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April 17, 2018

To: Honorable Mike McGuire
Member, California State Senate

Re: SB 897 (McGuire): Residential Property Insurance
As Amended February 28, 2018
Oppose Unless Amended

The above listed associations (The “Trades”) represent the vast majority of the homeowners’ insurance market share in California. We appreciate the many meetings we have had with you and your staff, and your desire to work with the industry to come to a solution. The Trades hope to continue discussions with you to reach agreement on amendments. At this point, however, we must respectfully **oppose SB 897** (as amended February 28, 2018) **unless it is amended** to address the concerns discussed below. As currently drafted, SB 897 will change additional living expenses (ALE) coverage, change the process for obtaining contents coverage, and provide for a grace period for payment of premium during a state of emergency.

Changing How Insurance Works will Increase Costs and Decrease Choice for all Californians

In a competitive marketplace flexibility provides insurers the ability to offer consumers choices in price and coverage. Unfortunately, in its current form, SB 897 will negatively impact both by mandating unnecessary requirements that will jeopardize insurers’ flexibility to offer California homeowners choice in coverages and increasing premiums for all homeowners across the state. For these reasons, we respectfully request the following amendments, which we have offered to you during our discussions:

Additional Living Expenses (ALE): SECTION 1. 2060.

The Trades recognize the benefit of subsection (a) for homeowners to provide a list of items that are typically covered by Additional Living Expenses (ALE) coverage, so they can best assist homeowners in collecting their covered ALE.

2060.

The Trades recommend striking subsections (b) and (c).

Subsection (b) is unnecessary. We are not aware of any issues with homeowners who have suffered a loss not receiving appropriate ALE coverage to maintain a comparable standard of living. In fact, insurers were issuing ALE payments as soon as they could get to their policyholders. The trades are concerned with the overly-broad “all reasonable additional expenses” language, in particular as it will likely result in consumer confusion and costly litigation where ALE coverage has already been resolved. Finally, boarding livestock is usually addressed by commercial coverage. Creating a statutory list to

include livestock could result in more commercial items being considered “reasonable,” and thus blur the line between personal and commercial insurance, and thus resulting in an increase in the price of insurance for all consumers.

~~(b) Additional living expense coverage under a residential property insurance policy shall include reimbursement for all reasonable additional expenses incurred by the insured in order to maintain a comparable standard of living following a covered loss. These additional costs shall include, but not be limited to, housing, furniture rental, food, transportation, storage, and boarding of pets and livestock.~~

Subsection (c) We appreciate that there are a few companies that offer fair rental value as an option to ALE, but other companies have chosen not to through their own underwriting guidelines. The purpose of insurance is to make people whole by paying for their **actual loss**. For companies that do not offer this, Subsection (c) could result in payments that exceed indemnification, as it is not intended to provide the policyholder with rental income – a commercial coverage. For such policies, It could also result in fraud by paying for rent when a homeowner has somewhere else to live for less or free. Fraud increases the cost of insurance for all consumers.

Insurance policies are actuarially priced to pay for actual coverage and requiring all insurers to offer a type of coverage that may not be within their risk profile will increase the price of insurance. The Trades recommend striking subsection (c) so that the private marketplace can continue to operate and allow those companies who wish to offer this type of coverage to do so, while allowing alternatives at the corresponding price points to exist for others who have different desires. We suggest deleting (c).

~~(c) Under a residential property insurance policy for which the insured has made a claim for additional living expenses, the insured may, at his or her option and in lieu of itemized expenses, choose to collect the monthly fair rental value of the dwelling for the duration of the time it is not inhabitable due to the covered loss, up to the limits of the policy. For purposes of this section, the fair rental value is the amount the insured dwelling could have demanded for rental in furnished condition at the time the claim is filed.~~

ALE: SECTION. 2.

Providing advance payment of ALE is consistent with the insurers’ practices during the extraordinary 2017 fires; insurers attempted to go over and beyond what is required under the law in order to get homeowners back on their feet, as soon as possible. Insurers were on the ground from day one, issuing advance ALE payments to help homeowners put their lives back together. The Trades recommend the following clarifying amendments to Section 2061 and subsections (a) through (d). .

2061.

In the event of a covered total loss of a primary residence relating to a state of emergency, as defined in Section 8558 of the Government Code, the following special provisions shall apply:

The Trades recommend the below clarifying amendments to subsection (a):

(a) If an insured has made a claim for covered additional living expenses (ALE), ~~related to a total loss,~~ an insurer shall, upon request by an insured, render an advance payment of no less than four months of ALE benefits, ~~living expenses or fair rental value.~~ Additional payment for additional living expenses or fair rental value ALE benefits shall be payable upon proper proof following the advance period.

