

In the Supreme Court of the State of California

**ASSOCIATION OF CALIFORNIA
INSURANCE COMPANIES and
PERSONAL INSURANCE
FEDERATION OF CALIFORNIA,**

Plaintiffs and Respondents,

v.

**DAVE JONES, in his capacity as the
Commissioner of the California
Department of Insurance,**

Defendant and Appellant.

Case No. S226529

**SUPREME COURT
FILED**

OCT 13 2015

Frank A. McGuire Clerk

Deputy

Court of Appeal, Second Appellate District, Case No. B248622
Los Angeles County Superior Court, Case No. BC463124
The Honorable Gregory W. Alarcon, Judge

APPELLANT'S MOTION FOR JUDICIAL NOTICE

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**TO THE HONORABLE CHIEF JUSTICE AND TO THE HONORABLE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE
OF CALIFORNIA:**

Pursuant to Rule 8.252, subdivision (a) of the California Rules of Court, defendant and appellant Dave Jones, in his capacity as the Insurance Commissioner of the State of California ("Commissioner"), hereby requests that the Court take judicial notice of the following documents:

- Exhibit A: Assembly Committee on Insurance, Bill Analysis of Sen. Bill No. 1854 (1991-1992 Reg. Sess.) as amended Aug. 11, 1992;
- Exhibit B: Senate Rules Committee, Office of Sen. Floor Analyses, analysis of Sen. Bill No. 1854 (1991-1992 Reg. Sess.) as amended Aug. 11, 1992;
- Exhibit C: Senate Committee on Insurance, Bill Analysis of Assem. Bill No. 2199 (2003-2004 Reg. Sess.) as amended May 17, 2004;
- Exhibit D: Senate Banking, Finance and Insurance Committee, Bill Analysis of Sen. Bill No. 2 (2005-2006 Reg. Sess.) as amended March 29, 2005;
- Exhibit E: Senate Rules Committee, Floor Analysis of Sen. Bill No. 2 (2005-2006 Reg. Sess.) as amended August 30, 2005;
- Exhibit F: Senate Banking, Finance and Insurance Committee, Bill Analysis of Assem. Bill No. 2022 (2009-2010 Reg. Sess.) as amended May 11, 2010;
- Exhibit G: Assembly Committee on Insurance, Hearing Analysis of Sen. Bill No. 812 (1990-1991 Reg. Sess.) as introduced March 7, 1991;

Exhibit H: Assembly Committee on Finance and Insurance,
summary of Assem. Bill No. 1353 (1971 Reg. Sess.);
and

Exhibit I: Legislative Counsel Opinion No. 16132 (Jul. 14, 1971)
Insurance Commissioner: Process (A.B. 1353).

Pursuant to Evidence Code sections 452 and 459, the Court may take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments ... of any state of the United States.” (Evid. Code, § 452, subd. (c).) Legislative committee reports and analysis are proper subjects of judicial notice. (See *In re J.W.* (2002) 29 Cal.4th 200, 211 [legislative committee analysis are subject to judicial notice]; *Acer v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484 [finding that legislative committee reports are proper subjects for judicial notice under Evidence Code section 452, subdivision (c)].) Opinions of the Legislative Counsel are also proper matters for judicial notice. (See *St. John’s Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 967, fn. 5.)

In this case, Exhibits A through F are portions of the legislative histories of Insurance Code sections 1749.85, 2051.5, 10101, 10102, and 10103 documenting the recurring problem of underinsurance caused by catastrophic wildfires and are relevant to whether the Commissioner had authority under Insurance Code section 790.10 to address the underinsurance problem. They are also relevant to review of the court of appeal’s analysis that omission of replacement cost estimates from these Insurance Code provisions was a deliberate legislative choice.

Exhibit G is a legislative committee bill analysis of Insurance Code section 790.034 and is relevant to the issue of the scope of the Commissioner’s rulemaking authority under Insurance Code section 790.10.

Exhibits H and I are portions of the legislative history of Insurance Code section 790.10 and are relevant to the scope of the Commissioner's authority to promulgate regulations under that section.

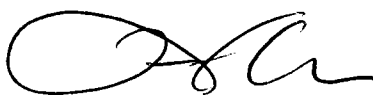
The Commissioner sought judicial notice of Exhibits A and B from the trial court, which did not rule on the request. (See Joint Appendix, Vol. II, 233-244.) The Commissioner requested, and the court of appeal granted, judicial notice of Exhibit G. (See Appellant's Request for Judicial Notice dated February 5, 2014; Order Granting Appellant's Request for Judicial Notice dated March 7, 2014.) The remaining documents sought for judicial notice were not presented to the trial court or the court of appeal, and do not relate to any proceeding below that occurred after judgment was entered in this case.

For these reasons, the Commissioner respectfully requests that the Court take judicial notice of each document.

Dated: October 9, 2015

Respectfully submitted,

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LISA W. CHAO
Deputy Attorney General
*Attorneys for Defendant and Appellant
Dave Jones, in his capacity as the
Insurance Commissioner of the State of
California*

DECLARATION OF LISA W. CHAO

1. I am an attorney at law duly authorized to practice before all courts of the State of California and this Court, and am employed as a Deputy Attorney General with the California Attorney General's Office, which represents Appellant Dave Jones, in his capacity as the Insurance Commissioner of the State of California ("Commissioner"), in this matter. I have personal knowledge of the facts recited herein, and if called and sworn, would competently so testify.

2. On October 1, 2015, I accessed the official website of California Legislative Information maintained by the Legislative Counsel Bureau at <http://leginfo.legislature.ca.gov> (Website).

3. I also caused to be compiled the legislative histories of Insurance Code sections 790.034, 790.10 and 10101 by the Office of the Attorney General's librarian trained in our office's methods for researching and compiling legislative history.

4. Exhibit A is a true and correct copy of the Assembly Committee on Insurance, Bill Analysis of Sen. Bill No. 1854 (1991-1992 Reg. Sess.) enacting California Residential Property Insurance Disclosure Act (Disclosure Act), Insurance Code sections 10101-10107, obtained by the librarian from the California State Archives.

5. Exhibit B is a true and correct copy of the Senate Rules Committee, Office of Sen. Floor Analyses, analysis of Sen. Bill No. 1854 (1991-1992 Reg. Sess.) enacting the Disclosure Act obtained by the librarian from the California State Archives.

6. Exhibit C is a true and correct copy of a legislative committee bill analysis of Assem. Bill No. 2199 (2003-2004 Reg. Sess.) amending Insurance Code section 2051.5 that I printed from the Website.

7. Exhibits D and E are true and correct copies of legislative committee bill analyses of Sen. Bill No. 2 (2005-2006 Reg. Sess.) adding Insurance Code section 1749.85 that I printed from the Website.

8. Exhibit F is a true and correct copy of a legislative committee bill analysis of Assem. Bill No. 2022 (2009-2010 Reg. Sess.) amending the Disclosure Act that I printed from the Website.

9. Exhibit G is a true and correct copy of a legislative committee bill analysis of Sen. Bill No. 812 (1990-1991 Reg. Sess.) enacting Insurance Code section 790.034 obtained by the librarian from the California State Archives.

10. Exhibit H is a true and correct copy of summary of Assem. Bill No. 1353 (1971 Reg. Sess.) enacting Insurance Code section 790.10 obtained by the librarian from the file of the Assembly Committee on Finance and Insurance located at the California State Archives; and

11. Exhibit I is a true and correct copy of the Legislative Counsel Opinion No. 16132 (Jul. 14, 1971) obtained by the librarian from the California State Archives.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 9th day of October 2015.


Lisa W. Chao



Date of Hearing: August 18, 1992

ASSEMBLY COMMITTEE ON INSURANCE

Burt Margolin, Chair

SB 1854 (Petris)- As Amended: August 11, 1992

SENATE ACTIONS:

COMMITTEE INS., CL. & CORPS. VOTE 6-2 FLOOR VOTE 36-0

SUBJECT

Should insurers be required to disclose to insureds the various forms of residential property insurance available?

DIGEST

Existing law:

- 1) Specifies the California Standard Form Fire Insurance Policy. The policy covers the insured for the actual cash value of the property at the time of loss, but not exceeding the amount it would cost to repair or replace the property with material of similar kind and quality. There is no allowance for increased cost of repair or reconstruction because of building codes or ordinances.
- 2) Requires fire insurance policies to comply with the standard fire form, but permits policies substantially equivalent, or more favorable to insureds.
- 3) Does not require insurers to disclose to applicants the additional homeowners insurance coverages available.

