

AMENDED IN ASSEMBLY SEPTEMBER 5, 2001

AMENDED IN ASSEMBLY AUGUST 20, 2001

AMENDED IN ASSEMBLY JULY 18, 2001

AMENDED IN ASSEMBLY JULY 9, 2001

AMENDED IN ASSEMBLY JUNE 25, 2001

AMENDED IN SENATE JUNE 4, 2001

AMENDED IN SENATE MAY 1, 2001

**SENATE BILL**

**No. 708**

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**Introduced by Senator Speier**

February 23, 2001

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An act to amend Sections 10089.70, 10089.71, 10089.72, 10089.73, 10089.74, 10089.75, 10089.77, 10089.78, 10089.79, 10089.82, 10089.83, 10089.84, 12921.1, 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 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 extend the operation of the program until January 1, 2006, and would expand it to include disputes arising out of an event for any insured peril that involves lines of insurance for residential and automobile coverage and any other insured loss the commissioner determines would be best served by the mediation process. The bill would make other changes to the mediation program.

(2) 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.

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

This bill would require the department to make public a letter or legal opinion signed by the commissioner or the department’s chief counsel that was prepared in response to an inquiry from an insured or other person or entity and that discusses the application of the Insurance Code or regulations promulgated by the commissioner. 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 10089.3 is added to the Insurance Code,  
2 to read:  
3 10089.3. (a) The department shall adopt regulations setting  
4 forth standards governing the training of insurance adjusters in  
5 evaluating damage caused by earthquakes. For purposes of this  
6 section, the California Earthquake Authority shall make available



1 to the Department of Insurance the standards used by the authority  
2 in order for the department to develop regulations that are  
3 consistent with the authority's standards. On or before December  
4 31, 2004, insurers shall train and accredit adjusters in accordance  
5 with these standards. Thereafter, an insurer using one or more  
6 adjusters who are not trained and accredited in accordance with  
7 those standards shall submit the names of those adjusters to the  
8 department, along with the claim number of the claim adjusted by  
9 that adjuster. An adjuster trained and accredited by one insurer  
10 pursuant to this section shall not be required to receive training and  
11 accreditation again in order to adjust claims for a different insurer.  
12 An insurer using an adjuster who has been trained and accredited  
13 by another insurer pursuant to this section shall not be required to  
14 submit the name of that adjuster to the department.

15 (b) For purposes of this section, "insurance adjuster" shall  
16 include the following persons:

17 (1) Persons licensed pursuant to Chapter 1 (commencing with  
18 Section 14000) of Division 5.

19 (2) Employees of persons licensed pursuant to Chapter 1  
20 (commencing with Section 14000) of Division 5 who perform  
21 insurance adjusting activities as defined in Section 14021.

22 (3) Employees of an insurer who perform insurance adjusting  
23 activities as defined in Section 14021.

24 SEC. 2. Section 10089.70 of the Insurance Code is amended  
25 to read:

26 10089.70. The department shall establish a program for the  
27 mediation of the disputes between insured complainants and  
28 insurers arising out of the Northridge earthquake of 1994 or any  
29 subsequent earthquake, and disputes arising under automobile  
30 collision coverage or automobile physical damage coverage, in a  
31 policy as defined in Section 660. The program, with respect to the  
32 mediation of earthquake insurance claims, shall only apply to  
33 personal lines of insurance related to residential coverage. The  
34 goal of the program shall be to favorably resolve a statistically  
35 significant number of disputes sent to mediation under the  
36 program. This chapter does not apply to any dispute that turns on  
37 a question of major insurance coverage or a purely legal  
38 interpretation, or disputes involving the actions of an agent or  
39 broker in which the insurer is not alleged to have been responsible  
40 for the conduct, or any complaint the commissioner finds to be



1 frivolous, or any dispute in which a party is alleged to have  
2 committed fraud.

3 SEC. 3. Section 10089.71 of the Insurance Code is amended  
4 to read:

5 10089.71. Any insured having a dispute with an insurer under  
6 a policy that qualifies for this program may file a written complaint  
7 with the department. The complaint shall indicate that the  
8 complainant has not been able to reach a satisfactory settlement of  
9 a claim with the insurer. The department shall, if deemed  
10 appropriate, notify the insurer against whom the complaint is made  
11 of the nature of the complaint, may request appropriate relief for  
12 the complainant, and may meet and confer with the complainant  
13 and the insurer in order to attempt resolution of the dispute.