Contents Coverages Section. 2.

Subsection (b) – (e) address contents coverage and inventory lists. Contents coverage is complex. As we discussed during our meetings, the bill unfortunately presumes a one size fits all approach for inventories which will result in insurers offering less generous policies, impact reinsurance and limit homeowners' choices in coverage and/or increase price for all Californians.

Different insurers offer very different coverage limits, and price accordingly. For example, a policy may provide contents coverage based upon 50% of Coverage A, for the dwelling (\$250,000 in contents for a \$500,000 home). Or a more generous policy may provide 75% contents coverage (\$375,000 in contents for the same \$500,000 home). The higher limit policies are there for extra coverage "just in case" and are intended to make available coverage for higher than usual contents such as family heirlooms; Insurers price for these policies based on the fact that not all homeowners will exhaust the coverage, even in a total loss.

Insurers are sensitive to homeowners in these events wanting some advance payments early on in the process without needing to provide an inventory list so soon after losing their homes. During the 2017 fires most insurers recognized this need, and provided advance contents payments without requiring inventory lists in every case, and allowed for groupings when inventory lists were necessary. Insurers continue to be extremely sensitive to the difficulties in recalling all possessions; their claims professionals are trained to take the necessary time with their policyholders and continue to work with their policyholders to help them get through the process.

The Trades suggest the following clarifying amendments to sections (b), (c) and (d) to help provide victims of the fires with immediate assistance:

(b) ~~If an insured has made a claim for contents related to a total loss of a primary the residence~~ ***was furnished at the time of the loss,*** an insurer shall ~~render~~ ***offer*** an ~~initial~~ advance payment of no less than 25 percent of the policy limit for contents without the completion of an inventory. ***Advanced payments issued pursuant to this section do not need to meet the requirements of subdivision (f) of Section 2695.9 of Title 10 of the California Code of Regulations.*** Additional payment for contents shall be payable upon request with proper proof ***submission by the insured of a complete inventory as may be required by the insurer subject to subdivisions (c) and (d) of this section.***

(c) ~~If an insured has made a claim for contents related to a total loss of a primary residence,~~ ***An*** insurer shall not require that the insured use a company-specific inventory form ***for contents claims*** if the insured can provide an inventory using a form that contains substantially the same information. Nothing in this subdivision limits the authority of an insurer to seek additional information from an insured upon receipt of an inventory form submitted by an insured.

(d) ~~If an insured has made a claim for contents related to a total loss of a primary residence,~~ ***For contents claims,*** an insurer shall accept an inventory that includes groupings of categories of personal property, including, but not limited to, clothing, shoes, books, food items, CDs, DVDs, or other categories of items for which it would be impractical to separately list each individual item claimed.

Unfortunately, the Trades must strongly oppose subsection (e), and recommend striking. Subsection (e) requires an insurer to offer a settlement for no less than 80% of the policy limit in lieu of requiring the insured to file an inventory. Such a requirement completely ignores how the coverage is underwritten or the variety of the levels of coverages currently available to policyholders. It also ignores requirements of reinsurance agreements. As discussed above, requiring such a high threshold will undoubtedly result in insurers offering less generous contents coverage to consumers and increase price of insurance for all California insurance consumers. The 25 percent agreed to in (b) will serve the purpose of providing homeowners an immediate advance coverage to allow them time to go through an inventory. Further, nothing would prevent an insurer from offering more; in fact, many insurers did so in the aftermath of the fires. A balance needs to be struck between expediting claims, preventing fraud, and ensuring that homeowners will have a choice of insurance products in the future. The Trades respectfully highly recommend striking subsection (e).

~~(e) If an insured has made a claim for contents related to a total loss of a primary residence, the insurer shall, upon the request of the insured, offer a settlement for shall offer no less than 80 percent of the policy limit for contents in lieu of without requiring the insured to file an itemized claim. A settlement made pursuant to this subdivision shall release the insurer from any further indemnity for loss of contents related to the claim. The insurer shall notify the insured that the insured retains the option to recover additional benefits if the insured subsequently completes a full inventory.~~

Grace Periods on Payments: Section 3

The Trades support the addition of Section 3 with the below clarifying amendments:

2062.

