

**Introduced by Senator Speier**

February 23, 2001

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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 introduced, 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 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 ~~five thousand~~ \_\_\_\_ dollars  
7 ~~(\$5,000)~~ (\$\_\_\_\_) for each act, or, if the act or practice was willful,  
8 a civil penalty not to exceed ~~ten thousand~~ \_\_\_\_ dollars ~~(\$10,000)~~  
9 (\$\_\_\_\_) for each act. ~~The commissioner shall have the discretion~~  
10 ~~to establish what constitutes an act~~ *An act for these purposes is a*  
11 \_\_\_\_\_. However, when the issuance, amendment, or servicing of a



1 policy or endorsement is inadvertent, all of those acts shall be a  
2 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*  
12 *commissioner did not order an insurer to pay a claim pursuant to*  
13 *this subdivision.*

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

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

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

27 10089.70. The department shall ~~establish~~ *maintain* a program  
28 for the mediation of the disputes between insured complainants  
29 and insurers arising out of ~~the Northridge Earthquake of 1994 or~~  
30 ~~any subsequent earthquake~~ *an event related to any insured peril.*  
31 The program shall apply only to personal lines of insurance related  
32 to residential coverage, *as defined in paragraphs (1) and (2) of*  
33 *subdivision (a) of Section 675, and automobile coverage, as*  
34 *defined in subdivisions (c) and (d) of Section 660. The goal of the*  
35 *program shall be to favorably resolve a statistically significant*  
36 *number of disputes sent to mediation under the program. This*  
37 *chapter does not apply to any dispute that turns on a question of*  
38 *major insurance coverage or a purely legal interpretation, or*  
39 *disputes involving the actions of an agent or broker in which the*  
40 *insurer is not alleged to have been responsible for the conduct, or*



1 any complaint the commissioner finds to be frivolous, or any  
2 dispute in which a party is alleged to have committed fraud.

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

5 10089.71. Any ~~person~~ *insured* having a dispute with an  
6 insurer under a policy of residential *or automobile* insurance  
7 arising out of the Northridge earthquake of 1994 or any subsequent  
8 earthquake *any qualifying event pursuant to Section 10089.70*  
9 may file a written complaint with the department. The complaint  
10 shall indicate that the complainant has not been able to reach a  
11 satisfactory settlement of a claim with the insurer.

12 SEC. 5. Section 10089.72 of the Insurance Code is amended  
13 to read:

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

19 (b) *The department may not refer an automobile claim to*  
20 *mediation unless the claimant's bid is five thousand dollars*  
21 *(\$5,000) or more, and the amount in dispute exceeds one thousand*  
22 *dollars (\$1,000).*

23 SEC. 6. Section 10089.73 of the Insurance Code is amended  
24 to read:

25 10089.73. If the dispute is not resolved within the time period  
26 prescribed by Section 10089.72, the insurer shall notify the  
27 department of the failure, and may include the reason for the  
28 failure. ~~The insurer may at that time notify the department of its~~  
29 ~~position with respect to the dispute shall, within the time period~~  
30 *prescribed by Section 10089.72, notify the department of its*  
31 *position if it believes that the dispute is not eligible for the*  
32 *mediation program.*

33 SEC. 7. Section 10089.74 of the Insurance Code is amended  
34 to read:

35 10089.74. (a) If the insurer notifies the department of the  
36 failure to resolve the dispute, the department shall notify the  
37 insured of the insured's ability to request mediation and ask the  
38 insured whether the insured requests mediation. If the insured  
39 responds affirmatively, the department shall refer the dispute to  
40 mediation.



1 (b) If the insurer fails to give the required notice to the  
2 department prior to the expiration of the time limits set forth in  
3 Section 10089.72, the department shall notify the insured of the  
4 insured's ability to request mediation and ask the insured whether  
5 the insured requests mediation. If the insured responds  
6 affirmatively, the department shall refer the dispute to mediation.  
7 The department may not refer a dispute to mediation if the matter  
8 turns upon a ~~question of major insurance coverage, a purely legal~~  
9 ~~interpretation, the actions of an agent or broker in which the~~  
10 ~~insurer is not alleged to have been responsible for the conduct, or~~  
11 ~~if a party is alleged to have committed fraud, any complaint the~~  
12 ~~commissioner finds to be frivolous~~ *any of the reasons or*  
13 *conditions set forth in Section 10089.70, relative to applicability,*  
14 or if for other good cause the commissioner determines that  
15 mediation of the dispute is inappropriate.

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

19 SEC. 8. Section 10089.75 of the Insurance Code is amended  
20 to read:

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

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

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



1 proceeding for any period beyond 60 days after the initial date of  
2 the order to participate. The basis for the commissioner's decision  
3 to require an insurer to participate in the mediation program shall  
4 not be made public unless review is sought. The commissioner's  
5 decision not to require an insurer to participate, including the basis  
6 for the decision, shall be made public.

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

14 SEC. 9. Section 10089.77 of the Insurance Code is amended  
15 to read:

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

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

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



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

8 (c) A requirement that no mediator participating in this  
9 program may be either a lawyer or an employee of a lawyer or law  
10 firm that has represented any party to the mediation in the previous  
11 36 months, or a person who has a business, familial, contractual,  
12 or other affiliation with a lawyer or law firm that has represented  
13 any party to the mediation in a lawsuit against the insurer in the last  
14 36 months.