14 SEC. 4. Section 10089.72 of the Insurance Code is amended  
15 to read:

16 10089.72. (a) If, after the department's intervention, the  
17 insurer and the insured do not reach agreement, the department  
18 may notify the insurer that in order to avoid referral to mediation,  
19 the insurer shall have 28 calendar days to resolve the dispute,  
20 unless the department, for good cause, extends the period by an  
21 additional 7 calendar days.

22 (b) The department may not refer a claim to mediation unless  
23 the amount claimed by the insured exceeds seven thousand five  
24 hundred dollars (\$7,500) and the amount in dispute exceeds two  
25 thousand dollars (\$2,000).

26 SEC. 5. Section 10089.73 of the Insurance Code is amended  
27 to read:

28 10089.73. If the dispute is not resolved within the time period  
29 prescribed by Section 10089.72, the insurer shall notify the  
30 department of the failure, and may include the reason for the  
31 failure. The insurer shall, within the time period prescribed by  
32 Section 10089.72, notify the department of its position if it  
33 believes that the dispute is not eligible for the mediation program.

34 SEC. 6. Section 10089.74 of the Insurance Code is amended  
35 to read:

36 10089.74. (a) If the insurer notifies the department of the  
37 failure to resolve the dispute, the department shall notify the  
38 insured of the insured's ability to request mediation and ask the  
39 insured whether the insured requests mediation. If the insured



1 responds affirmatively, the department shall refer the dispute to  
2 mediation.

3 (b) If the insurer fails to give the required notice to the  
4 department prior to the expiration of the time limits set forth in  
5 Section 10089.72, the department shall notify the insured of the  
6 insured's ability to request mediation and ask the insured whether  
7 the insured requests mediation. If the insured responds  
8 affirmatively, the department shall refer the dispute to mediation.  
9 The department may not refer a dispute to mediation if the matter  
10 turns upon any of the reasons or conditions set forth in Section  
11 10089.70, relative to applicability, or if for other good cause the  
12 commissioner determines that mediation of the dispute is  
13 inappropriate.

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

17 SEC. 7. Section 10089.75 of the Insurance Code is amended  
18 to read:

19 10089.75. (a) Any insurer may inform an insured who has  
20 filed a complaint with the department concerning a dispute that  
21 qualifies for this program of the existence of the mediation  
22 program and may ask the insured to seek mediation under this  
23 chapter jointly with the insurer. Any insurer may notify the  
24 department of any dispute arising out of a qualifying event that it  
25 believes may be appropriately resolved through the mediation  
26 program. The department, with respect to that notification, shall  
27 proceed as provided in subdivision (a) of Section 10089.74.

28 (b) Notwithstanding Section 10089.82, if the commissioner  
29 makes a finding that an individual insurer has engaged in  
30 unreasonable or arbitrary refusals to mediate, the commissioner  
31 shall have the authority to require that insurer to participate in  
32 mediation in all cases deemed by the commissioner appropriate for  
33 mediation under this chapter.

34 (c) Any insurer who has been ordered to participate in  
35 mediation on a mandatory basis may seek a review of the order by  
36 filing in a court of competent jurisdiction within 30 calendar days  
37 of the order. The commissioner's order to participate in mediation,  
38 however, may not be stayed during the pendency of any judicial  
39 proceeding for any period beyond 60 calendar days after the initial  
40 date of the order to participate. The basis for the commissioner's



1 decision to require an insurer to participate in the mediation  
2 program shall not be made public unless review is sought. The  
3 commissioner's decision not to require an insurer to participate,  
4 including the basis for the decision, shall be made public.

5 (d) Any insured whose request to mediate his or her claim  
6 under this chapter was declined by an insurer may request the  
7 commissioner to require the insurer to participate in the mediation  
8 program and may seek review in a court of competent jurisdiction  
9 of the commissioner's decision not to require the insurer to  
10 participate in the mediation program. The review shall be required  
11 to be sought within 30 calendar days after the commissioner's  
12 decision.

