

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

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, *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 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 require the commissioner to adopt regulations regarding the conduct that constitutes an act for these purposes, and would authorize the commissioner to order an insurer to pay restitution 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 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.

~~(3)~~

(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. The bill would also require the department to make certain information concerning these complaints public.

~~(4)~~

(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 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 hundred
7 dollars (\$7,500) for each act, or, if the act or practice was willful,
8 a civil penalty not to exceed fifteen thousand dollars (\$15,000) for
9 each act.

10 (b) ~~The commissioner shall have the discretion to establish~~
11 ~~what constitutes an act. In exercising that discretion, the~~
12 ~~commissioner shall adopt regulations providing criteria to be~~
13 ~~applied in making that determination and in establishing the~~
14 ~~penalty to be imposed. Those criteria shall include, at a minimum,~~
15 ~~those factors to be considered in determining that an act is willful,~~
16 ~~consideration of the severity of the detriment to the public caused~~
17 ~~by the act, the relative number of claims where acts are found to~~
18 ~~exist when contrasted to the total number of claims reviewed by~~
19 ~~the department for the relevant time period, and the existence or~~
20 ~~nonexistence of previous violations of Section 790.03 by the~~
21 ~~insurer. However, when the issuance, amendment, or servicing of~~
22 ~~a policy or endorsement is inadvertent, all of those acts shall be a~~
23 ~~single act for the purpose of this section.~~

24 (c) ~~The penalty imposed by this section shall be imposed by and~~
25 ~~determined by the commissioner as provided by Section 790.05.~~
26 ~~The penalty imposed by this section is appealable by means of any~~
27 ~~remedy provided by Section 12940 or by Chapter 5 (commencing~~
28 ~~with Section 11500) of Part 1 of Division 3 of Title 2 of the~~
29 ~~Government Code.~~

30 (d) ~~In addition to the penalty provided in this section, the~~
31 ~~commissioner may, by way of settlement or by decision after~~
32 ~~hearing, order the payment of restitution to individual insureds or~~
33 ~~claimants or to designated classes of insureds or claimants upon~~
34 ~~the terms and conditions that the commissioner in the reasonable~~
35 ~~exercise of discretion may require. However, it shall not be a~~
36 ~~defense in a private civil action that the commissioner did not order~~
37 ~~the payment of restitution to individual insureds or claimants or to~~



1 ~~designated classes of insureds or claimants pursuant to this~~
2 ~~subdivision.~~

3 ~~SEC. 2.~~ Section 10089.3 is added to the Insurance Code, to
4 read:

5 10089.3. (a) The department shall adopt regulations setting
6 forth standards governing the training of insurance adjusters in
7 evaluating damage caused by earthquakes. *For purposes of this*
8 *section, the California Earthquake Authority shall make available*
9 *to the Department of Insurance the standards used by the authority*
10 *in order for the department to develop regulations that are*
11 *consistent with the authority's standards.* On or before December
12 31, 2004, insurers shall train and accredit adjusters in accordance
13 with these standards. Thereafter, an insurer using one or more
14 adjusters who are not trained and accredited in accordance with
15 those standards shall submit the names of those adjusters to the
16 department, along with ~~information concerning earthquake claims~~
17 ~~those persons have adjusted.~~ *the claim number of the claim*
18 *adjusted by that adjuster.*

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

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

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

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

28 ~~SEC. 3.~~

29 ~~SEC. 2.~~ Section 10089.70 of the Insurance Code is amended
30 to read:

31 10089.70. The department shall establish ~~and maintain a~~
32 ~~mediation program, consistent with Section 10089.79, for the~~
33 ~~mediation of the disputes between insured complainants and~~
34 ~~insurers arising out of any event that results from an insured peril.~~
35 ~~The program shall apply only to lines of insurance related to~~
36 ~~residential coverage, as defined in paragraphs (1) and (2) of~~
37 ~~subdivision (a) of Section 675, collision and automobile physical~~
38 ~~damage coverage, as defined in subdivisions (c) and (d) of Section~~
39 ~~660, and any other insured property loss that the commissioner~~
40 ~~determines would be best served by the mediation process a~~



