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**State Senate**

**State Assembly**

## Potential Fire Insurance Legislation 2018 Primer

There is the potential to be as many as 30 fire insurance related legislative measures introduced by the February 16, 2018 bill introduction deadline for the year, the majority of which to be potentially sponsored by the Insurance Commissioner. It should be noted that these are currently proposals, with the exception of those in Section I which have been formally introduced. The following is intended to provide a primer on potential legislative action in this issue area.

### **I. Introduced Fire Insurance Legislation**

#### SB 824 (Lara, Dem-Bell Gardens) Post-Fire Homeowners Insurance Nonrenewal

This legislation prevents insurance companies from dropping or nonrenewing customers following a wildfire disaster. Second, it requires insurance companies to offer mitigation discounts and continued coverage to homeowners who make investments in wildfire mitigation safety, including fire-resistant roofing and other materials. Third, it requires approval by the Department of Insurance before insurance companies reduce the volume of policies in high-risk fire areas.

According to the author, homeowners in rural and urban areas have reported losing insurance as a result of exposure to wildfires. Placer County, a sponsor of the measure, has led a regional effort to seek legislative relief for purported insurance challenges affecting its residents.

#### AB 1740 (Daly, Dem-Anaheim) Fire Insurance Loss Valuation

Current law provides that under an open policy that requires payment of actual cash value, the measure of the actual cash value recovery is, in the case of a total loss to the structure, the policy limit or the fair market value of the structure, whichever is less, and in the case of a partial loss to the structure or loss to its contents, the amount it would cost the insured to repair, rebuild, or replace what was lost or injured less a fair and reasonable deduction for

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physical depreciation based upon its condition at the time of the injury or the policy limit, whichever is less.

This bill deletes the provisions regarding the actual cash value of the claim of total loss to the structure and instead requires that the actual cash value of the claim, for either a total or partial loss to the structure or its contents, be the amount it would cost the insured to repair, rebuild, or replace what was lost or injured less a fair and reasonable deduction for physical depreciation.

AB 1772 (Aguiar-Curry, Dem-Winters) Fire Insurance Indemnity

Current law defines the measure of indemnity for a loss under an open fire insurance policy and specifies time limits under which an insured must collect the full replacement cost of the loss. In the event of a loss relating to a state of emergency, existing law establishes a minimum time limit of not less than 24 months from the date that the first payment toward the actual cash value is made during which the insured may collect the full replacement cost of the loss, subject to the policy limit.

This bill extends the minimum time limit during which an insured may collect the full replacement cost of a loss relating to a state of emergency to 36 months.

**II. Proposed Legislation by California Department of Insurance: High Risk Wildfire Area Residential Insurance White Paper**

This section provides a summary of the major insurance issues identified in the Department of Insurance – High Risk Wildfire Area Residential Insurance, White Paper, December 2017, and its legislative concepts. While the Department of Insurance (CDI) is not recommending that every part of this proposal be implemented, it claims some of the proposed solutions will work effectively only if other parts of the proposal are also included.

**1. Offering, Issuing & Renewing Homeowners Insurance Coverage**

Legislative Proposal: An insurer admitted to transact fire insurance agrees to offer, issue, or renew a policy of residential property insurance for reasons relating to the risk of fire loss on property located within “state responsibility areas” or a “very high fire severity zone,” if the property meets specific mitigation and defensible space criteria and any other underwriting guidelines relating to the peril of fire that have a substantial relationship to the risk of fire loss, which would be directed by guidelines approved by the Insurance Commissioner.

According to CDI, homeowners have filed a significant number of complaints alleging that their insurer has nonrenewed their policy or refused to insure them due to the real or perceived wildfire risk. Many of these homeowners have conducted extensive defensible space and other mitigation efforts, but these actions have not resulted in significant change.

**2. Premium Credit for Wildfire Risk Mitigation**

Legislative Proposal: A property insured under a policy of residential property insurance is eligible for a premium credit, as compared to other similarly situated properties, if the property meets mitigation and defensible-space criteria for offering, issuing, and renewing homeowners insurance coverage.

According to CDI, homeowners have filed a significant number of complaints alleging that their insurer has increased their premiums due to the real or perceived wildfire risk. CDI reports it has seen cases where homeowners were paying an annual premium of \$800-\$1,000 but, upon renewal, saw increases as high as \$2,500-\$5,000. While the inherent risk of wildfires in certain areas increases the cost of a homeowners insurance policy, CDI argues there are legislative changes that can be enacted to lessen the severity of these high-premium increases.