13 SEC. 8. Section 10089.77 of the Insurance Code is amended  
14 to read:

15 10089.77. The department shall contract with a diverse pool  
16 of mediators for the provision of mediation services. The  
17 contractors shall be qualified mediators who meet standards  
18 established by the commissioner. The commissioner shall  
19 establish standards in consultation with consumer groups,  
20 policyholder groups, mediators, alternative dispute resolution  
21 groups, insurers, and the State Bar. These standards shall include:

22 (a) Mandatory training that may be provided by the  
23 department, which shall include, at a minimum, the legal rules for  
24 insurance policy interpretation and the rights of insureds under  
25 California law, and methods of determining costs of construction  
26 and reconstruction and costs of automobile repair in given  
27 geographical areas.

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

39 However, any prior representation, employment, or contractual  
40 relationship shall be disclosed to the parties to the mediation. If any



1 party objects to the mediator because of the prior representation,  
2 employment, or contractual relationship, the department shall  
3 dismiss that mediator and select a new mediator. An objection  
4 under this subdivision does not limit a party's right to object once  
5 under subdivision (d).

6 (c) A requirement that no mediator participating in this  
7 program may be either a lawyer or an employee of a lawyer or law  
8 firm that has represented any party to the mediation in the previous  
9 36 months, or a person who has a business, familial, contractual,  
10 or other affiliation with a lawyer or law firm that has represented  
11 any party to the mediation in a lawsuit against the insurer in the last  
12 36 months.

13 (d) Each party to the mediation may object once to the mediator  
14 assigned by the department. If a party objects to the mediator, the  
15 department shall dismiss the mediator and assign another  
16 mediator.

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

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

30 SEC. 10. Section 10089.79 of the Insurance Code is amended  
31 to read:

32 10089.79. (a) The costs of mediation shall be reasonable, and  
33 shall be borne by the insurer, except as provided in Section  
34 10089.81. The commissioner may set a fee not to exceed seven  
35 hundred dollars (\$700) for each dispute mediated.

36 ~~(b) The mediation program shall only begin if it is funded~~  
37 ~~through an appropriation made in the annual Budget Act. This~~  
38 ~~appropriation shall be repaid, under a plan approved through the~~  
39 ~~annual Budget Act, by the fees established in subdivision (a).~~



1 (b) *The administrative expenses for the mediation program*  
2 *shall be paid from existing resources available to the department.*  
3 *If additional resources are required by the department, those*  
4 *resources shall be made available by an annual appropriation in*  
5 *the Budget Act.*

6 SEC. 11. Section 10089.82 of the Insurance Code is amended  
7 to read:

8 10089.82. (a) An insured may not be required to use the  
9 department's mediation process. An insurer may not be required  
10 to use the department's mediation process, except as provided in  
11 Section 10089.75.

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

14 (c) If the parties agree to a settlement agreement, the insured  
15 will have three business days to rescind the agreement.  
16 Notwithstanding Chapter 2 (commencing with Section 1115) of  
17 Division 9 of the Evidence Code, if the insured rescinds the  
18 agreement, it may not be admitted in evidence or disclosed unless  
19 the insured and all other parties to the agreement expressly agree  
20 to its disclosure. If the agreement is not rescinded by the insured,  
21 it is binding on the insured and the insurer, and acts as a release of  
22 all specific claims for damages known at the time of the mediation  
23 presented and agreed upon in the mediation conference. If counsel  
24 for the insured is present at the mediation conference and a  
25 settlement is agreed upon that is signed by the insured's counsel,  
26 the agreement is immediately binding on the insured and may not  
27 be rescinded.

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

31 (e) All settlements reached as a result of department-referred  
32 mediation shall address only those issues raised for the purpose of  
33 resolution. Settlements and any accompanying releases are not  
34 effective to settle or resolve any claim not addressed by the  
35 mediator for the purpose of resolution, nor any claim that the  
36 insured may have related to the insurer's conduct in handling the  
37 claim.

38 Referral to mediation or the pendency of a mediation under this  
39 article is not a basis to prevent or stay the filing of civil litigation  
40 arising in whole or in part out of the same facts. Any applicable



1 statute of limitations is tolled for the number of days beginning  
2 from the notification date to the insurer pursuant to Section  
3 10089.72, until the date on which the mediation is either  
4 completed or declined, or the date on which the insured fails to  
5 appear for a scheduled mediation for the second time, or, in the  
6 event that a settlement is completed, the expiration of any  
7 applicable three business day cooling off period.

