



Property Casualty Insurers
Association of America
Advocacy. Leadership. Results.



PERSONAL INSURANCE FEDERATION
OF CALIFORNIA



AMERICAN
INSURANCE
ASSOCIATION



April 17, 2018

To: Honorable Bill Dodd
Member, California State Senate

Re: SB 894 (Dodd) Property Insurance
As Amended February 26, 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 894** (as amended February 26, 2018) unless it is amended to address concerns raised below. As currently drafted, SB 894 would: 1) restrict insurers from non-renewing homeowners’ insurance policies and mandate unnecessary reporting requirements for when insurers manage their risk; 2) require insurers to provide for the combination of policy limits, regardless of if the full limits are owed; and, 3) extend additional living expenses (ALE) coverage.

SB 894 Assumes a Problem that Does Not Exist

SB 894 extends the period of time for which an insurer must renew a policy from 12 to 24 months. SB 894 also creates unnecessary reporting requirements to the California Department of Insurance (CDI) when an insurer makes a needed business decision to manage its risk. These requirements presumably are intended to address perceived availability concerns that currently are not born out by the statistics.

The homeowners’ insurance marketplace in California is working. Californians are readily able to find homeowners’ insurance in the regular (aka, “admitted”) market. The FAIR Plan, California’s insurer of last resort that provides guaranteed issuance of a fire insurance policy to a homeowner who cannot find an admitted market policy, is not growing, strongly indicating that insurance is available in the regular marketplace.

The California Department of Insurance’s (CDI) recent white paper on availability¹ failed to demonstrate any availability problem in California; in fact, the statistics used in the paper show the opposite. Based on CDI’s complaint data relating to nonrenewals, the white paper asserts that non-renewals have dramatically increased in high risk wildfire areas. However, in taking a closer look at the actual numbers (rather than misleading percentages), the complaint data shows a mere increase from 41 complaints in 2010 to 143 complaints in 2016 – on a statewide basis. 143 complaints out of an estimated 4.6 million

¹ <http://www.insurance.ca.gov/0400-news/0100-press-releases/2018/upload/nr002-2018AvailabilityandAffordabilityofWildfireCoverage.pdf>

or more residential policies in high risk wildfire areas in California does not demonstrate an availability issue. Further, the CDI's numbers on new, renewed and nonrenewed policies refute the assertion that there is a problem: of the 714,547 policies in selected counties with the highest percentage of high risk fire areas, just over 1 percent of these policies were non-renewed by the insurer, while 5 percent were non-renewed by the policyholder. The remaining 94% were renewed. Finally, of the very small percent of non-renewed policies, the CDI cannot say whether these homeowners were ultimately unable to find insurance coverage elsewhere.

Despite the fact that insurance is available, we do understand your concern that homeowners should feel secure in their ability to retain their insurance in times of disaster and thus just request the below clarifying amendments to Section 1 (c) (1) to ensure that insurers can continue to underwrite for other claims:

(c) (1) Except for the reasons specified in subdivisions (a) to (e), inclusive, of Section the insurer shall ~~offer to, at least once, offer, for at least the next two annual renewal periods or 24 months, whichever is greater,~~ to renew the policy in accordance with the provisions of subdivision (a) if the total loss to the primary insured structure was caused by a disaster, as defined in subdivision (b) of Section 1689.14 of the Civil Code, the loss was not also due to the negligence of the insured, no losses have occurred subsequent to the disaster-related total loss, and there was no physical or risk changes to the insured property which result in the property becoming uninsurable.