This bill:

- 1) Forbids the issuance of a policy of residential property insurance unless a notice disclosing certain provisions of the purchased coverage, and other types of coverage, is provided to the insured.
- 2) Specifies the content of the notice. The notice must describe guaranteed replacement cost coverage with building code upgrades, or with limited or no building code upgrades. The notice also must describe extended replacement cost coverage, replacement cost coverage and actual cash value coverage. The insurer or insurance agent must indicate on the notice the type of coverage selected or purchased by a homeowner.
- 3) Requires the notice to be provided to insureds every other year for renewals of policies.

- continued -

- 4) Provides that after January 1, 1993 no policy may be issued, and after July 1, 1993 no policy may be renewed, as guaranteed replacement cost coverage if there are maximum limits for damage to the insured residential property. Additional endorsements may have limits.
- 5) Requires a residential property insurance policy to disclose, on the declaration page or a separate page, the liability limits for the dwelling and personal property, any deductibles, and whether coverage is provided for building code upgrades. If code upgrade is provided, the limits of such coverage must be specified.
- 6) Authorizes the Insurance Commissioner, only if requested by an insurer, to change the disclosure statement. Language can only be added to describe coverage not currently in the disclosure.
- 7) Provides that it goes into effect on July 1, 1993, except for the provision concerning the issuance of guaranteed replacement cost policies which would become effective January 1, 1993.

FISCAL EFFECT

None

COMMENTS

- 1) PURPOSE. The sponsor, the City of Oakland, and the author state that this bill is a full-disclosure and truth in labeling bill for purchasers of homeowners insurance. They state that this measure is a response to the severe underinsurance problems faced by homeowners who lost their homes in last year's Oakland Hills Fire. The sponsor and author contend that this bill is needed so that homeowners receive full and accurate information needed to make an informed choice about coverage.

According to the sponsor and author, many victims who thought they had full replacement, guaranteed replacement or top of the line property insurance discovered that their coverage was inadequate to cover actual rebuilding costs. Homeowners also discovered that their policies did not cover code upgrades, the additional expense, especially for older houses, of making a dwelling comply with the building codes adopted since the house was built. Other homeowners found out that their policy limits were set too low or that inflation ate away at the coverage levels.

The sponsor and the author state that this bill is needed to ensure that homeowners are informed about their coverage and other available coverages. Most homeowners, the sponsor and author believe, would purchase guaranteed replacement cost coverage if made aware of it.

- 2) NUMBERS. There were over 3,000 houses destroyed in the Oakland Hills Fire. According to information provided by the author, 70 percent of the policies on these dwellings did not cover required building code upgrades, fewer

- continued -

than 100 homeowners had policies that did not provide replacement coverage, and 5 to 10 homeowners had no coverage at all. According to the Department of Insurance, most homeowners were underinsured, some by as much as \$100,000 to \$200,000.

Five insurers have agreed to pay fire victims above homeowners policy limits. These insurers are California Casualty, California State Automobile Association, Fireman's Fund, Liberty Mutual and State Farm. Civil Service Employees Insurance Company filed lawsuits asking the court to determine whether it must pay full replacement costs, above policy limits, for three insured dwellings. The Insurance Commissioner is studying Allstate, Civil Service Employees Company, Farmers, Fireman's Fund and State Farm for alleged improper practices after the Oakland Hills Fire.

- 3) REPLACEMENT COST COVERAGE. At issue is the perception of policyholders that they are covered for their complete loss in contrast to the actual language of the homeowners' policies. The marketing practices of insurers and agents could have led homeowners to believe that they were covered for the complete rebuilding of their dwellings because of the titles of the various coverage packages available. There is no standard industry-wide definition for replacement value, complete replacement value or guaranteed replacement value coverages. Persons purchasing these coverages could assume that their losses would be covered without further study of their policies. Most homeowners purchase policies with lower coverage levels, which consequently require them to bear part of the rebuilding costs.

Policyholders should periodically review their policies to determine whether the coverage is adequate. Changes in the value of a dwelling or inflation could leave a homeowner underinsured.

- 4) PRIOR VERSION. The June 22, 1992 version of this measure would have forbidden the delivery of a homeowner's policy that provided less than guaranteed replacement cost coverage unless a notice was provided informing the purchaser that the coverage may be less than the amount needed to fully repair the lost or damaged dwelling. The notice must have specified whether code upgrade was included, the dollar amount required to rebuild to current building code standards, and the cost of code upgrade coverage.
- 5) OPPOSITION. The Personal Insurance Federation (PIF), Association of California Insurance Companies (ACIC), American Insurance Associations (AIA), and Alliance of American Insurers (AAI) opposed the June 22, 1992 version of this bill. The notice required by the current version of this measure resembles the notice sought by the opponents. The opponents, however, have not indicated that they have lifted their opposition to this bill.
- 6) RELATED BILL: AB 2921 (Lee) requires insurers to provide written disclosure to applicants for homeowners coverage, or renewal, of the additional coverages available, such as replacement or guaranteed

- continued -

replacement, coverages to meet changes in building codes or ordinances, or replacement of personal property. AB 2921 is on Third Reading on the Senate Floor.

SPONSOR: City of Oakland

SUPPORT: Insurance Commissioner
California State Automobile Association

OPPOSITION: Personal Insurance Federation
Association of California Insurance Companies
Alliance of American Insurers
American Insurance Association



UNFINISHED BUSINESS

<p align="center">SENATE RULES COMMITTEE</p> <p align="center">Office of Senate Floor Analyses 1020 N Street, Suite 524 445-6614</p>	Bill No.	SB 1854
	Author:	Petris (D)
	Amended:	8/11/92
	Vote Required:	21

Committee Votes:

Senate Floor Vote:

COMMITTEE: INS/CLAIMS/CORPS		
BILL NO.:	5B 1854	
DATE OF HEARING:	4-1-92	
SENATORS:		Y/N/D
C. Green		/
Johnston		/
Keene		/
Riles		/
Lewis		/
McCorquodale		/
H. ers		/
Russell		/
VACANT (V)		
TOTTE (C)		/

PLACED
ON FILE
PURSUANT
TO SENATE
RULE 28.8

NOTE: Senate Floor Amendments of 5/28/92 rewrote the contents of the bill. Thus, the Senate Policy vote may not be relevant

Assembly Floor Vote: 74-1, 8/25/92

SUBJECT: Insurance: homeowners
SOURCE: City of Oakland

DIGEST: Assembly Amendments rewrote the bill as it left the Senate concerning disclosures to be made to homeowner's insurance customers but the intent of the bill is the same.

The bill places into law a California Residential Property disclosure statement which insureds must be provided when they are issued a policy of property insurance or when they renew the policy as specified.

ANALYSIS: On October 19 and 20, 1991, a devastating fire occurred in the foothills of the City of Oakland. It killed 25 people, destroyed about 3,000 dwellings and caused more than \$1.5 billion in damage.

The Civil Service Employees Insurance Co. of San Francisco filed three lawsuits in Alameda County Superior Court alleging that it only was obligated to pay the maximum allowed under the homeowner's insurance policies. The question is whether they must pay the actual cost of replacing dwellings they insured.

Many victims at an April 1, 1992, meeting held in Oakland attended by local officials and the Insurance Commissioner testified about misleading sales and marketing practices by insurers, inadequate disclosure of policy terms, lack of good faith in settlement offers, incessant rotation and replacement of claims adjusters and other grievances.

CONTINUED

The Insurance Commissioner ordered immediate market conduct examinations of five insurance companies and called an investigatory hearing he will chair May 27 in Oakland in which insurance executives may be subpoenaed to testify about their actions. He has requested the companies to undertake internal examinations of their response to fire claims and report to him on their performance efforts to resolve outstanding issues to the satisfaction of their customers. He has announced that market conduct studies of five companies frequently cited as having acted improperly by policyholders will be done. The five are Allstate, Civil Service Employees, Farmers, Firemen's Fund, and State Farm. The purpose of the market studies is to determine whether each of the companies have committed violations of the Insurance Code in the underwriting of policies or the handling of claims. (See attached Claims Study of 1992 by the Department of Insurance.)