8 SEC. 12. Section 10089.83 of the Insurance Code is amended  
9 to read:

10 10089.83. (a) On or before August 1 of each year in which  
11 this program is in effect, the commissioner shall issue a report on  
12 the status of the program in the prior year, including statistics about  
13 the number of cases suitable for mediation, the number sent to  
14 mediation, and the number accepted, as well as declined, by the  
15 insurers, and other similar information concerning the operation  
16 of the program.

17 (b) At six-month intervals, the department shall collect from  
18 the mediators with which it contracts for this service the following  
19 information: the number of persons to whom mediation was  
20 offered, the number of insurers that accepted and declined  
21 mediation, the number of settlements, and of those settlements, the  
22 number rejected within the three business day cooling off period.  
23 For each settlement, the mediation service shall also report the  
24 amount initially claimed by the consumer and the amount agreed  
25 to be paid, if any, by the insurer or other party.

26 (c) The department may adopt regulations, including reporting  
27 requirements, in the commissioner's discretion, to implement this  
28 chapter. The regulations shall be adopted as emergency  
29 regulations pursuant to Chapter 3.5 (commencing with Section  
30 11340) of Part 1 of Division 3 of Title 2 of the Government Code.  
31 The adoption of the regulations is deemed necessary for the  
32 immediate preservation of the public peace, health or safety, or  
33 general welfare.

34 SEC. 13. Section 10089.84 of the Insurance Code is amended  
35 to read:

36 10089.84. This chapter shall remain in effect until January 1,  
37 2006, and as of that date is repealed, unless a later enacted statute,  
38 which is enacted before January 1, 2006, deletes or extends that  
39 date. Any case referred to mediation by the department prior to  
40 January 1, 2006, shall be mediated under this chapter whether or



1 not the mediation has been completed prior to January 1, 2006. No  
2 later than October 1, 2004, the commissioner shall report to the  
3 Governor and the Legislature on whether the program should be  
4 extended, expanded, terminated, or otherwise modified and shall  
5 include specific findings regarding the use of the program by  
6 insureds and insurers.

7 SEC. 14. Section 12921.1 of the Insurance Code is amended  
8 to read:

9 12921.1. (a) The commissioner shall establish a program on  
10 or before July 1, 1991, to investigate complaints and respond to  
11 inquiries received pursuant to Section 12921.3, to comply with  
12 Section 12921.4, and, when warranted, to bring enforcement  
13 actions against insurers. The program shall include, but not be  
14 limited to, the following:

15 (1) A toll-free number published in telephone books  
16 throughout the state, dedicated to the handling of complaints and  
17 inquiries.

18 (2) Public service announcements to inform consumers of the  
19 toll-free telephone number and how to register a complaint or  
20 make an inquiry to the department.

21 (3) A simple, standardized complaint form designed to assure  
22 that complaints will be properly registered and tracked.

23 (4) Retention of records on complaints for at least three years  
24 after the complaint has been closed.

25 (5) Guidelines to disseminate complaint and enforcement  
26 information on individual insurers to the public, that shall include,  
27 but not be limited to, the following:

28 (A) License status.

29 (B) Number and type of complaints closed within the last full  
30 calendar year, with analogous statistics from the prior two years  
31 for comparison. The proportion of those complaints determined by  
32 the department to require that corrective action be taken against the  
33 insurer, or leading to insurer compromise, or other remedy for the  
34 complainant, as compared to those that are found to be without  
35 merit. This information shall be disseminated in a fashion that will  
36 facilitate identification of meritless complaints and discourage  
37 their consideration by consumers and others interested in the  
38 records of insurers.

39 (C) Number and type of violations found, by reference to the  
40 line of insurance and the law violated.



1 (D) Number and type of enforcement actions taken.

2 (E) Ratio of complaints received to total policies in force, or  
3 premium dollars paid in a given line, or both. Private passenger  
4 automobile insurance ratios shall be calculated as the number of  
5 complaints received to total car years earned in the period studied.

6 (F) Any other information the department deems is appropriate  
7 public information regarding the complaint record of the insurer  
8 that will assist the public in selecting an insurer. However, nothing  
9 in this section shall be construed to permit disclosure of  
10 information or documents in the possession of the department to  
11 the extent that the information and those documents are protected  
12 from disclosure under any other provision of law.