Because the market is functioning well, we have significant concerns regarding the unnecessary reporting requirements to CDI should an insurer take responsible and appropriate steps to reduce and balance its aggregate risk in a particular area. CDI already has efficient means, by statute, to obtain this information. CDI regularly implements data calls and conducts market conduct exams. Further, CDI collects complaints data and investigates these complaints. The reporting requirement in SB 894 suggests a problem, when in fact there is none, and creates a slippery slope for future regulation, which could interfere with responsible risk management. **The Trades respectfully request the author remove the reporting requirements in Section 1 (c) (2) and (c) (3) of SB 894.**

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

SB 894 would permit insureds to combine different coverage limits that were designed to address specific consumer insurance needs. While at first blush this seems like a reasonable approach, it fails to take into account the significant complexities of how insurance works. There are several types of insurance coverages all priced differently to reflect the risk based on actuarial determinations for each line of coverage: Coverage A covers the dwelling; Coverage B, detached structures; Coverage C, contents; and Coverage D, additional living expenses (ALE). The complexities of separately pricing different coverages are based on actuarial science that recognizes the inherent differences in experience and risk and the relative cost difference in providing coverage for these risks. The Department of Insurance understands these complexities and approves these rates accordingly. Combining these very different coverages would require a significant change in the well-established actuarial methodology used by insurers and would result in increased insurance premiums for all Californians for those insurers who would to try to underwrite in this manner. The proposed requirement assumes that each distinctive

coverage is separate but equal and interchangeable in risk profile and cost to the insurer for that specific coverage risk. This one size fits all approach is fundamentally unsound and will lead to higher overall cost for each coverage.

Of greater concern, SB 894 combines insurance coverage limits, not the actual amount owed to a homeowner as a result of the facts of the consumer's specific claim. The purpose of insurance is to make people whole by paying for their actual loss. Not all losses in a specific claim reach the higher monetary limit of a particular coverage. Of course, if a loss equals or exceeds a coverage limit, the homeowner will receive the full amount; however, the policies are priced with rates approved by CDI based on the actuarial knowledge that this will not always be the case. California law requires that all rates be actuarially sound.

Paying more than what is actually owed is inconsistent with the purpose of insurance – to pay what is owed to compensate a homeowner for his or her loss. An example of where combining coverage limits does not make sense and would result in paying more than what is actually owed to the consumer would be a situation where although a total loss of a house reaches the limits of Coverage A and Coverage B, it did not reach the limits of Coverage C, contents. This example is likely, as many insurers provide very generous contents coverage “just in case” for the less likely occasion where a homeowner may have higher than average priced contents, such as a family heirloom. The premium, however, is priced to reflect the experience that *most* insurance claims do not have content losses that actually reach these higher coverage limits.

Combining limits, rather than the actual amount owed under each policy will increase the cost of insurance for all Californians. Further it seeks an “easy” solution where no problem has been demonstrated and will create a host of unintended adverse consequences for homeowners. **The Trades respectfully request the author remove Section 3 of SB 894.**

We are aware of some discussion of amending SB 894 to combine actual incurred losses rather than limits. This, however, also does not take into consideration the fact that each coverage is priced based on actual experience. For example, when pricing contents coverage, actuaries base rates on the experience that not all contents will actually be replaced by the consumer, and thus the policy will pay out the actual cash value of the item, rather than replacement cost since the homeowner is not replacing the item.

Finally, any type of combination of policy coverage could result in issues with mortgagers. If a mortgage company is listed as an insured along with the homeowner (which is often the case), the mortgage company could attempt to collect on coverage other than the dwelling coverage, causing the homeowner to have less coverage.

Extending Additional Living Expenses

SB 894 extends additional living expenses coverage (ALE) to 36 months and allows for additional extensions for “good cause.” While we could be neutral on this expansion, the bill is unclear as to whether the “subject to policy provisions” language applies to these extensions. This is necessary to appropriately price for coverage. Further, “good cause” needs to be defined and limited to

circumstances beyond the homeowner's control. **Therefore, the Trades request the following clarifying amendments:**

