, to
25 read:

26 12921.9. A letter or legal opinion of the department, prepared
27 in response to an inquiry from an insured or other person or entity,
28 that discusses the application of the law and regulations generally
29 or in connection with specific fact situations, shall be made public.
30 However, the department may redact the name, address, policy
31 number, and other identifying information regarding a particular
32 insured or other person or entity from the letter or legal opinion
33 when it is made public.

34 SEC. 17. Section 12926.2 is added to the Insurance Code, to
35 read:

36 12926.2. (a) As used in this section, “extraordinary
37 circumstances” means circumstances outside of the control of a
38 licensee that severely and materially affect the licensee’s ability to
39 conduct normal business operations.



1 (b) In determining noncompliance with this code and
2 regulations adopted pursuant to this code, and appropriate
3 penalties, if any, the commissioner may consider evidence
4 concerning the existence of extraordinary circumstances.

5 (c) A settlement agreement between the commissioner and an
6 insurer may not contain a provision referencing the existence of
7 extraordinary circumstances relative to the subject matter at issue,
8 unless the agreement specifies the precise period of time during
9 which extraordinary circumstances were in existence. Except as
10 provided in subdivision (d), extraordinary circumstances may not
11 be stated to exist for a duration of more than six months.

12 (d) A settlement agreement may concede the existence of
13 extraordinary circumstances for a period of time exceeding six
14 months if all of the following conditions are met:

15 (1) The commissioner makes a finding in the agreement that
16 extraordinary circumstances existed for more than six months, and
17 documents in that finding facts supporting that conclusion.

18 (2) The finding identifies the public purpose justifying the
19 extension of extraordinary circumstances beyond the six-month
20 period.

21 (3) The beginning and ending date, by month and year, of the
22 commencement and termination of the extraordinary
23 circumstances are identified.