Current law requires fire policies in California to conform to the California Standard Form Fire Insurance Policy, unless additional coverages are contained in the policy that are substantially equivalent or more favorable to the insured person. This standard form policy sets forth a maximum dollar amount of insurance that will be paid to the insured person for losses to the property, not to exceed "the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business."

This bill:

1. Forbids the issuance of a policy of residential property insurance unless a notice disclosing certain provisions of the purchased coverage, and other types of coverage, is provided to the insured.
2. Specifies the content of the notice. The notice must describe guaranteed replacement cost coverage with building code upgrades, or with limited or no building code upgrades. The notice also must describe extended replacement cost coverage, replacement cost coverage and actual cash value coverage. The insurer or insurance agent must indicate on the notice the type of coverage selected or purchased by a homeowner.
3. Requires the notice to be provided to insureds every other year for renewals of policies.
4. Provides that after January 1, 1993 no policy may be issued and after July 1, 1993 no policy may be renewed, as guaranteed replacement cost coverage if there are maximum limits for damage to the insured residential property. Additional endorsements may have limits.
5. Requires a residential property insurance policy to disclose, on the declaration page or a separate page, the liability limits for the dwelling and personal property, any deductibles, and whether coverage is provided for building code upgrades. If code upgrade is provided, the limits of such coverage must be specified.
6. Authorizes the Insurance Commissioner, only if requested by an insurer, to change the disclosure statement. Language can only be added to describe coverage not currently in the disclosure.

CONTINUED

7. Provides that it goes into effect on July 1, 1993, except for the provision concerning the issuance of guaranteed replacement cost policies which would become effective January 1, 1993.

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No

SUPPORT: (Verified 8/26/92)

City of Oakland (source)
California Trial Lawyers Association
City of Berkeley
Personal Insurance Federation of California
Insurance Commissioner
California State Auto Association
Executive Council of Homeowners
American Insurance Association

ARGUMENTS IN SUPPORT: The author's office indicates, this bill was introduced in response to the disastrous East Bay Fire of 1991. An estimated 3,000 homes were destroyed in that conflagration. Many homeowners were shocked to find that their homeowners' policies did not cover a full replacement of the value of their structures. There are reports that some homeowners have found that their policy's limits leave them up to \$200,000 short of the actual amount needed to rebuild their homes.

Currently, there is guaranteed replacement coverage insurance for homeowners which provides that no matter what dollar limit is expressed in the policy, the insurance carrier pays the total amount of rebuilding the structure. Unfortunately, many consumers do not know about the existence of guaranteed replacement cost coverage and insurance companies do not always advise insureds of the availability of this type of coverage.

Another problem was that 70 percent of the policies did not include a provision to cover mandated building code upgrades. Some insurance companies are dealing with this problem on a case by case basis and some are even paying for these upgrades even if the policy did not include this provision. However, the majority are not paying and these costs are coming directly out of the pockets of these homeowners.

CONTINUED

ASSEMBLY FLOOR VOTE:

MEASURE: SB 1854
AUTHOR: Petris
TOPIC: Insurance: homeowners.
DATE: 08/25/92
LOCATION: ASH. FLOOR
MOTION: SB 1854 PETRIS THIRD READING BY LEE
(AYES 74. NOES 1.) (PASS)

AYES

- | | | | |
|----------------|---------------|---------------|------------------|
| Allen | Andal | Archie-Hudson | Areias |
| Baker | Bane | Bates | Becerra |
| Bentley | Boland | Bronzan | Bruite |
| Burton | Campbell | Cannella | Chacon |
| Chandler | Cluts | Collins | Connelly |
| Conroy | Cortese | Costa | Eaves |
| Elder | Eppler | Farr | Felando |
| Ferguson | Floyd | Frazer | Barbara Friedman |
| Terry Friedman | Frizzelle | Gotch | Hannigan |
| | | | |
| Harvey | Hauser | Hayden | Horcher |
| Hughes | Hunter | Isenberg | Jones |
| Katz | Kelley | Klehs | Knowles |
| Lancaster | Lee | Lempert | Margolin |
| Mays | Moore | Mountjoy | Murray |
| Nolan | O'Connell | Peace | Polanco |
| Quackenbush | Roybal-Allard | Sastrand | Sher |
| Speier | Statham | Tanner | Tucker |
| Umberg | Vasconcellos | Woodruff | Wright |
| Wyman | Brown | | |

NOES

McClintock

DLW:jk 8/26/92 Senate Floor Analyses
Attachment



BILL ANAL

SENATE COMMITTEE ON INSURANCE
 Senator Jackie Speier, Chair

AB 2199 (Kehoe)
 2004

Hearing Date: June 16,

As Amended: May 17, 2004
 Fiscal: No
 Urgency: Yes (2/3 floor vote required)

VOTES: Asm. Ins. DP:17-0
 Asm. Floor Passed:78-0

SUMMARY

Would define the measure of indemnity under an open policy offering replacement cost, and place specified conditions on insurers in circumstances related to a state of emergency, would allow an insured to be granted a time extension to rebuild, repair, or replace the insured property for "good cause" even without a state of emergency and would, as specified, require an extension of time after a state of emergency is declared, and would further allow an insured to rebuild, repair, or replace the property at a location other than the original insured premise, under specified circumstances.

DIGEST

Existing law

1. Defines an "open policy" of fire insurance, generally speaking, as one that does not state the amount for which the item is insured, but also states, in essence, that the measure of payment is the expense to replace the item in its condition at the time just prior to commencement of the fire [Insurance Code Section 2051];
2. Requires a disclosure that, in the event of a covered loss, a replacement cost policy is to, generally speaking, "repair or replace the damaged or destroyed dwelling with like or equivalent construction," and explains various conditions on qualifying for replacement cost, such as a requirement

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to insure the dwelling to its full replacement cost at the time the policy is issued, and notifies policyholders that some insurers may require that homes be rebuilt before replacement costs will be paid [Insurance Code Section 10102];

3. Otherwise leaves unspecified important standards related to whether an insurer may require rebuilding within six months, a year or any other time, in order to claim replacement cost from the insurer, but sets forth these standards, to some extent, through regulation;

This bill

- 1) Would define the measure of indemnity, under an open policy that promises payment of replacement cost, to be the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured;
- 2) Would specify that if a policy requires the insured

to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer must pay the actual cash value (ACV) of the damaged property, until such time as the damaged property is repaired, rebuilt, or replaced;

- 3) Would require that once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the ACV payment made and the full replacement cost reasonably paid to replace the damaged property, up to the policy limits stated in the policy;
- 4) Would provide that from the date that ACV payments are made, no time limit of less than 12 months shall be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit, and allows for additional extensions of six months for good cause;
- 5) Would specify that, in the event of a loss relating to a declared "state of emergency," no time limit of less than 24 months shall be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit;

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- 6) Would provide that insurers are not prohibited from allowing the insured additional time to collect the full replacement cost;
- 7) Would specify that, in the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision that limits or denies payment of the replacement cost if the insured decides to rebuild or replace the property at a location other than the original insured premises;
- 8) Would provide that the measure of indemnity shall be based upon the replacement cost of the insured property and shall not be based upon the cost to repair, rebuild, or replace at a location other than the insured premises;
- 9) Would provide that insurers are not prohibited from restricting payment in cases of suspected fraud.

COMMENTS

- 1. Purpose of the bill . To allow consumers a reasonable amount of time to rebuild or to replace their properties, particularly when there is a state of emergency, and to clarify the calculations for replacement costs under an open fire policy. -
- 2. Background .

Many homeowners insurance policies promising replacement costs make the payment of replacement cost contingent upon a home being reconstructed within 180 days of the fire. In light of the scale of disaster that unfolded last year throughout Southern California, the Chair was concerned about the 180 day limit in some policies. She convened an oversight hearing on November 20, 2003. This committee took testimony at the San Bernardino City Hall from wildfire victims and from insurers, as well as local government officials. Present at the hearing were members of the Senate and Assembly representing the greater San Bernardino area, as well as the Insurance Commissioner.

Generally speaking, there was a commitment by most insurers to grant homeowners involved in the disaster additional time to reconstruct their homes and,

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therefore, additional time to claim replacement costs. Insurers with 180 day or one year time limits generally promised extensions of the time limits specified in their policies in light of the scale of the disaster.