(2) In the event of a covered loss relating to a state of emergency, as defined in Section 8558 of the Government Code, coverage for additional living expenses shall be for a period of ~~24 months, no less than 24~~ **36 months from the inception of the loss**, but shall be subject to other policy provisions, ~~provided that any extension of time required by this paragraph beyond the period provided in the policy shall not act to increase the additional living expense policy limit in force at the time of the loss. This paragraph shall become operative on January 1, 2007. provisions. Additional extensions of six months shall be provided to policyholders for good cause.~~ **However, for a policy with a dollar limit on coverage for additional living expenses, an insurer shall grant an extension of up to 12 additional months for a total of 36 months where an insured acting in good faith and with reasonable diligence encounters a delay or delays in approval for or re-construction of the home/residence which are a result of circumstances beyond the control of the insured. Circumstances beyond the control of the insured include, but is not limited to, unavoidable construction permit delays, lack of necessary**

Conclusion

The recent wildfires have understandably created great concern and consternation among homeowners who lost their homes. So far, those who have lost their homes and businesses have submitted nearly \$12 billion in claims to their insurers. Insurers have been at the scene since day one 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.

We are hopeful we can come to agreement with the author, but for the time being must maintain the position of **oppose unless amended, SB 894**

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

cc: Honorable Steven Glazer, Chair, Senate Insurance Committee
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 MARCH 8, 2018

AMENDED IN SENATE FEBRUARY 26, 2018

SENATE BILL

No. 894

Introduced by Senators Dodd and McGuire
(Coauthor: Assembly Member Levine)

January 12, 2018

An act to amend Sections 675.1 and 2051.5 of, and to add Section 10103.7 to, the Insurance Code, relating to insurance.

legislative counsel's digest

SB 894, as amended, Dodd. Property insurance.

Existing law requires an insurer, in the case of a total loss to the primary insured structure under a policy of residential property insurance, to offer to renew the policy at least once if the loss to the primary insured structure was caused by a disaster, as defined, and was not also due to the negligence of the insured, except as specified.

This bill would instead require the insurer to offer to renew the policy for at least the next 2 annual renewal periods or 24 months, whichever is greater. The bill would require an insurer who decides not to offer to renew a policy after the expiration of that period to report the decision to not offer to renew the policy to the Insurance Commissioner. The bill would require an insurer who, within 5 years after the declaration of a disaster, decides that it will not offer, or offer to renew, any residential policies described above for coverage of loss to structures located in the declared disaster area, to report that decision to the commissioner.

Existing law defines the measure of indemnity for a loss under a property insurance policy and specifies time limits under which an insured must collect the full replacement cost of the loss. Existing law

prohibits a property insurance policy issued or delivered in the state from limiting or denying payment of the replacement cost of property in the event the insured decides to rebuild or replace the property at a location other than the insured premises. Existing law provides that coverage for additional living expenses incurred due to a covered loss relating to a state of emergency shall be for a period of 24 months.

This bill would increase from 24 months to no less than 36 months, the minimum coverage for additional living expenses in the case of a loss relating to a declared state of emergency, and would allow extensions of 6 months for good cause.

This bill would require an insurer to allow an insured that has suffered a loss relating to a declared state of emergency to combine the policy limits for primary dwelling, other structures, contents, and additional living expenses, and to use the combined amount for any of the covered purposes.

The bill would make certain provisions of the bill retroactive to any applicable claim filed on or after July 1, 2017. The bill would provide that the provisions of the bill are severable.

The bill would make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 675.1 of the Insurance Code is amended
2 to read:
3 675.1. In the case of a total loss to the primary insured structure
4 under a residential policy subject to Section 675, the following
5 provisions apply:
6 (a) If reconstruction of the primary insured structure has not
7 been completed by the time of policy renewal, the insurer, prior
8 to or at the time of renewal, and after consultation by the insurer
9 or its representative with the insured as to what limits and
10 coverages might or might not be needed, shall adjust the limits
11 and coverages, write an additional policy, or attach an endorsement
12 to the policy that reflects the change, if any, in the insured's
13 exposure to loss. The insurer shall adjust the premium charged to
14 reflect any change in coverage.
15 (b) The insurer shall not cancel coverage while the primary
16 insured structure is being rebuilt, except for the reasons specified

1 in subdivisions (a) to (e), inclusive, of Section 676. The insurer
2 shall not use the fact that the primary insured structure is in
3 damaged condition as a result of the total loss as the sole basis for
4 a decision to cancel the policy pursuant to subdivision (e) of that
5 section.