In the event of a state of emergency, as defined in Section 8558 of the Government Code, an insurer shall grant a 30-day grace period for payment of premiums for residential property insurance policies covering a property located within the affected area defined in the state of emergency for a period of 30 days after the emergency. This section shall not be construed to require any change to insurer practices regarding billing, automatic payment or cancellation for nonpayment if the insurer reinstates, without a lapse in coverage or a late fee, any policy subject to this section that was canceled for nonpayment of premium, if requested by the insured and upon reasonably timely payment by a displaced insured of all premiums due.

~~During the grace period, a policy may not be canceled for nonpayment of a premium and a late fee shall not be assessed.~~

Conclusion

The recent wildfires have understandably created great concern and consternation for homeowners in your district who tragically lost their homes. We appreciate and understand your interest in expediting the claims process for homeowners who become victims of such awful tragedies as we saw with the 2017 fires. In fact, insurers reacted quickly and in large number to immediately help their policyholders recover. So far, those who have lost their homes and businesses have submitted nearly \$12 billion in claims to their insurers, statewide. Insurers have been at the scene since day one, issuing ALE payments and expediting claims to help their policyholders begin putting their lives back together, following these devastating fires. Many insurers' catastrophe claims teams remain at the scene. Insurers are here for the long haul.

The Trades hope to continue conversations with you, and are hopeful we can come to agreement on the above amendments so we can remove our opposition.

For the time being the Trades respectfully maintain our position of **oppose unless amended, SB 897**.

Should you have any questions, please contact Kara Cross, Personal Insurance Federation of California ([916-442-6646](tel:916-442-6646)/kcross@pifc.org); Armand Feliciano, Property and Casualty Insurers Association of America ([916-440-1117](tel:916-440-1117)/armand.feliciano@pciaa.net); Katherine Pettibone, American Insurance Association ([916-873-3677](tel:916-873-3677)/kpettibone@aiadc.org); Shari McHugh, Pacific Association of Domestic Insurance Companies ([916-930-1993](tel:916-930-1993)/smchugh@mchughgr.com); or Christian Rataj, National Association of Mutual Insurance Companies ([303-907-0587](tel:303-907-0587)/crataj@namic.org)

cc: Honorable Members, Senate Insurance Committee
Erin Ryan, Principal Consultant, Senate Insurance Committee
Tim Conaghan, Policy Consultant, Senate Republican Caucus
Ronda Paschal, Deputy Legislative Secretary, Office of the Governor

AMENDED IN SENATE FEBRUARY 28, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

No. 897

**Introduced by Senators McGuire and Dodd
(Coauthors: Assembly Members Levine and Wood)**

January 12, 2018

An act to amend Section 2060 of, and to add Sections 2061 and 2062 to, the Insurance Code, relating to residential property insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 897, as amended, McGuire. Residential property insurance: wildfires.

Existing law defines the measure of indemnity for a loss under a property insurance policy. Existing law requires an insurer, in the event of a loss under a residential insurance policy for which the insured has made a claim for additional living expenses, to provide the insured with a list of items that the insurer believes may be covered under the policy as additional living expenses. Additionally, existing law provides that, in the case of a loss related to a declared state of emergency, an insurer provide coverage for living expenses for a period of 24 months, subject to the limitations of the policy.

This bill would specify that additional living expense coverage shall include all reasonable expenses incurred by the insured in order to maintain a comparable standard of living and would provide a list of expenses that shall be covered. The bill would also authorize an insured to collect, in lieu of additional living expenses, the fair rental value, as defined, of the dwelling that has suffered a loss.

This bill would require, for losses related to a declared state of emergency, that the insurer provide an advance payment for living expenses and an advance payment for contents, the insurer to accept an inventory of contents in any reasonable form permit the grouping of certain items in an inventory of contents, and offer a ~~settlement for payment of~~ no less than 80% of the policy limit for contents ~~in lieu of~~ *without* an itemized claim.

This bill would require an insurer to offer a 30-day grace period for payments of premiums for policies on property located within a declared state of emergency for a period of 30 days after the declaration of the emergency and would prohibit an insurer from canceling a policy for nonpayment or assessing a late fee during the grace period.

This bill would apply specified provisions retroactively to any applicable claim filed on or after July 1, 2017.

DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 2060 of the Insurance Code is amended to read:

2060.