### 3. Wildfire Risk Models

Legislative Proposal: Insurers will be permitted to use a wildfire-risk model (to determine eligibility for, or the premium of, a policy of residential property insurance) if it has been approved by the Insurance Commissioner. A wildfire-risk model is defined as any computer-based, map-based, or other measurement tool used by an insurer to rate or underwrite the risk of wildfire. The Insurance Commissioner cannot approve a wildfire-risk model used by an insurer to determine eligibility for, or the premium of, a policy of residential property insurance unless the model takes into account the amount and density of fuel surrounding the structure, slope of the property, and accessibility to the property by emergency responders if that data is provided by state or local fire officials or is otherwise available to the insurer by way of an inspection of the property.

According to CDI, based upon complaints received from homeowners and members of the Legislature, the majority of nonrenewals, refusals to insure, and increased premiums in these rural areas were the result of insurers' greater use and emphasis on wildfire-risk models. Legislators, other public officials, and their constituents have expressed concern that wildfire-risk models are not accurate, do not provide satellite imagery that is granular enough to objectively identify fuel sources and other physical characteristics, and do not take into account mitigation done by the homeowner or the community. Since the wildfire-risk tools that insurers use have a measure of objectivity and a relationship to the risk of loss, CDI lacks the statutory authority under current law to prohibit an insurer from using these tools to determine whether it will issue or renew a homeowners' insurance policy. CDI has no authority over the development and construction of the models.

### 4. Homeowner Right to Appeal Score Determined by Wildfire-Risk Model

Legislative Proposal: An insured or applicant for a policy of residential property insurance who disagrees with the score or other factors determined by a wildfire-risk model used by an insurer is permitted to appeal such score with the insurer. The insurer must respond to any appeal within 30 calendar days. If the person appealing the score or other determined factor is insured with the insurer with whom the appeal is made, the insurer cannot make an

adverse underwriting decision during the pendency of the appeal, including cancellation, nonrenewal, or charging a premium increase on the policy.

According to CDI, it has received a significant number of complaints from homeowners alleging that after an insurer has nonrenewed, refused to insure, or increased premiums due to a change in score or new use of a wildfire-risk model, there is no mechanism in place to appeal the score determined by the model.

#### 5. California Wildfire Exposure Manual

Legislative Proposal: CDI will be granted authority to obtain data from insurers in order to examine the aggregated California premium-and-loss data by wildfire risk (eg. The data used by the California Department of Forestry & Fire Protection model) to create a wildfire-exposure-risk manual similar in concept to the frequency and severity bands manual used by automobile insurers in developing private passenger auto rates. Insurers could rely on the aggregated wildfire-exposure-risk data to develop credible wildfire risk rates that would allow them to more accurately price the few risks currently being written as well as loosen their current underwriting restrictions and write more risks that are currently being turned down for coverage.

According to CDI, on an individual basis, insurers within California's admitted market do not write large numbers of risks situated in California's Wildland-Urban Interface (WUI) areas. Each individual insurer's premium and loss experience data within WUI areas is minimal and lacks rate credibility. As a result, many insurers opt to use external vendor wildfire risk models that are not specifically designed for rating purposes in their rate development process. These models, when used for rating, deliver pricing estimations that can lead to overpricing or underpricing of risks. Further, many insurers opt to either significantly restrict or simply forego writing risks in WUI areas given the lack of a credible data source to use in pricing risk.

### III. Proposed Legislation by California Department of Insurance: Additional Wildfire Related Legislative Concepts

According to the Department of Insurance, the following legislative proposals are intended to address issues such underinsurance – when policy limits are not sufficient for the insured to rebuild a destroyed home. Another issue CDI identifies is that after a major disaster where multiple homes are destroyed the timeframes in the insurance policy are not long enough. Other issues that arise after major events include the need for immediate insurance proceeds to be paid for additional living expenses, the onerous task of creating a home inventory of all personal property lost in a fire, and destruction of documents like insurance policies.

#### 1. Extended Replacement Cost Mandatory Offer

Legislative Proposal: No policy of residential property insurance may be issued or renewed unless the applicant or insured is offered Extended Replacement Cost Coverage in an amount of no less than 50% of coverage above the policy limits for the primary dwelling, contents,

and additional living expenses in the policy. The offer is to be accompanied by the premium charge for each additional coverage.