1 *program for the mediation of the disputes between insured*
2 *complainants and insurers arising out of the Northridge*
3 *Earthquake of 1994 or any subsequent earthquake, and collision*
4 *and automobile physical damage coverage, as defined in*
5 *subdivisions (c) and (d) of Section 660. The program, with respect*
6 *to the mediation of earthquake insurance claims, shall only apply*
7 *to personal lines of insurance related to residential coverage. The*
8 *goal of the program shall be to favorably resolve a statistically*
9 *significant number of disputes sent to mediation under the*
10 *program. This chapter does not apply to any dispute that turns on*
11 *a question of major insurance coverage or a purely legal*
12 *interpretation, or disputes involving the actions of an agent or*
13 *broker in which the insurer is not alleged to have been responsible*
14 *for the conduct, or any complaint the commissioner finds to be*
15 *frivolous, or any dispute in which a party is alleged to have*
16 *committed fraud.*

17 ~~SEC. 4.~~

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

20 10089.71. Any insured having a dispute with an insurer under
21 a policy that qualifies for this program may file a written complaint
22 with the department. The complaint shall indicate that the
23 complainant has not been able to reach a satisfactory settlement of
24 a claim with the insurer. The department shall, if deemed
25 appropriate, notify the insurer against whom the complaint is made
26 of the nature of the complaint, may request appropriate relief for
27 the complainant, and may meet and confer with the complainant
28 and the insurer in order to attempt resolution of the dispute.

29 ~~SEC. 5.~~

30 SEC. 4. Section 10089.72 of the Insurance Code is amended
31 to read:

32 10089.72. (a) If, after the department's intervention, the
33 insurer and the insured do not reach agreement, the department
34 may notify the insurer that in order to avoid referral to mediation,
35 the insurer shall have 28 calendar days to resolve the dispute
36 ~~following notice of the dispute from the department~~, unless the
37 department, for good cause, extends the period by an additional 7
38 calendar days.

39 (b) The department may not refer a claim to mediation unless
40 the amount claimed by the insured exceeds seven thousand five



1 hundred dollars (\$7,500) and the amount in dispute exceeds two
2 thousand dollars (\$2,000).

3 ~~SEC. 6.~~

4 *SEC. 5.* Section 10089.73 of the Insurance Code is amended
5 to read:

6 10089.73. If the dispute is not resolved within the time period
7 prescribed by Section 10089.72, the insurer shall notify the
8 department of the failure, and may include the reason for the
9 failure. The insurer shall, within the time period prescribed by
10 Section 10089.72, notify the department of its position if it
11 believes that the dispute is not eligible for the mediation program.

12 ~~SEC. 7.~~

13 *SEC. 6.* Section 10089.74 of the Insurance Code is amended
14 to read:

15 10089.74. (a) If the insurer notifies the department of the
16 failure to resolve the dispute, the department shall notify the
17 insured of the insured’s ability to request mediation and ask the
18 insured whether the insured requests mediation. If the insured
19 responds affirmatively, the department shall refer the dispute to
20 mediation.

21 (b) If the insurer fails to give the required notice to the
22 department prior to the expiration of the time limits set forth in
23 Section 10089.72, the department shall notify the insured of the
24 insured’s ability to request mediation and ask the insured whether
25 the insured requests mediation. If the insured responds
26 affirmatively, the department shall refer the dispute to mediation.
27 The department may not refer a dispute to mediation if the matter
28 turns upon any of the reasons or conditions set forth in Section
29 10089.70, relative to applicability, or if for other good cause the
30 commissioner determines that mediation of the dispute is
31 inappropriate.

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

35 ~~SEC. 8.~~

36 *SEC. 7.* Section 10089.75 of the Insurance Code is amended
37 to read:

38 10089.75. (a) Any insurer may inform an insured who has
39 filed a complaint with the department concerning a dispute that
40 qualifies for this program of the existence of the mediation



1 program and may ask the insured to seek mediation under this
2 chapter jointly with the insurer. Any insurer may notify the
3 department of any dispute arising out of a qualifying event that it
4 believes may be appropriately resolved through the mediation
5 program. The department, with respect to that notification, shall
6 proceed as provided in subdivision (a) of Section 10089.74.

7 (b) Notwithstanding Section 10089.82, if the commissioner
8 makes a finding that an individual insurer has engaged in
9 unreasonable or arbitrary refusals to mediate, the commissioner
10 shall have the authority to require that insurer to participate in
11 mediation in all cases deemed by the commissioner appropriate for
12 mediation under this chapter.

13 (c) Any insurer who has been ordered to participate in
14 mediation on a mandatory basis may seek a review of the order by
15 filing in a court of competent jurisdiction within 30 calendar days
16 of the order. The commissioner's order to participate in mediation,
17 however, may not be stayed during the pendency of any judicial
18 proceeding for any period beyond 60 calendar days after the initial
19 date of the order to participate. The basis for the commissioner's
20 decision to require an insurer to participate in the mediation
21 program shall not be made public unless review is sought. The
22 commissioner's decision not to require an insurer to participate,
23 including the basis for the decision, shall be made public.