The committee also heard testimony as to the laborious documentation process that was required by some insurance companies, and of the struggle by fire victims as they sought to claim their benefits under this lengthy process. Insurer practices varied. For example, one insurer indicated that it wasn't pressing its policyholders to do itemization (the Automobile Club of Southern California-AAA) while at least one other major company indicated that it would require itemization.

The Department of Insurance (DOI) legal department informed the committee that losses related to mudslides may be covered under some policies, depending upon the policy language. Testimony was also received from public officials, both before and during the hearing, about the costs of clearing property, the complexity of determining if debris was toxic and therefore had to be handled differently (costing homeowners more and squeezing their policy limits), and other related issues.

- 3. Support . The author indicates that companies may or may not provide extensions of time to future fire victims because there are no strict rules set forth in law. The author states that it's important to establish "timeframes in law [that] will provide consumers the protection they so justly deserve, especially after such devastation. According to the author, six large companies represent 65% of the entire homeowners' market and of these companies 2/3 require a homeowner to rebuilt or replace a home within 6 months. In addition, some companies "start the clock" from the date of the fire, while others start the clock from when the claim is filed.

Consumers Union supports the bill for all of the reasons noted above. Consumers Union notes that contractors and building materials are often in short supply after a major disaster. Consumers Union also notes that it is unfair to deny full recovery just

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because someone wants to move from a fire-prone area. The bill limits the payment to the insured to the amount that would have been due if the insured had rebuilt in the original location. Consumers Union notes that this reduces the risk of future loss.

Consumer Attorneys of California and The Greenspan Company, public adjusters, support the bill for all of the reasons noted, above.

- 4. Opposition . None.

- 5. Clarifying comment .

It is not the intent of the author or the legislation that the language of this bill apply to the fire victims of 2003. It is staff's understanding from the Department of Insurance that the insurers covering victims of the 2003 fires have generally agreed to extend their contract limitations in accordance with this proposed new statute.

Unless a bill contains language specifically making its operation retroactive, staff has been advised in the past by Legislative Counsel that the language in a bill operates prospectively. Therefore, the committee and Legislature, should it pass AB 2199, should be aware that its provisions would be operative with respect to homeowners policies that incept or are renewed on or after the effective date of this statute. This bill is an urgency measure and so the date upon which the Governor signs the bill, should he do so, would be the date upon which it becomes effective.

6. Clarifying amendment needed.

On page 2 at line 17, after the words "from the date" insert:

"that the first payment toward"

On page 2 at line 18, strike the word "payment"

On page 2 at line 24, after "date the" insert:

"first payment toward"

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On page 2, at line 24, strike the word "payment"

RELATED LEGISLATION

SB 64 (Speier): Would allow mediation of disputed fire claims arising from the 2003 Southern California firestorms. Status: Before Assembly Insurance Committee.

SB 691 (Escutia): Would generally ban credit scoring in the rating or underwriting of homeowners' policies. Status: Before Assembly Insurance Committee, and granted reconsideration.

SB 1323 (Ortiz): Would prohibit credit scoring for underwriting or rating homeowners' insurance and prohibit insurers from reporting inquiries about coverage to industry databases, as specified.

SB 1474 (Escutia): Would, generally speaking, require that new offers and renewals of homeowners coverage be made unless the owner of the home has made two or more covered claims in a three year period, with some exceptions. Status: Before Assembly Insurance Committee.

SB 1855 (Alpert): Would require insurers to offer buyers cost comparisons for various coverages under a policy, and would amend language in the homeowners insurance disclosure statement presently set forth in statute. Status: Before Assembly Insurance Committee.

AB 1049 (Calderon): Prohibited an adverse underwriting decision based upon an inquiry about coverage, when knowledge of the inquiry was obtained by the insurer from an industry database such as CLUE. Status: Chapter 442, Statutes of 2003.

AB 2399 (Liu): Would ban discrimination in the issuance of homeowners policies based upon dog breeds, would allow for differential pricing based upon breed and related actuarial data, and would grant a discount to those homeowners with breeds granted an American Kennel Club "Canine Good Citizen" certification. Status: Before Assembly Insurance.

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AB 2199, Page

— AB 2962 (Pavley): Specifies the calculation of actual cash value that shall apply to a homeowners' policy.
Status: Before Senate Insurance Committee.

POSITIONS

Support

Department of Insurance (sponsor)
The Greenspan Company
Consumer Attorneys of California
Consumers Union

Oppose

None.

Consultant: Brian Perkins 916-445-0825

SENATE BANKING, FINANCE AND INSURANCE COMMITTEE
 Senator Jackie Speier, Chair

SB 2 (Speier) Hearing Date: April
 6, 2005

As Amended: March 29, 2005
 Fiscal: Yes
 Urgency: No

SUMMARY

Would create new pre- and post-licensure education requirements for agents and brokers, expand alternative living expense (ALE) and debris removal payments under a homeowners policy after a state of emergency, require payment of policy limits for personal property without an inventory after a total loss caused by a state of emergency, make the earthquake and catastrophe mediation programs permanent, require the approval of replacement cost estimation software, and make other related changes.

DIGEST

Existing law

1. Requires pre- and post-licensure education of agent-brokers and personal lines licensees according to a curriculum approved by the Department of Insurance (DOI);
2. Guarantees not less than 24 months after a state of emergency during which a policyholder may collect replacement cost for loss to a structure;
3. Defines "actual cash value" and "replacement cost" as those terms generally apply to a homeowners' policy;
4. Imposes other requirements on a policy of homeowners' coverage, including but not limited to specified language to explain coverage and perils not covered, cancellation of coverage or waiver of provisions of the policy, mortgagee interests, requirements if a loss occurs, etc.;

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5. Generally speaking, requires that no insurer deny homeowners coverage based upon an inquiry about policy coverage when the inquiry was reported to the insurer by an insurance-support organization;
6. Generally grants broad authority to the DOI and Insurance Commissioner (IC) to regulate the business of insurance;
7. Establishes a statute of limitations of January 8, 2008 on mediation programs involving earthquake, disaster-related fire claims, and specified auto insurance claims;

This bill

1. Would, with respect to all lines of insurance, prohibit an insurer from submitting a report of a claim to an insurance-support organization without first giving a copy of the report to the policyholder,

unless the report is of a suspected fraudulent claim;

- 2. Would require the DOI to develop a curriculum to instruct broker-agents and other personnel in the office in the proper estimation of the replacement cost of structures, require continuing education in this subject, and prohibit untrained persons from doing estimates, as specified;
- 3. Would require not less than 24 months of ALE after a total loss caused by a state of emergency, and require an insurer to provide insureds with a list of items that may be covered as ALE;
- 4. Would require that insurers provide insureds with a copy of the policy within 15 working days of a claim for a total loss;
- 5. Would require, after a total loss caused by a state of emergency, that debris removal done without cost to the property owner be reimbursed to the property owner at fair market value;
- 6. Would require that policy limits for personal property be paid without requiring an inventory in the

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event of a total loss, as specified, caused by a state of emergency;

- 7. Would require that software used to represent to a consumer the replacement value of a home be approved by the DOI, as specified;
- 8. Would create a permanent mediation program for fire and earthquake losses caused by a state of emergency.

COMMENTS

1. Purpose of the bill . To help survivors of catastrophes recover by easing documentation requirements and expanding coverage so that reconstruction can be accelerated. _

2. Background. This bill arises from the hearings held by this committee in San Bernardino in October of 2003 and in El Cajon in November of 2004, as well as claims worked by staff of the committee after these hearings. In the hearings, fire survivors spoke movingly about the trauma of having to provide extensive inventory requirements to recover for personal property collected over decades, about how they worried whether ALE funds would run out before they were able to move back into their homes, about problems with debris removal, underinsurance at time of the loss, and about the concern that a lawsuit would be needed to recover under a policy. _

As noted below, several bills passed this Legislature last year to deal with the shortcomings of prior law. First, the terms "actual cash value" and "replacement cost" under a policy were defined and placed into statute (AB 2199-Kehoe and AB 2962-Pavley). Insurers must now offer at least 24 months to claim replacement cost after a loss caused by a state of emergency (Pavley). The DOI was allowed to mediate the claims of 2003 fire survivors (SB 64, Speier), and staff understands that hundreds of mediation requests were received by the DOI.