According to CDI, many insureds are not prominently made aware of the dangers of being underinsured and the ability to purchase additional insurance to mitigate this possibility. In many cases, insureds may not be advised of the cost of purchasing this additional coverage in order to make an informed decision. Also, some insurers offer only a 20% or 25% Extended Replacement Cost coverage, which is frequently insufficient to cover the increased construction costs to rebuild after a major disaster event.

#### 2. Declared Disaster Extended Replacement Cost

Legislative Proposal: This proposal provides automatic additional replacement costs coverage for the insured to rebuild the dwelling destroyed after a declared disaster. The amount of additional coverage for the insured to rebuild the dwelling destroyed after a declared disaster. The amount of additional coverage would be equal to 50% of the actual coverage available under the policy for Primary and Other Structures. This concept could also apply to Contents and Additional Living Expenses coverage.

According to CDI, when insureds are not offered or do not purchase Extended Replacement Cost Coverage they may find themselves underinsured after a major event.

#### 3. Declared Disaster Combined Major Coverages

Legislative Proposal: This proposal is that the insured can use any unused coverage amounts from other coverage limits if they are short in coverage to rebuild. The limits for Primary Structures, Other Structures, Contents, and Additional Living Expenses (ALE) could be combined allowing the insured to decide how best to use the proceeds based upon their needs.

According to CDI, in some losses, the insured may be underinsured for the Primary Structure, but may have unused coverage in the Other Structures coverage or Contents coverage. It is akin to a combined single limit approach used in some commercial lines and specialty policies.

#### 4. Rebuild & Collect Full Replacement Cost Time Extension

Legislative Proposal: This proposal extends the 24 month rebuild period to 36 months with possible extensions for good cause.

According to CDI, after a major event, there is a shortage of qualified workers in the construction industry and along with the demand surge from all structures needing to be rebuilt at the same time, 24 months may be a tight timeline.

#### 5. Post-Home Rebuild Full Replacement Cost Collection Right

Legislative Proposal: This proposal amends statute to state in the event of a total loss of the insured structure, no policy may contain a provision that limits payment of the replacement

cost, in addition to any Extended Replacement Costs Coverage purchased by the insured and in addition to any increase in policy limits, in the event the insured decides to rebuild or replace the property at a location other than the insured premises. This provision permits the insured to recover full replacement cost benefits whether the insured rebuilds at the current location, rebuilds at a new location, or purchase an already built home at a new location.

According to CDI, statute requires that homeowners may recover full replacement cost benefits whether they rebuild at the current location, rebuild on a new location, or purchase an already built home at a new location. However, some insurers seek to withhold the additional Extended Replacement Cost coverage purchased by the insured unless the insured actually rebuilds on the same lot.

#### 6. Declared Disaster Additional Living Expenses Coverage

Legislative Proposal: This proposal extends the time period to collect ALE after a declared disaster to 36 months and allows extensions for ALE that are to be provided to policyholders for good cause. It also increases the ALE policy limit by 100% after a declared disaster.

According to CDI, due to the magnitude of recent wildfires, the rebuild process for some consumers will exceed 24 months. Completing the debris removal process, locating qualified contractors, and creating a complete scope of loss and construction bid are expected to delay the rebuilding process.

#### 7. Additional Living Expense Scope of Coverage

Legislative Proposal: Existing law requires the carrier to provide a list of items it believes may qualify for ALE. The recommendation is for this list to be provided in writing. These additional costs include those for housing, furniture rental, food, transportation, storage, and boarding of pets and livestock.

According to CDI, after major events, unique situations arise that should be covered under ALE, but that most insurers may not readily agree to. There may be a lack of hotels and other traditional housing. Insurers should cover the expenses for Airbnb, short-term rentals, renting a recreational vehicle, or purchasing a temporary home while the primary insured home is being rebuilt.

#### 8. Consolidated Debris Removal Coverage

Legislative Proposal: This proposal codifies the consolidated debris removal program and requires insurers to participate if there is a declared disaster and if the appropriate government agency cites the health and safety of the community and / or natural resources as a basis for conducting the consolidated debris removal program. This recommendation also clarifies the two main types of property coverage and how the consolidated debris removal program will work with each.

According to CDI, in 2007, local, state, and federal agencies began the consolidated debris removal program. Some insurers have discouraged insureds from signing up for these programs, even though both the insureds and insurers will financially benefit.