24 (d) Any insured whose request to mediate his or her claim
25 under this chapter was declined by an insurer may request the
26 commissioner to require the insurer to participate in the mediation
27 program and may seek review in a court of competent jurisdiction
28 of the commissioner's decision not to require the insurer to
29 participate in the mediation program. The review shall be required
30 to be sought within 30 calendar days after the commissioner's
31 decision.

32 ~~SEC. 9.~~

33 SEC. 8. Section 10089.77 of the Insurance Code is amended
34 to read:

35 10089.77. The department shall contract with a diverse pool
36 of mediators for the provision of mediation services. The
37 contractors shall be qualified mediators who meet standards
38 established by the commissioner. The commissioner shall
39 establish standards in consultation with consumer groups,



1 policyholder groups, mediators, alternative dispute resolution
2 groups, insurers, and the State Bar. These standards shall include:

3 (a) Mandatory training that may be provided by the
4 department, which shall include, at a minimum, the legal rules for
5 insurance policy interpretation and the rights of insureds under
6 California law, and methods of determining costs of construction
7 and reconstruction and costs of automobile repair in given
8 geographical areas.

9 (b) A requirement that no mediator participating in this
10 program may have business, familial, contractual, or other
11 affiliation with, or financial interest in, the insured, or in any
12 insurer, insurance agent, or agency. For purposes of this
13 subdivision, an investment in a mutual fund that holds insurer
14 stocks is not a financial interest. Financial interest does not include
15 prior representation of, or an employment or contractual
16 relationship with a law firm or lawyer who represents, one or more
17 insurers or who represents insurance agents in connection with
18 their business affairs, provided the law firm or lawyer has not
19 previously represented any of the parties to the mediation.

20 However, any prior representation, employment, or contractual
21 relationship shall be disclosed to the parties to the mediation. If any
22 party objects to the mediator because of the prior representation,
23 employment, or contractual relationship, the department shall
24 dismiss that mediator and select a new mediator. An objection
25 under this subdivision does not limit a party's right to object once
26 under subdivision (d).

27 (c) A requirement that no mediator participating in this
28 program may be either a lawyer or an employee of a lawyer or law
29 firm that has represented any party to the mediation in the previous
30 36 months, or a person who has a business, familial, contractual,
31 or other affiliation with a lawyer or law firm that has represented
32 any party to the mediation in a lawsuit against the insurer in the last
33 36 months.

34 (d) Each party to the mediation may object once to the mediator
35 assigned by the department. If a party objects to the mediator, the
36 department shall dismiss the mediator and assign another
37 mediator.

38 ~~SEC. 10.~~

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



1 10089.78. Upon receipt of a complaint, the mediation service,
2 to the extent possible, shall issue a notice to the insured and the
3 insurer setting a date and time within 21 calendar days of the date
4 of the notice for commencement of a mediation conference. The
5 mediator shall make all reasonable efforts to schedule the
6 mediation at a time agreeable to both parties. The notice shall
7 inform the parties that the cost of mediation will be borne by the
8 insurer, except to the extent provided in Section 10089.81. The
9 notice shall also state that in the event of a proposed settlement the
10 insured may have three business days in which to rescind the
11 agreement, as specified in subdivision (c) of Section 10089.82.

12 ~~SEC. 11.~~

13 *SEC. 10.* Section 10089.79 of the Insurance Code is amended
14 to read:

15 10089.79. (a) The costs of mediation shall be reasonable, and
16 shall be borne by the insurer, except as provided in Section
17 10089.81. The commissioner may set a fee not to exceed seven
18 hundred dollars (\$700) for each dispute mediated.

19 (b) The mediation program shall only begin if it is funded
20 through an appropriation made in the annual Budget Act. This
21 appropriation shall be repaid, under a plan approved through the
22 annual Budget Act, by the fees established in subdivision (a).

23 ~~SEC. 12.~~

24 *SEC. 11.* Section 10089.82 of the Insurance Code is amended
25 to read:

26 10089.82. (a) An insured may not be required to use the
27 department's mediation process. An insurer may not be required
28 to use the department's mediation process, except as provided in
29 Section 10089.75.