During the first hearing in 2003 and the second in 2004, homeowners testified, sometimes in tears, about their experiences in the claims process. Many were

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worn down emotionally by the need to fully inventory decade's worth of personal property losses in order to recover under their policies. In one instance, a homeowner had to document how many cloth napkins were consumed by the fire.

Some survivors used volunteer labor to clear lots of debris after the fire in the hope of conserving coverage under their policy limits for more important purposes, such as rebuilding. In San Bernardino, prior to the hearing, the fire department indicated to the Chair that the city and volunteers could clear a lot for relatively little. In contrast, some contractors were exploiting insurance policy limits by claiming that chimneys constituted hazardous waste that needed expensive disposal procedures. Shadow Mountain Community Church, located in El Cajon, organized hundreds of volunteers and cleared hundreds of lots. Some policyholders later discovered that their insurer refused to pay for this free labor, making the Church's effort-in effect-a wealth transfer to the insurer by volunteers.

Many homeowners feared running out of ALE money before they could reconstruct their homes. At the 2003 hearing, the Chair of the committee required every insurance company present (most of the major companies) to state publicly whether they were willing to extend ALE beyond the 12 month period typically in an insurance policy, in light of the disaster. Most insurers agreed to do so, and some noted that they already offered 24 months of ALE coverage. Prior to the El Cajon hearing, the Chair succeeded in convincing Allied Insurance Company to extend ALE beyond the one year limit in its policy as long as the claimant was in negotiations over settlement. Staff was able to verify that nearly every Allied insured received an extension, and many of those claims have since been settled.

Allstate Insurance Company refused to extend the time limit for its policyholders. Some Allstate's policyholders did obtain additional sums from the company after the Chair and staff worked with the insurer and policyholders to document additional living expenses incurred but not reported during the

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first year after the fire. Other policyholders received accelerated payments as a result of intervention with Allstate, while some also remain dissatisfied with the insurer.

Of all complaints heard in both hearings, none was more frequent nor so moving as the discussion of underinsurance. In case after case, homeowners reported that they thought they had enough insurance, only to discover that they were significantly underinsured-sometimes hundreds of thousands of dollars short. One woman testified in San Diego after wheeling a shopping cart with her personal possessions into the hall where the hearing was being held. In the months after this hearing, the committee was able to work with this woman's insurer to obtain accelerated payments from her insurer. She has since begun reconstructing her home.

Staff of the committee also visited San Diego in the month prior to the hearing and spoke directly to homeowners at home sites, in a city hall, a community

college, and at an evening meeting in the community of Crest. Both in these meetings and during public hearings, it became apparent that at least one way to avoid being underinsured was to be in the construction business and to know the costs of reconstruction. Absent such unique knowledge, however, the types of individuals who were underinsured spanned nearly every occupational group and type of person, including doctors, lawyers, business owners, religious personnel, insurance adjusters, steel workers, long-time residents and retirees, and relatively new homeowners. In hearings held by the DOI to educate the public and to determine if market conduct exams needed to be commenced, underinsurance was a major issue.

The insurance industry had many explanations about why people from nearly every walk of life were underinsured. Some insurers felt that few of their policyholders were underinsured, and they offered to pay beyond policy limits. Staff is aware of many insurers who paid beyond policy limits. Industry representatives also placed responsibility on homeowners who decided to pay less for coverage than

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would have been needed to be fully covered or who failed to disclose new room additions, expensive features of the home or to "schedule" expensive personal property.

Another explanation for underinsurance appears to be that homeowners' insurance coverage has changed dramatically in the past ten years. As recently as a decade ago, "guaranteed replacement cost" policies were the norm. Such policies guaranteed to replace the home regardless of the policy's limits. Underinsurance under such a policy is not an issue.

Since that time, and after significant costs associated with the guarantee, most insurers have moved to a policy of replacement cost plus a percentage of coverage (aka "extended replacement cost"), removing the guarantee to a homeowner that there will be enough to actually rebuild after a total loss. The fact that a policy will only grant an "extension" of a percentage (typically 25% to 50%) above policy limits makes it critical that initial policy limits be set accurately and updated regularly.

The use of estimation software that offered a "quick quote" of initial and updated replacement costs may have been one source of the underinsurance problem. The same software appears to have offered a more faithful estimate if the user took the time to fill in all the blanks in the description of the property. The software vendor has since eliminated the "quick quote" option in the software. One agent of a major insurer also commented to staff of the committee that unlicensed or poorly trained personnel in many agent offices may be another significant source of the problem—they simply don't recognize when the computer's estimate of replacement cost is too low.

Both the public and insurers realized that a catastrophe makes construction costs increase significantly, and lengthens the time needed to reconstruct. Changes made in law last year, and proposed this year both in this bill and in SB 518 (Kehoe), seek to address this concern.

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3. Support . The author believes that the 2003 wildfires illustrate the continued shortcomings of current insurance coverage for the most significant asset of most families: a home. Despite some of the important changes made in the prior session of the Legislature, the author states that the risks faced by homeowners remain tremendous.

As demonstrated during hearings and through claims worked by staff, the author believes that the underinsurance problem needs to be addressed. Better and continued training of personnel in how to estimate the replacement cost of a home is therefore critical. Requiring that insurers provide homeowners a copy of the policy in 15 days will help both parties settle claims faster.

Extending ALE to at least 24 months after a state of emergency recognizes that reconstruction is difficult when government agencies and building contractors are overwhelmed by skyrocketing demand. Paying policy limits for personal property after a total loss caused by a state of emergency will free the energy of survivors to concentrate on rebuilding, and perhaps even allow some of this money to be used for rebuilding as costs of construction skyrocket after a disaster. The public interest is best served when properties are cleared and reconstruction begins after a disaster, and ensuring that volunteer labor - the cheapest and most readily available after a major catastrophe- is paid for by insurers will further this public interest.

It is important that companies like CLUE have accurate information about all claims-auto, homeowners, life, etc.. To ensure accurate information, the author believes that the claimant should be able to see the information before it is given to CLUE.

The author also believes that the earthquake and fire mediation programs have worked well to encourage parties to settle quickly. They should be made permanent.

United Policyholders notes many of the same flaws in the existing law as the author. Untied Policyholders

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does not believe that regulating the software used to estimate replacement costs is a good idea unless the bill is amended to include language that the IC's approval of the software is not a de facto finding that the program is accurate or that the IC has verified the underlying data, materials and labor cost data in the program. The group also strongly supports increased education requirements for agents and other personnel in order to reduce the underinsurance problem. United Policyholders strongly supports allowing 24 months of ALE for reconstruction after a state of emergency.

The DOI supports SB 2 and asks that amendments be made as summarized below:

- I. Eliminate the DOI's obligation to approve software. DOI doesn't believe that it has the technical capability or budget to approve the software and it is concerned about its approval being used by the insurers as a shield to defend against underinsurance problems;
- II. Within Section 1749.85:

- i. Clarify that the language includes personal lines broker-agents, create a specific number of education hours and clarify that these hours are within, and not in addition to, the existing number of hours, designate the insurer to tell the DOI who needs the training and to inform the DOI when retraining is required under the one-every-six years rule in the bill, identify - other than an existing licensee-who is to be trained in how to estimate replacement costs, and make other clarifying changes;
- ii. Allow the department to determine if a foundation should be considered part of a total loss (eliminate 2051.5 (c) (3) of the bill).

4. Opposition . The Personal Insurance Federation of California (PIFC) generally makes the following points:

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- a. Section 2: The mandate to provide a homeowner with a claim submission prior to giving the information to an insurance support organization, such as CLUE, will increase costs and consumers can already correct information within 45 days of submitting the correction through use of the Fair Credit Reporting Act (FCRA);
- b. Section 3: PIFC supports enhanced education for agents-brokers but believes the bill's provisions are burdensome and complex-the section should be amended to clarify that companies will have the ability to establish educational programs that address the issues of proper valuation within the existing educational requirements of agents and brokers;
- c. Section 4: Paying fair market value for volunteer debris removal raises liability and public policy issues related to the lack of training by volunteers in removing debris, while mandatory ALE payments for months may not be fair if the homeowner decides to build a home that requires time beyond the conventional 12 month limit, and "grave concerns" were expressed about the provision of full policy limits for personal property without an inventory after a declared emergency-millions of homeowners will pay for these additional costs, a windfall may be provided to those who do not need full payment and the IRS will still require itemization to substantiate a tax deduction, particularly if payment is made in excess of the actual loss;
- d. Section 5: The requirement that the DOI approve of estimation software is unworkable, for a variety of reasons;
- e. Section 6: Requiring that a list of likely ALE expenses and that a policy be provided within 15 working days of a claim is duplicative, and it makes more sense to set the time at 30 days after a total loss and 60 days after a loss related to a disaster;

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- f. Section 7: Put back into the bill language in the existing program that says, in brief, that claims that are litigated or frivolous need not be mediated-PIFC is otherwise supportive of creating a permanent mediation program.