#### 9. Expedited Claims & Billing Procedures

Legislative Proposal: This proposal codifies the Voluntary Expedited Claims and Billing Procedures such that, after any total loss, these automatically trigger and are mandatory. The following are the issues sought to be addressed. For ALE, insurers must adopt a standard advance payment of at least four months for a total loss. On Personal Property, insurers must provide a standard contents advance payment of at least 25% of policy limits for a total loss of the primary residence in a wildfire. Regarding Personal Property Inventory Forms, insurers are to require an insured use a company-specific inventory form. With respect to Inventory Itemization, insurers must agree to accept reduced itemization of contents in wildfire loss. For Contents Coverage, insurers are to permit the insured the option to settle for 80% of the limit without having to compile the home inventory form. Lastly, the Billing Grace Period after a fire is to be 30 days.

According to CDI, insurers have agreed to the procedures when requested by the Department after each major wildfire.

#### 10. New Business Replacement Cost Estimate Requirement

Legislative Proposal: This proposal addresses the lack of regulation to require an insurer to conduct a replacement cost estimate or to update those estimates on a regular basis to keep up with rising costs of construction over the life of the insurance policy. This proposal requires all insurers that write residential property insurance to provide an estimate of replacement cost on all new business and also re-run those estimates during the annual renewal process.

According to CDI, underinsurance is partly caused by inaccurate or outdated replacement cost models used by insurers to determine the amount of coverage they are willing to offer to the policyholder.

#### 11. Complete Policy Document Requirement

Legislative Proposal: This proposal clarifies what documents should be furnished to the insured after a covered loss. This requires the insurer to provide the entire insurance policy, including all endorsements along with the insured's declarations page covering the period in which the loss occurred.

According to CDI, after a disaster, some insurers only provide the insured with the declarations page of the policy and not the full policy.

#### 12. Declared Disaster Replacement Cost Right to Sue Period

Legislative Proposal: This proposal is to increase the 12 month right to sue provision in current law to 24 months after a declared disaster. Also, the tolling of this timeframe as supported by case law should be expressly stated in statute.

According to CDI, there are conflicting laws that allow for the right to sue. One limits court action to 12 months and the other 24 months after a disaster occurs.

### 13. Declared Disaster Policy Renewal

Legislative Proposal: This proposal is to extend the declared disaster insurance policy one renewal to at least two renewals that must extend at least 24 months from the date of the total loss.

According to CDI, the current legal requirement to offer, at least once, a renewal policy if the total loss to the primary insured structure was caused by a disaster and the loss was not also due to the negligence of the insured is insufficient.

## First Week of 2018 Bill Introductions Includes Measures that Impact the Workers Compensation System

AB 1749 (Daly, Dem-Anaheim): This bill is intended to address the issues surrounding California peace officers who were injured as a result of their efforts to help victims of the Las Vegas shooting incident of October 1, 2017. It provides that whenever any officer is injured, dies, or is disabled from performing duties as an officer by reason of engaging in the apprehension of law violators, but is not at the time acting under the immediate direction of the person's employer, that individual's dependents are to be accorded all of the same benefits the peace officer would have received had that officer been acting under the immediate direction of his employer.

AB 1751 (Low, Dem-San Jose): This is one of three bills intended to address the issues of opioid addiction. AB 1751 authorizes the Department of Justice to enter into an agreement with an entity operating an interstate data share hub for the purposes of participating in interjurisdictional information sharing between prescription drug monitoring programs across state lines. This is a positive development given the possibility for prescriptions to be filled in neighboring states. However, the structure of other states' prescription drug monitoring programs as it relates to access to information and privacy safeguards may make this more difficult to implement than expected.

AB 1752 (Low): This adds Schedule V drugs to the list subject to reporting under the Controlled Substance Utilization Review and Evaluation System database. Per the Drug Enforcement Administration: Substances in this schedule have a low potential for abuse relative to substances listed in Schedule IV and consist primarily of preparations containing limited quantities of certain narcotics.



AB 1753 (Low): Of the three bills the author is offering, this is the most intriguing. Current law states that prescription forms for controlled substance prescriptions be obtained from security printers approved by the Department of Justice. This bill would limit the secure printers to three, which is an effort to curb the abuse of pirated or forged prescription forms.