6 (c) (1) Except for the reasons specified in subdivisions (a) to
7 (e), inclusive, of Section 676, the insurer shall offer, for at least
8 the next two annual renewal periods ~~or 24 months, whichever is~~
9 ~~greater, but no less than 24 months of coverage from the date of~~
10 ~~the loss~~ to renew the policy in accordance with the provisions of
11 subdivision (a) if the total loss to the primary insured structure
12 was caused by a disaster, as defined in subdivision (b) of Section
13 1689.14 of the Civil Code, and the loss was not also due to the
14 negligence of the insured, no losses have occurred subsequent to
the disaster-related total loss, and there was no physical or risk changes to
the insured property which result in the property becoming uninsurable.

15 ~~(2) If an insurer does not offer to renew a policy after the~~
16 ~~expiration of the period described in paragraph (1), the insurer~~
17 ~~shall report the decision to not offer to renew the policy to the~~
18 ~~commissioner.~~

19 ~~(3) If an insurer, within five years after the declaration of a~~
20 ~~disaster, as defined in subdivision (b) of Section 1689.14 of the~~
21 ~~Civil Code, decides that it will not offer, or offer to renew, any~~
22 ~~residential policies described in this section for coverage of loss~~
23 ~~to structures located in the declared disaster area, the insurer shall~~
24 ~~report that decision to the commissioner.~~

25 (d) With respect to policies of residential earthquake insurance,
26 the California Earthquake Authority, or any insurer, including a
27 participating insurer, as defined in subdivision (i) of Section
28 10089.5, may defer its initial implementation of this section until
29 no later than October 1, 2005.

30 (e) With respect to a residential earthquake insurance policy
31 issued by the California Earthquake Authority, the following
32 provisions apply:

33 (1) The participating insurer that issued the underlying policy
34 of residential property insurance on the primary insured structure
35 shall consult with the insured as to what limits and coverages might
36 or might not be needed as required by subdivision (a).

37 (2) The California Earthquake Authority, in lieu of meeting the
38 requirements of subdivision (a), shall establish procedures and
39 practices that allow it to reasonably accommodate the needs and
40 interests of consumers in maintaining appropriate earthquake

- 1 insurance coverage, within the statutory and regulatory limitations
- 2 on the types of insurance coverages and the coverage limits of the
- 3 policies that the authority may issue.

(f) Subdivision (b) and (c) do not apply:

(1) Where the renewal of the policy would threaten the solvency of the insurer;

(2) The insurer suffers the withdrawal of reinsurance covering all or part of the risk and this withdrawal will likely threaten the financial integrity or solvency of the insurer; or

(3) The insurer has withdrawn from the state of California in accordance with Sections 1070 and 1076 inclusive;

4 SEC. 2. Section 2051.5 of the Insurance Code is amended to
5 read:

6 2051.5. (a) Under an open policy that requires payment of the
7 replacement cost for a loss, the measure of indemnity is the amount
8 that it would cost the insured to repair, rebuild, or replace the thing
9 lost or injured, without a deduction for physical depreciation, or
10 the policy limit, whichever is less.

11 If the policy requires the insured to repair, rebuild, or replace
12 the damaged property in order to collect the full replacement cost,
13 the insurer shall pay the actual cash value of the damaged property,
14 as defined in Section 2051, until the damaged property is repaired,
15 rebuilt, or replaced. Once the property is repaired, rebuilt, or
16 replaced, the insurer shall pay the difference between the actual
17 cash value payment made and the full replacement cost reasonably
18 paid to replace the damaged property, up to the limits stated in the
19 policy.