In fairness to those that oppose the bill, noted below, most of the comments were covered by the PIFC letter. It should be noted that the Insurance Brokers and Agents of the West oppose any new requirements for broker-agent education above those already required. ACIC also opposes the 100% payment for personal property provision because it applies to earthquake coverage as well for fire losses (see "Suggested Amendments," below). ACIC would accept an extension of ALE to 24 months after a declared disaster provided the bill extends the effective date of this provision to July 1, 2006 so that insurers have time to make their rate filings. ACIC agrees that the mediation program should be extended, agrees that the \$1500 fee for earthquake and fire mediations is sound, and objects to the same fee for auto mediation. [See "Suggested Amendments," below].

State Farm, which already offers two years of ALE as a standard benefit in its policies, opposes making this mandatory because it eliminates consumer choice in the market.

5. Suggested Amendments

- a. Continuing education: Staff recommends dropping most of the existing language while adopting language that prohibits unlicensed persons from estimating replacement costs under a policy of residential coverage. Staff also recommends that the bill be modified to require the existing curriculum committee, in 2006, to recommend to the IC additions to existing or new courses of pre- and post-licensing education courses.

The amendments would be as follows: On page 4, eliminate lines 2 through 35 and on line 37, before the word "shall", insert the words "or

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personal lines broker-agent", and on line 39, strike the comma and insert a period, and strike the remainder of the line as well as line 40. On page 5, strike lines 1 - 3.

Additionally, staff recommends that an amendment be adopted as follows: The curriculum committee shall recommend to the IC, in the year 2006, additions to existing curriculum or new courses for purposes of original licensing and continuing education covering instruction in the proper valuation of residential structures for purposes of estimating the replacement costs of those structures." Rationale: The DOI has numerous questions about the workability of the existing language of the bill and requiring that structure valuation be included in the curriculum that governs licensing is therefore a simpler choice. The suggested amendment also states clearly that an unlicensed person can't value a structure.

- b. Personal property. Staff recommends that this language be clarified so that it is clear that a claim for 100% of personal property limits

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without an inventory can only be made after a fire loss (not a loss covered by a policy of earthquake coverage). On page 6, starting at line 13, after the word "to", insert "fire caused by" Rationale: This clarifies that recovery of 100% of policy limits for personal property only applies to losses caused by a fire when a declared disaster caused the fire.

c. Software. Staff recommends eliminating the software approval requirement in the bill because all parties, including the DOI, seem to agree that the DOI lacks the ability to vet software that estimates replacement costs of residential structures. On page 6, starting at line 36, eliminate Section 5 of the bill. _

d. 15 day time period to produce policy. Staff recommends that more time be allowed before a policy is required to be provided to homeowners. Insurers insist that the same personnel who hand out checks to disaster victims

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will otherwise be tied up assembling copious documentation of policies tailored to each individual policyholder. Whether or not this is a fair representation, the practical reality is that disputes about what is or is not covered often arise later in the claims settlement process, whereas the earliest need is for cash. It is important to retain this requirement in the bill (that a policy eventually be given to the homeowner) because no such requirement presently exists in law and adequate documentation of the policy will help to reduce claims disputes. On page 7 at line 20, strike "15 working" and insert "30" and on line 21, at the end of the line, before the period, insert: ", and within 60 days after receipt of a claim caused by a declared state of emergency".

e. Mediation fee cap. Drafting by Legislative Counsel inadvertently increased the auto mediation cap. Staff recommends that this be corrected. On page 8 at line 39, after the word "each" insert "homeowners or earthquake," and on page 8 at line 40, after the word "chapter", strike the period and insert "and seven hundred dollars (\$700) for each automobile coverage dispute mediated pursuant to this chapter" and insert a period. Rationale: This amendment clarifies that earthquake and fire disaster mediations will retain their existing cap of \$1500 in cost, whereas auto mediations will retain their existing cap of \$700.

6. Prior legislation .

SB 64 (Speier, Chapter 357, Statutes of 2004):
Created a mediation program for 2003 fire survivors;

SB 1855 (Alpert, Chapter 385, Statutes of 2004):
Revised a statutory disclosure form to create disclosure that most policies are for "limited" replacement cost rather than replacement cost;

AB 1049 (Calderon, Chapter 442, Statutes of 2003):
Prohibits insurers from using inquiries about claims to deny a policy of homeowners coverage when the

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insurer discovers the inquiry based upon an insurance support organization report;

AB 2199 (Kehoe, Chapter 311, Statutes of 2004):
Created a statutory definition of replacement cost and gave homeowners 24 months after a state of emergency in which to claim replacement cost;

AB 2962 (Pavley, Chapter 605, Statutes of 2004):
Created a statutory definition of actual cash value, prohibited an insurer from refusing to renew a policy at least once after a state of emergency, and requires that the premium charged after a total loss reflect the reduced risk of the property.

7. Related legislation .

SB 251 (Morrow): Would permit homeowners to accept 85% of policy limits for personal property without having to complete an inventory, in the event of a total loss of a primary residence and after signing a waiver as to further claims of coverage, and would apply to all total losses and not just those caused by a state of emergency.

SB 518 (Kehoe): Would create additional requirements for public adjusters, require 24 months of ALE after a state of emergency, extend the statute of limitations for suit under a homeowners policy to 24 months, and make related changes.

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POSITIONS

Support

Department of Insurance
United Policyholders

Oppose

Personal Insurance Federation of California
Insurance Brokers and Agents of the West
Insurance Services Office
California Chamber of Commerce
Association of California Insurance Companies
American Agents Alliance
Pacific Association of Domestic Insurance Companies
State Farm
Western Insurance Agents Association
American Insurance Association

Consultant: Brian Perkins, (916) 651-4763

SENATE THIRD READING
SB 2 (Speier)
As Amended August 30, 2005
Majority vote

SENATE VOTE :23-15

INSURANCE 7-1 APPROPRIATIONS 12-5

Ayes: Vargas, Calderon, Frommer, Karnette, Lieber, Nava, Umberg	Ayes: Chu, Bass, Berg, Calderon, Laird, Klehs, Leno, Nation, Levine, Saldana, Yee, Mullin
Nays: Mountjoy	Nays: Sharon Runner, Emmerson, Haynes, Nakanishi, Walters

SUMMARY : Requires the curriculum committee to make recommendations to instruct broker-agents in proper methods of estimating the replacement value of structures; requires insurers to extend the additional living expense (ALE) timeframe to 24 months after a declared state of emergency; and, makes permanent the mediation program. Specifically, this bill :

- 1) Requires the curriculum committee, appointed by the Insurance Commissioner (IC), to make recommendations to the IC in 2006 to instruct fire and casualty broker-agents and personal lines broker-agents and applicants for these broker-agent licenses in proper methods of estimating the replacement value of structures and of explaining various levels of coverage under a homeowners' insurance policy. Requires providers of the curriculum to submit their course content to the IC for approval.
- 2) Prohibits a person who is not an insurer underwriter or actuary or other person identified by the insurer, or a licensed fire and casualty broker-agent, personal lines broker-agent, contractor, or architect from estimating the replacement value of a structure or from explaining various levels of coverage under a homeowners' insurance policy.

- 3) Provides that, in the event of a covered loss relating to a state of emergency, ALE coverage shall be for a period of 24 months, but shall be subject to other policy provisions, provided that any extension of time shall not act to increase the ALE policy limit in force at the time of the loss. Specifies that this provision not take effect until January 1, 2007.
- 4) Requires an insurer, in the event of a total loss under a homeowners' 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.
- 5) Provides that the IC may set a fee not to exceed \$1,500 for each homeowners' or earthquake coverage dispute and \$700 for each automobile coverage dispute.
- 6) Makes permanent the mediation program.

7) Includes language to avoid a chaptering out problem with SB 518 (Kehoe).