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

19 ~~(e) In selecting mediators, the department shall give priority to~~  
20 ~~mediators who bid less than four hundred dollars (\$400) while~~  
21 ~~offering complete and cost-effective mediation services. In~~  
22 ~~addition, the department may use, on a pro bono basis, mediators~~  
23 ~~who meet the standards of the program.~~

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

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

37 SEC. 11. Section 10089.79 of the Insurance Code is amended  
38 to read:

39 10089.79. The costs of mediation shall be reasonable, and  
40 shall be borne by the insurer, except as provided in Section



1 10089.81. The commissioner may set a fee not to exceed ~~four~~  
2 *seven* hundred dollars (~~\$400~~) (*\$700*) for each dispute mediated.

3 SEC. 12. Section 10089.82 of the Insurance Code is amended  
4 to read:

5 10089.82. (a) An insured may not be required to use the  
6 department's mediation process. An insurer may not be required  
7 to use the department's mediation process, except as provided in  
8 Section 10089.75.

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

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

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

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

35 Referral to mediation or the pendency of a mediation under this  
36 article is not a basis to prevent or stay the filing of civil litigation  
37 arising in whole or in part out of the same facts. Any applicable  
38 statute of limitations is tolled for the number of days beginning  
39 from the ~~referral to mediation~~ *notification date to the insurer* until  
40 the date on which the mediation is either completed or declined,



1 or the date on which the insured fails to appear for a scheduled  
2 mediation for the second time, or, in the event that a settlement is  
3 completed, the expiration of any applicable three business day  
4 cooling off period.

5 SEC. 13. Section 10089.83 of the Insurance Code is amended  
6 to read:

7 10089.83. (a) On or before August 1, 1996, and on or before  
8 August 1 of each ~~succeeding~~ year in which this program is in  
9 effect, the commissioner shall issue a report on the status of the  
10 program in the prior year, including statistics about the number of  
11 cases suitable for mediation, the number sent to mediation, and the  
12 number accepted, as well as declined, by the insurers, and other  
13 similar information concerning the operation of the program.

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

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

31 SEC. 14. Section 10089.84 of the Insurance Code is amended  
32 to read:

33 10089.84. This chapter shall remain in effect until January 1,  
34 2005, and as of that date is repealed, unless a later enacted statute,  
35 which is enacted before January 1, 2005, deletes or extends that  
36 date. Any case referred to mediation by the department prior to  
37 January 1, 2005, shall be mediated under this chapter whether or  
38 not the mediation has been completed prior to January 1, 2005. No  
39 later than August 1, 2004, the commissioner shall report to the  
40 Governor and the Legislature on whether the ~~pilot~~ program should



1 be extended, expanded, terminated, or otherwise modified and  
2 shall include specific findings regarding the use of the program by  
3 insureds and insurers.

4 SEC. 15. Section 12921.3 of the Insurance Code is amended  
5 to read:

6 12921.3. (a) The commissioner, in person or through  
7 employees of the department, shall receive complaints and  
8 inquiries, investigate complaints, prosecute insurers when  
9 appropriate and according to guidelines determined pursuant to  
10 ~~subdivision (g)~~ of Section 12921.1, and respond to complaints and  
11 inquiries by members of the public concerning the handling of  
12 insurance claims, including but not limited to, violations of Article  
13 10 (commencing with Section 1861) of Chapter 9 of Part 2 of  
14 Division 1, by insurers, or alleged misconduct by insurers or  
15 production agencies.

16 (b) *The commissioner shall not decline to investigate*  
17 *complaints for any of the following reasons:*

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

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

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

24 (c) *In addition to the required summary report referenced in*  
25 *subdivision (c) of Section 12921.1, and within 90 days of making*  
26 *a finding that a complaint is justified pursuant to Section 12921.1,*  
27 *the department shall release to the public the information set forth*  
28 *in paragraphs (2), (3), and (4) of subdivision (c) of Section*  
29 *12921.1, and any response by the insurer, but shall not include any*  
30 *information that would identify the insured, including the name,*  
31 *address, policy number, or other information that would tend to*  
32 *identify the insured. An insurer shall have 30 days prior to release*  
33 *of this information to provide a response to the department.*

34 (d) The commissioner, as he or she deems appropriate, and  
35 pursuant to Section 12921.1, shall provide for the education of,  
36 and dissemination of information to, members of the general  
37 public or licensees of the department concerning insurance  
38 matters.

39 SEC. 16. Section 12921.9 is added to the Insurance Code, to  
40 read:



1 12921.9. A letter or legal opinion of the department, prepared  
2 in response to an inquiry from an insured or other person or entity,  
3 that discusses the application of the law and regulations generally  
4 or in connection with specific fact situations, shall be made public.  
5 However, the department may redact the name, address, policy  
6 number, and other identifying information regarding a particular  
7 insured or other person or entity from the letter or legal opinion  
8 when it is made public.

9 SEC. 17. Section 12926.2 is added to the Insurance Code, to  
10 read:

11 12926.2. (a) As used in this section, “extraordinary  
12 circumstances” means circumstances outside of the control of a  
13 licensee that severely and materially affect the licensee’s ability to  
14 conduct normal business operations.

15 (b) In determining noncompliance with this code and  
16 regulations adopted pursuant to this code, and appropriate  
17 penalties, if any, the commissioner may consider evidence  
18 concerning the existence of extraordinary circumstances.

19 (c) A settlement agreement between the commissioner and an  
20 insurer may not contain a provision referencing the existence of  
21 extraordinary circumstances relative to the subject matter at issue,  
22 unless the agreement specifies the precise period of time during  
23 which extraordinary circumstances were in existence. Except as  
24 provided in subdivision (d), extraordinary circumstances may not  
25 be stated to exist for a duration of more than six months.

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

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

32 (2) The finding identifies the public purpose justifying the  
33 extension of extraordinary circumstances beyond the six-month  
34 period.

35 (3) The beginning and ending date, by month and year, of the  
36 commencement and termination of the extraordinary  
37 circumstances are identified.