20 (b) (1) ~~(A)~~ Except as provided in paragraph (2), no time
limit of

21 less than 12 months from the date that the first payment toward
22 the actual cash value is made shall be placed upon an insured in
23 order to collect the full replacement cost of the loss, subject to the
24 policy limit. ~~Additional extensions of six months shall be provided~~
25 ~~to policyholders for good cause.~~ In the event of a loss relating to
26 a “state of emergency,” as defined in Section 8558 of the
27 Government Code, no time limit of less than 24 months from the
28 date that the first payment toward the actual cash value is made
29 shall be placed upon the insured in order to collect the full
30 replacement cost of the loss, subject to the policy limit.
Additional extensions of six months shall be provided to
policyholders for good cause.

(B) An insurer shall provide the extension for good cause where
an insured acting in good faith and with reasonable diligence
encounters a delay or delays in approval for or re-construction
of the home/residence which are beyond the control of the
insured. Circumstances beyond the control of the insured
include, but are not limited to, unavoidable construction permit
delays, lack of necessary construction materials, and the
unavailability of contractors to perform the necessary work.
Nothing

31 in this section shall prohibit the insurer from allowing the insured
32 additional time to collect the full replacement cost.

33 (2) In the event of a covered loss relating to a state of
34 emergency, as defined in Section 8558 of the Government Code,
35 coverage for additional living expenses shall be for a period of no
36 less than ~~36~~ 24 months from the inception of the loss, but shall
be

37 subject to other policy provisions. **However, for a policy with a
dollar limit on coverage for additional living expenses, an insurer shall grant
an extension of up to 12 additional months for a total of 36 months where
an insured acting in good faith and with reasonable diligence encounters a
delay or delays in approval for or re-construction of the home/residence
which are a result of circumstances beyond the control of the insured.
Circumstances beyond the control of the insured include, but is not limited
to, unavoidable construction permit delays, lack of necessary construction
materials and contractors unavailable to perform the necessary work.**

~~Additional extensions of six~~

38 ~~months shall be provided to policyholders for good cause.~~

39 (c) In the event of a total loss of the insured structure, no policy
40 issued or delivered in this state may contain a provision that limits

1 or denies payment of the replacement cost in the event the insured
2 decides to rebuild or replace the property at a location other than
3 the insured premises. However, the measure of indemnity shall be
4 based upon the replacement cost of the insured property and shall
5 not be based upon the cost to repair, rebuild, or replace at a location
6 other than the insured premises.

7 (d) Nothing in this section shall prohibit an insurer from
8 restricting payment in cases of suspected fraud.

9 ~~SEC. 3. Section 10103.7 is added to the Insurance Code, to~~
10 ~~read:~~

11 ~~10103.7. In the event of a covered loss relating to a state of~~
12 ~~emergency, as defined in Section 8558 of the Government Code,~~
13 ~~an insured under a residential property insurance policy shall be~~
14 ~~permitted to combine the policy limits for the primary dwelling,~~
15 ~~other structures, contents, and additional living expenses. If the~~
16 ~~insured chooses this option, the insured may use these combined~~
17 ~~limits for any of the covered expenses reasonably necessary to~~
18 ~~rebuild or replace the damaged or destroyed dwelling, other~~
19 ~~structures, or contents, or for additional living expenses.~~

20 ~~SEC. 4. The provisions of this bill are severable. If any~~
21 ~~provision of this bill or its application is held invalid, that invalidity~~
22 ~~shall not affect other provisions or applications that can be given~~
23 ~~effect without the invalid provision or application.~~

24 ~~SEC. 5. Paragraph (1) of subdivision (c) of Section 675.1 of~~
25 ~~the Insurance Code, as amended by this bill, and paragraph (2)~~
26 ~~of subdivision (b) of Section 2051.5 of the Insurance Code, as~~
27 ~~amended by this bill, shall be applied retroactively to any~~
28 ~~applicable claim filed on or after July 1, 2017.~~