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

32 (c) If the parties agree to a settlement agreement, the insured
33 will have three business days to rescind the agreement.
34 Notwithstanding Chapter 2 (commencing with Section 1115) of
35 Division 9 of the Evidence Code, if the insured rescinds the
36 agreement, it may not be admitted in evidence or disclosed unless
37 the insured and all other parties to the agreement expressly agree
38 to its disclosure. If the agreement is not rescinded by the insured,
39 it is binding on the insured and the insurer, and acts as a release of
40 all specific claims for damages known at the time of the mediation



1 presented and agreed upon in the mediation conference. If counsel
2 for the insured is present at the mediation conference and a
3 settlement is agreed upon that is signed by the insured's counsel,
4 the agreement is immediately binding on the insured and may not
5 be rescinded.

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

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

16 Referral to mediation or the pendency of a mediation under this
17 article is not a basis to prevent or stay the filing of civil litigation
18 arising in whole or in part out of the same facts. Any applicable
19 statute of limitations is tolled for the number of days beginning
20 from the notification date to the insurer pursuant to Section
21 10089.72, until the date on which the mediation is either
22 completed or declined, or the date on which the insured fails to
23 appear for a scheduled mediation for the second time, or, in the
24 event that a settlement is completed, the expiration of any
25 applicable three business day cooling off period.

26 ~~SEC. 13.~~

27 *SEC. 12.* Section 10089.83 of the Insurance Code is amended
28 to read:

29 10089.83. (a) On or before August 1 of each year in which
30 this program is in effect, the commissioner shall issue a report on
31 the status of the program in the prior year, including statistics about
32 the number of cases suitable for mediation, the number sent to
33 mediation, and the number accepted, as well as declined, by the
34 insurers, and other similar information concerning the operation
35 of the program.

36 (b) At six-month intervals, the department shall collect from
37 the mediators with which it contracts for this service the following
38 information: the number of persons to whom mediation was
39 offered, the number of insurers that accepted and declined
40 mediation, the number of settlements, and of those settlements, the



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

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

13 ~~SEC. 14.~~

14 *SEC. 13.* Section 10089.84 of the Insurance Code is amended
15 to read:

16 10089.84. This chapter shall remain in effect until January 1,
17 2006, and as of that date is repealed, unless a later enacted statute,
18 which is enacted before January 1, 2006, deletes or extends that
19 date. Any case referred to mediation by the department prior to
20 January 1, 2006, shall be mediated under this chapter whether or
21 not the mediation has been completed prior to January 1, 2006. No
22 later than October 1, 2004, the commissioner shall report to the
23 Governor and the Legislature on whether the program should be
24 extended, expanded, terminated, or otherwise modified and shall
25 include specific findings regarding the use of the program by
26 insureds and insurers.

27 *SEC. 14.* *Section 12921.1 of the Insurance Code is amended*
28 *to read:*

29 12921.1. (a) The commissioner shall establish a program on
30 or before July 1, 1991, to investigate complaints and respond to
31 inquiries received pursuant to Section 12921.3, to comply with
32 Section 12921.4, and, when warranted, to bring enforcement
33 actions against insurers. The program shall include, but not be
34 limited to, the following:

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

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



- 1 (3) A simple, standardized complaint form designed to assure
2 that complaints will be properly registered and tracked.
- 3 (4) Retention of records on complaints for at least three years
4 after the complaint has been closed.
- 5 (5) Guidelines to disseminate complaint and enforcement
6 information on individual insurers to the public, that shall include,
7 but not be limited to, the following:
- 8 (A) License status.
- 9 (B) Number and type of complaints closed within the last full
10 calendar year, with analogous statistics from the prior two years
11 for comparison. The proportion of those complaints determined by
12 the department to require that corrective action be taken against the
13 insurer, or leading to insurer compromise, or other remedy for the
14 complainant, as compared to those that are found to be without
15 merit. This information shall be disseminated in a fashion that will
16 facilitate identification of meritless complaints and discourage
17 their consideration by consumers and others interested in the
18 records of insurers.
- 19 (C) Number and type of violations found, *by reference to the*
20 *line of insurance and the law violated.*
- 21 (D) Number and type of enforcement actions taken.
- 22 (E) Ratio of complaints received to total policies in force, or
23 premium dollars paid in a given line, or both. Private passenger
24 automobile insurance ratios shall be calculated as the number of
25 complaints received to total car years earned in the period studied.
- 26 (F) Any other information the department deems is appropriate
27 public information regarding the complaint record of the insurer
28 that will assist the public in selecting an insurer. However, nothing
29 in this section shall be construed to permit disclosure of
30 information or documents in the possession of the department to
31 the extent that the information and those documents are protected
32 from disclosure under any other provision of law.
- 33 (6) Procedures and average processing times for each step of
34 complaint mediation, investigation, and enforcement. These
35 procedures shall be consistent with those in Article 6.5
36 (commencing with Section 790) of Chapter 1 of Part 2 of Division
37 1 for complaints within the purview of that article, consistent with
38 those in Article 7 (commencing with Section 1858) of Chapter 9
39 of Part 2 of Division 1 for complaints within the purview of that
40 article, and consistent with any other provisions of law requiring



