

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

Introduced by Senator Speier

February 23, 2001

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

(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
- 7 to the Department of Insurance the standards used by the authority



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

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

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

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

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

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

25 10089.70. The department shall establish a program for the
26 mediation of the disputes between insured complainants and
27 insurers arising out of the Northridge earthquake of 1994 or any
28 subsequent earthquake, and disputes arising under automobile
29 collision coverage or automobile physical damage coverage, in a
30 policy as defined in Section 660. The program, with respect to the
31 mediation of earthquake insurance claims, shall only apply to
32 personal lines of insurance related to residential coverage. The
33 goal of the program shall be to favorably resolve a statistically
34 significant number of disputes sent to mediation under the
35 program. This chapter does not apply to any dispute that turns on
36 a question of major insurance coverage or a purely legal
37 interpretation, or disputes involving the actions of an agent or
38 broker in which the insurer is not alleged to have been responsible
39 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 SEC. 11. Section 10089.82 of the Insurance Code is amended
2 to read:

3 10089.82. (a) An insured may not be required to use the
4 department's mediation process. An insurer may not be required
5 to use the department's mediation process, except as provided in
6 Section 10089.75.

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

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

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

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

33 Referral to mediation or the pendency of a mediation under this
34 article is not a basis to prevent or stay the filing of civil litigation
35 arising in whole or in part out of the same facts. Any applicable
36 statute of limitations is tolled for the number of days beginning
37 from the notification date to the insurer pursuant to Section
38 10089.72, until the date on which the mediation is either
39 completed or declined, or the date on which the insured fails to
40 appear for a scheduled mediation for the second time, or, in the



1 event that a settlement is completed, the expiration of any
2 applicable three business day cooling off period.

3 SEC. 12. Section 10089.83 of the Insurance Code is amended
4 to read:

5 10089.83. (a) On or before August 1 of each year in which
6 this program is in effect, the commissioner shall issue a report on
7 the status of the program in the prior year, including statistics about
8 the number of cases suitable for mediation, the number sent to
9 mediation, and the number accepted, as well as declined, by the
10 insurers, and other similar information concerning the operation
11 of the program.

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

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

29 SEC. 13. Section 10089.84 of the Insurance Code is amended
30 to read:

31 10089.84. This chapter shall remain in effect until January 1,
32 2006, and as of that date is repealed, unless a later enacted statute,
33 which is enacted before January 1, 2006, deletes or extends that
34 date. Any case referred to mediation by the department prior to
35 January 1, 2006, shall be mediated under this chapter whether or
36 not the mediation has been completed prior to January 1, 2006. No
37 later than October 1, 2004, the commissioner shall report to the
38 Governor and the Legislature on whether the program should be
39 extended, expanded, terminated, or otherwise modified and shall

1 include specific findings regarding the use of the program by
2 insureds and insurers.

3 SEC. 14. Section 12921.1 of the Insurance Code is amended
4 to read:

5 12921.1. (a) The commissioner shall establish a program on
6 or before July 1, 1991, to investigate complaints and respond to
7 inquiries received pursuant to Section 12921.3, to comply with
8 Section 12921.4, and, when warranted, to bring enforcement
9 actions against insurers. The program shall include, but not be
10 limited to, the following:

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

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

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

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

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

24 (A) License status.

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

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

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

38 (E) Ratio of complaints received to total policies in force, or
39 premium dollars paid in a given line, or both. Private passenger

1 automobile insurance ratios shall be calculated as the number of
2 complaints received to total car years earned in the period studied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

~~(d)~~

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

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

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

(b) A letter or legal opinion made public pursuant to this section shall not be construed as establishing an agency guideline, criterion, bulletin, manual, instruction, order, standard of general

1 application, rule, or regulation, as those terms are described in
2 Sections 11340.5 and 11342.600 of the Government Code.

3 SEC. 17. Section 12926.2 is added to the Insurance Code, to
4 read:

5 12926.2. (a) As used in this section, “extraordinary
6 circumstances” means circumstances outside of the control of a
7 licensee that severely and materially affect the licensee’s ability to
8 conduct normal business operations.

9 (b) In determining noncompliance with this code and
10 regulations adopted pursuant to this code, and appropriate
11 penalties, if any, the commissioner may consider evidence
12 concerning the existence of extraordinary circumstances.

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

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

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

26 (2) The finding identifies the public purpose justifying the
27 extension of extraordinary circumstances beyond the six-month
28 period.

29 (3) The beginning and ending date, by month and year, of the
30 commencement and termination of the extraordinary
31 circumstances are identified.