(a) In the event of a ~~loss~~ *loss, as described in Section 675*, under a residential property insurance ~~policy~~ *policy, as defined in Section 10087*, for which the insured has made a claim for additional living expenses, the insurer shall provide the insured with a list, in writing, of items that the insurer believes may be covered under the policy as additional living expenses. The list may include a statement that the list is not intended to include all items covered under the policy, but only those that are commonly claimed, if this is the case. If the department develops a list for use by insurers, the insurer may use that list.

~~(b) Additional living expense coverage under a residential property insurance policy shall include reimbursement for all reasonable additional expenses incurred by the insured in order to maintain a comparable standard of living following a covered loss. These additional costs shall include, but~~

not be limited to, housing, furniture rental, food, transportation, storage, and boarding of pets and livestock.

~~(c) Under a residential property insurance policy for which the insured has made a claim for additional living expenses, the insured may, at his or her option and in lieu of itemized expenses, choose to collect the monthly fair rental value of the dwelling for the duration of the time it is not inhabitable due to the covered loss, up to the limits of the policy. For purposes of this section, the fair rental value is the amount the insured dwelling could have demanded for rental in furnished condition at the time the claim is filed.~~

SEC. 2.

Section 2061 is added to the Insurance Code, to read:

2061.

In the event of a covered ***total*** loss ***of a primary residence*** relating to a state of emergency, as defined in Section 8558 of the Government Code, the following special provisions shall apply:

(a) If an insured has made a claim for ***covered additional*** living expenses ***(ALE)*** ~~related to a total loss~~, an insurer shall, upon request by an insured, render an advance payment of no less than four months of ***ALE benefits*** living expenses or fair rental value. ~~Insurers shall adopt a standard four-month additional living expense or fair rental payment amount. Additional payment for additional living expenses or fair rental value~~ ***ALE benefits*** shall be payable upon proper proof following the advance period.

(b) If an insured has made a claim ~~for contents~~ related to a total loss of a primary ~~the~~ residence ***was furnished at the time of the loss***, an insurer shall ~~render~~ ***offer*** an ~~initial~~ advance payment of no less than 25 percent of the policy limit for contents without the completion of an inventory. ***Advanced payments issued pursuant to this section do not need to meet the requirements of subdivision (f) of Section 2695.9 of Title 10 of the California Code of Regulations.*** Additional payment for contents shall be payable upon request with proper proof ***submission by the insured of a complete inventory as may be required by the insurer subject to subdivisions (c) and (d) of this section.***

(c) If an insured has made a claim for contents related to a total loss of a primary residence, ~~a~~ ***An*** insurer shall not require that the insured use a company-specific inventory form ***for contents claims*** if the insured can provide an inventory using a form that contains substantially the same information. Nothing in this subdivision limits the authority of an insurer to seek additional information from an insured upon receipt of an inventory form submitted by an insured.

(d) If an insured has made a claim for contents related to a total loss of a primary residence, ***For contents claims***, an insurer shall accept an inventory that includes groupings of categories of personal property, including, but not limited to, clothing, shoes, books, food items, CDs, DVDs, or other categories of items for which it would be impractical to separately list each individual item claimed.

~~(e) If an insured has made a claim for contents related to a total loss of a primary residence, the insurer shall, upon the request of the insured, offer a settlement for~~ ***shall offer*** no less than 80 percent of the policy limit for contents in lieu of ~~without~~ requiring the insured to file an itemized claim. A settlement made pursuant to this subdivision shall release the insurer from any further indemnity for loss of contents related to the claim. ~~The insurer shall notify the insured that the~~

~~insured retains the option to recover additional benefits if the insured subsequently completes a full inventory.~~

SEC. 3.

Section 2062 is added to the Insurance Code, to read:

2062.

In the event of a state of emergency, as defined in Section 8558 of the Government Code, an insurer shall grant a 30-day grace period for payment of premiums for residential property insurance policies covering a property located within the affected area defined in the state of emergency for a period of 30 days after the emergency. **This section shall not be construed to require any change to insurer practices regarding billing, automatic payment or cancellation for nonpayment if the insurer reinstates without a lapse in coverage or a late fee, any policy subject to this section that was cancelled for nonpayment of premium, if requested by a displaced insured and upon reasonably timely payment of all premiums due.** During the grace period, a policy may not be canceled for nonpayment of a premium and a late fee shall not be assessed.

SEC. 4.

The provisions of this bill are severable. If any provision of this bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5.

~~Section 2 of this bill, and the amendatory provisions of Section 1 of this bill, shall be applied retroactively to any applicable claim filed on or after July 1, 2017~~