EXISTING LAW :

- 1) Provides that if an open policy (i.e., a policy in which the value of the property is not agreed upon but is left to be ascertained in case of loss) requires the insured to repair, rebuild or replace the damaged property in order to collect full replacement cost, the insurer must pay the actual cash value (ACV) of the damaged property until the property is repaired, rebuilt or replaced. Specifies that once the property is repaired, rebuilt or replaced, the insurer must pay the difference between the ACV payment made and the full replacement cost reasonably paid to replace the damaged property up to the policy limits.
- 2) Provides that under an open policy that requires payment of actual cash value, the measure of the ACV recovery, shall be determined as follows: a) in case of total loss to the structure, the policy limit or the fair market value of the structure, whichever is less; b) in 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 the thing lost or injured less a fair and reasonable deduction for physical

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

- 3) Prohibits a time limit of less than 12 months from the date that the first ACV payment is made from being placed upon an insured in order to collect the full replacement cost of the loss. Allows extensions of six months to be provided for good cause. Prohibits, in the event of a loss relating to a state of emergency, a time limit of less than 24 months from the date that the first ACV payment is made from being placed upon an insured in order to collect the full replacement cost of the loss.
- 4) Requires the Department of Insurance (DOI) to establish a mediation program for disputes between claimants and insurers arising out of the 1994 Northridge earthquake or any subsequent earthquake, for disputes relating to automobile insurance claims, and for disputes arising from claims under residential property insurance policies and in which the Governor has declared a state of emergency.
- 5) Requires that the cost of mediation be reasonable and be borne by the insurer. Provides that the IC may set a fee not to exceed \$700 for mediations involving earthquake or auto disputes and not to exceed \$1,500 for mediations involving residential property insurance loss disputes.
- 6) Authorizes the mediation program to continue until January 1, 2008.

FISCAL EFFECT : According to the Assembly Appropriations Committee, minor absorbable workload to DOI to continue oversight of the homeowners' insurance market.

COMMENTS : The author states that this bill arises from hearings held by the Senate Insurance Committee in October and November of 2003 following the wildfires in Southern California, as well as claims worked by the Senate Insurance Committee staff after these hearings. The author notes that during these hearings, fire survivors spoke about having to provide extensive inventory requirements to recover personal property collected over decades, about how they worried whether ALE funds would run out before they were able to move back into their homes, about problems with debris removal, about underinsurance at the time of loss, and about the concern that a lawsuit would be needed to

recover under a policy.

The author believes that the 2003 wildfires illustrate the continued shortcomings of current insurance coverage for the most significant asset of most families: a home. Despite some of the important changes made in the prior session of the Legislature, the author states that the risks faced by homeowners remain tremendous.

As demonstrated during hearings and through claims worked by the Senate Insurance Committee staff, the author believes that the underinsurance problem needs to be addressed. Better and continued training of personnel in how to estimate the replacement cost of a home is therefore critical. Extending ALE to at least 24 months after a state of emergency recognizes that reconstruction is difficult when government agencies and building contractors are overwhelmed by skyrocketing demand.

Finally, the author believes that the earthquake and fire mediation programs have worked well to encourage parties to settle quickly, and, therefore, the programs should be made permanent.

DOI supports this bill and states that this bill seeks to add consumer protections that highlight some of the tremendous problems that faced homeowners after the Southern California wildfires. DOI believes that these changes will make it easier for homeowners to face the rebuilding process, not just for their physical structure, but for their emotional losses as well.

Analysis Prepared by : Christine Ebbink / INS. / (916)
319-2086

FN: 0012206

**SENATE COMMITTEE ON BANKING, FINANCE,
AND INSURANCE**

Senator Ronald Calderon, Chair

AB 2022 (Gaines) Hearing Date: June 30, 2010

As Amended: May 11, 2010

Fiscal: No

Urgency: No

VOTES: Asm. Floor (05/20/10) 72-0/Pass
 Asm. Ins. (05/05/10) 12-0/Pass

SUMMARY Would revise the disclosure notice required to be provided to homeowners by insurers so it is shorter, easier to read, and to make it easier for the homeowner to review the adequacy of his or her coverage in the event of a loss or a major catastrophe. _

DIGEST

Existing law

1. Requires insurers that sell residential property insurance to disclose to buyers the principal forms of insurance coverage for residential dwellings, and the form of dwelling coverage that the buyer has purchased. This notice is named the California Residential Property Insurance Disclosure Statement (disclosure statement);
2. Specifies that the disclosure statement shall contain the following forms of dwelling coverages and defines the terms:
 - a. Guaranteed replacement cost coverage with full building code upgrade;
 - b. Guaranteed replacement cost coverage with limited or no building code upgrade;
 - c. Limited replacement cost coverage with an additional percentage;
 - d. Limited replacement cost coverage with no additional percentage;
 - e. Actual cash value coverage; and
 - f. Building code upgrade.
3. Specifies that the disclosure statement does not explain the types of contents coverage (furniture, clothing, etc.) provided by the residential policy;

4. Requires the disclosure statement to be accompanied by a California Residential Property Insurance Bill of Rights (property bill of rights) that is printed in at least 10-point type;
5. Requires this property bill of rights to contain both items of advice (such as "keep accurate records of renovations and improvements to the structure of your home") and information that the consumer is entitled to receive (including a copy of the residential policy and an explanation of how the policy limits were established).

This bill

Would revise the current disclosure notice and the set of rights that residential property insurers must provide to policyholders, as follows:

1. Would require the California Residential Insurance Disclosure Notice to Consumers (disclosure notice) to be printed in no less than 10-point type.
2. Would require the disclosure notice to identify the coverage purchased by the customer from among the following primary forms of residential dwelling insurance coverage, and defines the terms:
 - a. Actual cash value coverage;
 - b. Replacement cost coverage;
 - c. Extended replacement cost coverage;
 - d. Guaranteed replacement cost coverage; and
 - e. Building code upgrade coverage.
3. Would require the disclosure notice to identify several key facts in a new category titled "Information You Should Know About Residential Dwelling Insurance" and explains the terms:
4.
 - a. Avoid being underinsured;
 - b. The residential dwelling coverage limit;
 - c. Demand surge;
 - d. Changes to property;
 - e. Exclusions;
 - f. Contents (personal property) coverage disclosure; and
 - g. Consumer assistance.
5. Would maintain the requirement the California Residential Property Insurance Bill of Rights be printed in at least 10-point type, would restate various rights in the statement now provided to residential property insurance policyholders, add a requirement that explanation for a policy cancellation or nonrenewal to be in writing, and adds the right to an offer of coverage and premium quote for earthquake coverage if the insured is eligible and removes material deemed not needed in light of experience with the existing notice.

COMMENTS

1. Purpose of the bill To revise the disclosure notice required to be provided to homeowners by insurers so it is shorter, easier to read, and to make it easier for the homeowner to review the adequacy of his or her coverage in the event of a loss or a major catastrophe. _
2. Background. The California Residential Property Insurance Disclosure legislation, which was adopted in 1992, was the response to the insurance claims issues arising from the Oakland Hills Fire of 1991. There were approximately 3,000 houses and apartments that were completely destroyed by that fire and many of the homeowners were significantly underinsured. According to the author, the main purpose of this disclosure legislation was to alert policyholders to the various forms of coverage available so they would know the importance of seeking Guaranteed Replacement Coverage and to become aware of their current coverages and options. _
3. Arguments in support. Since the enactment of the disclosure legislation in 1992, California has had the misfortune to suffer several major disasters, including major wildfires in Southern California. The author and the sponsoring Department of Insurance (DOI) state that the disclosure notice, even with amendments over the years, has become outdated in its content. Guaranteed Replacement Cost coverage is offered by only four or five insurers in the entire homeowners insurance market. Further, due to the length of the disclosure notice, its cumbersome charts, and the technical descriptions of coverage and responsibilities, the disclosure notice fails to provide the readability necessary to effectively convey the important information.
4. According to the author and the DOI, the revised disclosure notice is easier to read, updates key terms in homeowners policies, emphasizes the avoidance of underinsurance, and describes the effect of a demand surge on construction costs. This information will help homeowners in reviewing the adequacy of their insurance coverages in the event of a catastrophe such as a wildfire. _
5. Questions None
6. Suggested Amendments. None
7. Prior and Related Legislation None

POSITIONS

Support

Department of Insurance (Sponsor)
Association of California Insurance Companies (ACIC)
United Policyholders

Oppose

None

Consultant: Kenneth Cooley (916) 651-4102

Date of Hearing: June 25, 1991

ASSEMBLY COMMITTEE ON INSURANCE

Burt Margolin, Chair

SB 812 (Robbins) - As Introduced: March 7, 1991

SENATE ACTIONS:

COMMITTEE INS., CL. & CORPS. VOTE 6-0 FLOOR VOTE 35-0

SUBJECT

Should the state Insurance Commissioner, in adopting regulations on claims settlement, be required to take into consideration settlement practices by classes of insurers?