## Legislature Forms Select Committee on Sexual Harassment

This week, the Senate and Assembly announced that they will be forming a joint select committee with the goal of creating a comprehensive set of rules governing how sexual harassment claims are handled in both houses. The move comes after several accusations of sexual harassment and misconduct have come forward, prompting resignations and leaves of absence from legislators.

The committee will meet later this month, and is comprised of members of both houses and both parties. Assembly Member Laura Friedman will serve as the chair along with Senator Holly Mitchell, and the members include Senate Republican Leader Pat Bates, Assembly Republican Leader Brian Dahle, Senator Jean Fuller, Senator Connie Leyva, Assembly Member Eloise Reyes, and Assembly Member Marie Waldron. The committee will work to address a repeated complaint that neither the Senate nor the Assembly have appropriate policies in place to deal with instances of sexual harassment. The Assembly is also working on providing resources for employees to receive resources and counselling.

Other legislators are also working on proposals related to the wave of sexual harassment scandals that have swept through multiple industries. Assembly Member Kevin McCarty has proposed a bill that would require legislators to pay for settlements in harassment lawsuits out of their own pockets, instead of allowing the continued use of taxpayer funds. Senator Connie Leyva has put forward a proposal that would prohibit the use of nondisclosure agreements in settlements for sexual harassment lawsuits, affecting both the public and private sector. Additionally, following strong pressure from fellow legislators to resign following allegations of harassment against staffers, Senator Tony Mendoza agreed to take a one month paid leave of absence from the Senate during an official investigation.

## Assembly Speaker Announces 2018 Leadership Position & Committee Member Changes

On the first day of this year's legislative session, Democratic Assembly Speaker Anthony Rendon (Lakewood) appointed: Assembly Member Laura Friedman (Glendale) to Assistant Speaker Pro Tempore; Assembly Member Todd Gloria (San Diego) to Majority Whip and removed him as Assistant Majority Whip; and, Assembly Member Eloise Reyes (San

Bernardino) to replace Assembly Member Monique Limon (Santa Barbara) as Assistant Majority Whip. The Speaker also announced the following committee assignment changes:

**Aging & Longterm Care**

Assembly Member Blanca Rubio (Baldwin Park) to replace Assembly Member Adam Gray (Merced).

**Agriculture**

Assembly Member Marc Levine (Marin County) to replace Assembly Member Bill Quirk (Hayward).

**Appropriations**

Assembly Members Bill Quirk and Adrin Nazarian (North Hollywood) to replace Assembly Members Adam Gray and Reginald Jones-Sawyer (Los Angeles). Assembly Member Wendy Carrillo (Los Angeles) has also been appointed to the Committee.

**Banking & Finance**

Assembly Member Monique Limon as Committee Chair. Assembly Members Ian Calderon (Whittier) and Lorena Gonzalez-Fletcher (San Diego) have also been appointed to the Committee.

**Communications & Conveyance**

Assembly Members Patrick O'Donnell (Long Beach) and Sharon Quirk-Silva (Fullerton).

**Governmental Organization**

Assembly Member Marc Berman (Palo Alto).

**Health**

Assembly Members Cecilia Aguiar-Curry (Winters) and Wendy Carrillo.

**Housing & Community Development**

Assembly Member Todd Gloria to replace Assembly Member Ash Kalra (San Jose).

**Insurance**

Assembly Member Timothy Grayson (Concord).

**Jobs, Economic Development & the Economy**

Assembly Member Wendy Carrillo to replace Assembly Member Timothy Grayson.

**Judiciary**

Assembly Member Rob Bonta (Alameda) to replace Assembly Member Phil Ting (San Francisco).

**Local Government**

Assembly Members Ken Cooley (Rancho Cordova) to replace Assembly Member Lorena Gonzalez-Fletcher.

**Privacy & Consumer Protection**

Assembly Member Kevin Mullin (South San Francisco) to replace Assembly Member Ash Kalra. Assembly Member Phil Ting has also been appointed to the Committee.

**Public Safety**

Assembly Member Wendy Carrillo to replace Assembly Member Blanca Rubio.

**Revenue & Taxation**

Assembly Member Autumn Burke (Inglewood).

**Rules**

Assembly Member Wendy Carrillo to replace Assembly Member Marc Levine. Assembly Members Marc Levine and Eloise Reyes have been appointed as Democratic Alternates on the Committee.

**Transportation**

Assembly Member Mike Gipson (Carson).

**Water, Parks & Wildlife**

Assembly Member Ash Kalra.