1 certain procedures to be followed by the department in
2 investigating or prosecuting complaints against insurers.

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

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

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

11 (10) Inclusion in its annual report to the Governor, required by
12 Section 12922, detailed information regarding the program
13 required by this section, that shall include, but not be limited to:
14 a description of the operation of the complaint handling process,
15 listing civil, criminal, and administrative actions taken pursuant to
16 complaints received; the percentage of the department's personnel
17 years devoted to the handling and resolution of complaints; and
18 suggestions for legislation to improve the complaint handling
19 apparatus and to increase the amount of enforcement action
20 undertaken by the department pursuant to complaints if further
21 enforcement is deemed necessary to insure proper compliance by
22 insurers with the law.

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

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

- 32 (1) The name of the complainant.
- 33 (2) The date the complaint was filed.
- 34 (3) A succinct description of the facts of the complaint.
- 35 (4) A statement of the department's rationale for determining
36 that the complaint was justified that applies the department's
37 criteria to the facts of the complaint.

38 (d) An insurer shall provide to the department the name,
39 mailing address, telephone number, and facsimile number of a
40 person whom the insurer designates as the recipient of all notices,



1 correspondence, and other contacts from the department
2 concerning complaints described in this section. The insurer may
3 change the designation at any time by providing written notice to
4 the Consumer Services Division of the department.

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

8 SEC. 15. Section 12921.3 of the Insurance Code is amended
9 to read:

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

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

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

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

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

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

31 (c) In addition to the required summary report referenced in
32 subdivision (c) of Section 12921.1, and within 90 days of making
33 a finding that a complaint is justified pursuant to Section 12921.1,
34 the department shall release to the public the information set forth
35 in paragraphs (2), (3), and (4) of subdivision (c) of Section
36 12921.1, and any response by the insurer, but shall not include any
37 information that would identify the insured, including the name,
38 address, policy number, or other information that would tend to
39 identify the insured. An insurer shall have 30 days prior to release
40 of this information to provide a response to the department.



1 (d) The commissioner, as he or she deems appropriate, and
2 pursuant to Section 12921.1, shall provide for the education of,
3 and dissemination of information to, members of the general
4 public or licensees of the department concerning insurance
5 matters.

6 SEC. 16. Section 12921.9 is added to the Insurance Code, to
7 read:

8 12921.9. (a) A letter or legal opinion signed by the
9 Commissioner or the Chief Counsel of the Department of
10 Insurance that was prepared in response to an inquiry from an
11 insured or other person or entity and that discusses either generally
12 or in connection with a specific fact situation the application of the
13 Insurance Code or regulations promulgated by the commissioner
14 shall be made public. The department may redact the name,
15 address, policy number, and other identifying information
16 regarding a particular insured or other person or entity from the
17 letter or legal opinion when it is made public.

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

23 SEC. 17. Section 12926.2 is added to the Insurance Code, to
24 read:

25 12926.2. (a) As used in this section, “extraordinary
26 circumstances” means circumstances outside of the control of a
27 licensee that severely and materially affect the licensee’s ability to
28 conduct normal business operations.

29 (b) In determining noncompliance with this code and
30 regulations adopted pursuant to this code, and appropriate
31 penalties, if any, the commissioner may consider evidence
32 concerning the existence of extraordinary circumstances.

33 (c) A settlement agreement between the commissioner and an
34 insurer may not contain a provision referencing the existence of
35 extraordinary circumstances relative to the subject matter at issue,
36 unless the agreement specifies the precise period of time during
37 which extraordinary circumstances were in existence. Except as
38 provided in subdivision (d), extraordinary circumstances may not
39 be stated to exist for a duration of more than six months.



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

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

7 (2) The finding identifies the public purpose justifying the
8 extension of extraordinary circumstances beyond the six-month
9 period.

10 (3) The beginning and ending date, by month and year, of the
11 commencement and termination of the extraordinary
12 circumstances are identified.