13 (6) Procedures and average processing times for each step of  
14 complaint mediation, investigation, and enforcement. These  
15 procedures shall be consistent with those in Article 6.5  
16 (commencing with Section 790) of Chapter 1 of Part 2 of Division  
17 1 for complaints within the purview of that article, consistent with  
18 those in Article 7 (commencing with Section 1858) of Chapter 9  
19 of Part 2 of Division 1 for complaints within the purview of that  
20 article, and consistent with any other provisions of law requiring  
21 certain procedures to be followed by the department in  
22 investigating or prosecuting complaints against insurers.

23 (7) A list of criteria to determine which violations should be  
24 pursued through enforcement action, and enforcement guidelines  
25 that set forth appropriate penalties for violations based on the  
26 nature, severity, and frequency of the violations.

27 (8) Referral of complaints not within the department's  
28 jurisdiction to appropriate public and private agencies.

29 (9) Complaint handling goals that can be tested against surveys  
30 carried out pursuant to subdivision (a) of Section 12921.4.

31 (10) Inclusion in its annual report to the Governor, required by  
32 Section 12922, detailed information regarding the program  
33 required by this section, that shall include, but not be limited to:  
34 a description of the operation of the complaint handling process,  
35 listing civil, criminal, and administrative actions taken pursuant to  
36 complaints received; the percentage of the department's personnel  
37 years devoted to the handling and resolution of complaints; and  
38 suggestions for legislation to improve the complaint handling  
39 apparatus and to increase the amount of enforcement action  
40 undertaken by the department pursuant to complaints if further



1 enforcement is deemed necessary to insure proper compliance by  
2 insurers with the law.

3 (b) The commissioner shall promulgate a regulation that sets  
4 forth the criteria that the department shall apply to determine if a  
5 complaint is deemed to be justified prior to the public release of  
6 a complaint against a specifically named insurer.

7 (c) The commissioner shall provide to the insurer a description  
8 of any complaint against the insurer that the commissioner has  
9 received and has deemed to be justified at least 30 days prior to  
10 public release of a report summarizing the information required by  
11 this section. This description shall include all of the following:

12 (1) The name of the complainant.

13 (2) The date the complaint was filed.

14 (3) A succinct description of the facts of the complaint.

15 (4) A statement of the department's rationale for determining  
16 that the complaint was justified that applies the department's  
17 criteria to the facts of the complaint.

18 (d) An insurer shall provide to the department the name,  
19 mailing address, telephone number, and facsimile number of a  
20 person whom the insurer designates as the recipient of all notices,  
21 correspondence, and other contacts from the department  
22 concerning complaints described in this section. The insurer may  
23 change the designation at any time by providing written notice to  
24 the Consumer Services Division of the department.

25 (e) For the purposes of this section, notices, correspondence,  
26 and other contacts with the designated person shall be deemed  
27 contact with the insurer.

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 (4) The commissioner may defer the investigation until the  
10 finality of a dispute, mediation, arbitration, or civil action  
11 involving the claim is known.

12 (c) The commissioner, as he or she deems appropriate, and  
13 pursuant to Section 12921.1, shall provide for the education of,  
14 and dissemination of information to, members of the general  
15 public or licensees of the department concerning insurance  
16 matters.

17 SEC. 16. Section 12921.9 is added to the Insurance Code, to  
18 read:

19 12921.9. (a) A letter or legal opinion signed by the  
20 Commissioner or the Chief Counsel of the Department of  
21 Insurance that was prepared in response to an inquiry from an  
22 insured or other person or entity and that discusses either generally  
23 or in connection with a specific fact situation the application of the  
24 Insurance Code or regulations promulgated by the commissioner  
25 shall be made public. The department may redact the name,  
26 address, policy number, and other identifying information  
27 regarding a particular insured or other person or entity from the  
28 letter or legal opinion when it is made public.

29 (b) A letter or legal opinion made public pursuant to this section  
30 shall not be construed as establishing an agency guideline,  
31 criterion, bulletin, manual, instruction, order, standard of general  
32 application, rule, or regulation, as those terms are described in  
33 Sections 11340.5 and 11342.600 of the Government Code.

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.