DIGEST

Existing law prohibits insurers from engaging in unfair methods of competition and unfair and deceptive practices.

This bill requires the Insurance Commissioner, in adopting regulations concerning unfair or deceptive practices, to take into consideration settlement practices by classes of insurers.

FISCAL EFFECT

Minor cost, if any.

COMMENTS

- 1) BACKGROUND. State law sets forth various unfair methods of competition and unfair and deceptive practices. Unfair and deceptive insurance practices include failing to affirm or deny coverage of claims within a reasonable time after receiving required proof of loss. During the previous administration, the Department of Insurance began drafting regulations which included a proposed 40-day period in which insurers must accept or deny coverage of a claim. According to the department, new regulations are being drafted by the current administration.
- 2) NEED FOR BILL. The author, who is the sponsor, states that the regulations which have been under consideration would inappropriately apply a single standard of practice for settling claims. The author and supporters contend that medical malpractice and other complex types of claims, which often result in litigation, should not be subject to the

- continued -

"same rigid guidelines" which could apply to automobile or other claims that require less time to resolve. The author believes the Insurance Commissioner should consider distinguishing among the various types of insurance lines when attempting to regulate claims practices.

- 3) NEW REGULATIONS TO BE CONSIDERED. According to the Department of Insurance, a task force of interested parties has been developing new regulations on unfair or deceptive insurance practices. The department expects the new proposals to be available for public review in July. The department indicates that the more than 25 existing classes of insurance are likely to be divided into six groups.

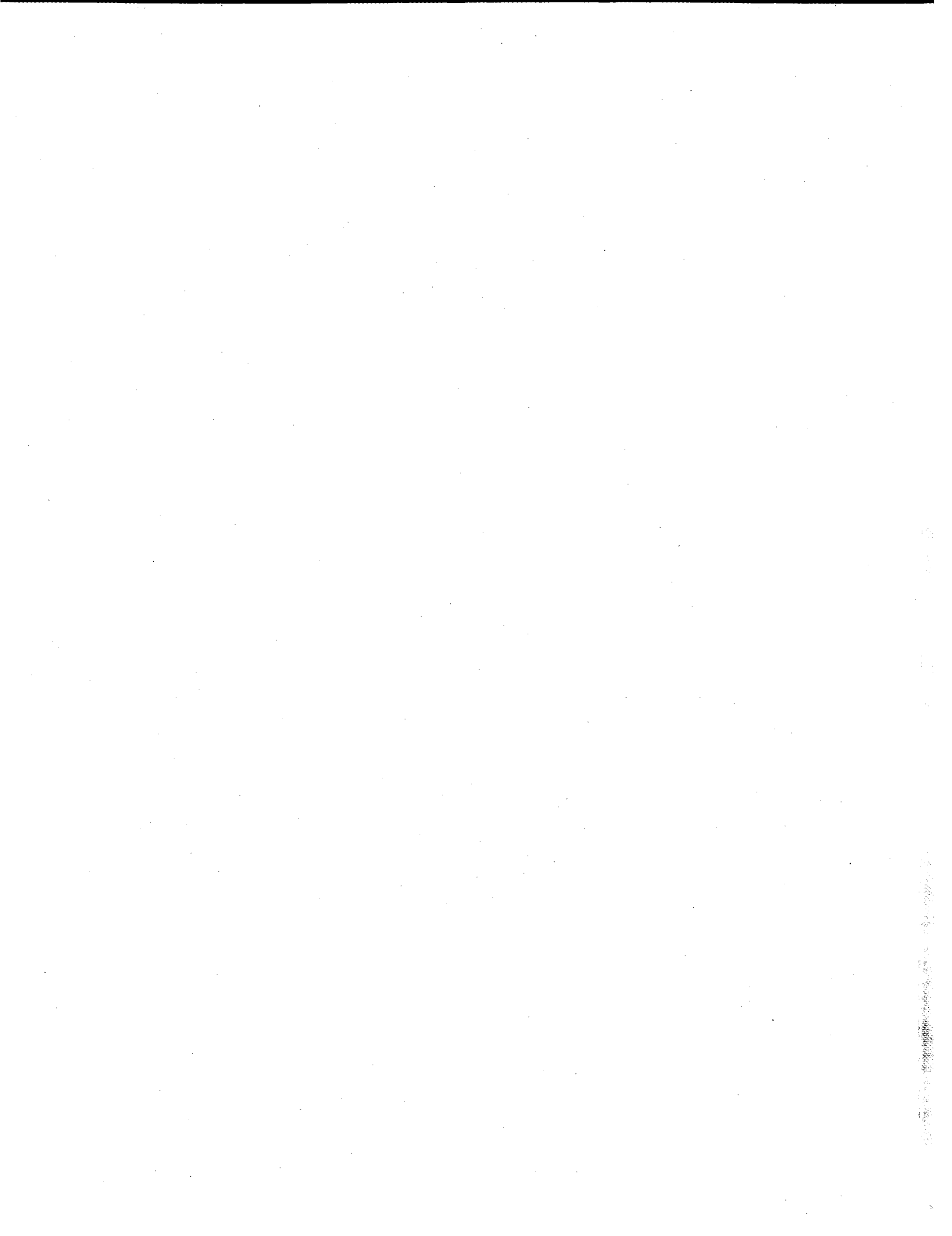
SPONSOR: The author

SUPPORT: California Association of Professional Liability Insurers
The Doctors' Company

OPPOSITION: None received

Sandra Michioku
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SB 812
Page 2



AB 1353 - Fenton

Section 790.03 of the Insurance Code sets forth in general terms what is described therein as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance. These include the subjects of misrepresentation, false or misleading advertising, boycotts, concerted acts in restraint of trade, false financial statements, unfair discrimination, and statements that an insurer is insured against insolvency.

Since the insurance business, particularly the accident and health business, is becoming more and more competitive, the possibilities of unfair or deceptive trade practices are increasing.

This bill gives the Insurance Commissioner the authority to promulgate rules and regulations so that if the need therefor arises, he can, without delay, promulgate necessary rules making such practices definite and specific for the benefit of the public without having to wait for the Legislature to act at a later date.



LEGISLATIVE COUNSEL

REQUEST OF _____

Senator Clarke L. Bradley
(per Robert Keller)

~~_____~~
Opinion —

What authority does AB 1353 confer upon the Insurance Commissioner in addition to that presently recognized by Section 11374 of the Government Code?

Any question with respect to this request
has been referred to Mr. Waltrip
and it has been assigned.

Requester

Senator Clarke L. Bradley
(per Robert Keller)

Received 7/9/71

Subject

Insurance Commissioner (Ins. C. - Op.)

This will acknowledge your request on
the subject indicated. Our file number is
shown on this receipt.

GEORGE H. MURPHY
Legislative Counsel

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Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California
July 14, 1971

Honorable Clark L. Bradley
Senate Chamber

Insurance Commissioner: Process
(A.B. 1353) - #16132

Dear Senator Bradley:

QUESTION

You have asked what authority, if any, would Assembly Bill No. 1353, as amended July 9, 1971, if enacted, confer upon the Insurance Commissioner with regard to adopting rules and regulations concerning Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, in addition to that presently conferred upon him by Section 11374 of the Government Code.

OPINION AND ANALYSIS

Assembly Bill No. 1353, as amended July 9, 1971, would, if enacted, add Section 790.10 to the Insurance Code, to read:

"790.10. The commissioner shall, from time to time as conditions warrant, after notice and public hearing, promulgate reasonable rules and regulations, and amendments and additions thereto, as are necessary to administer this article."

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DAVID D. ALVES
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CARL M. ARNOLD
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LAWRENCE H. FEIN
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HARVEY J. FOSTER
JOHN C. GANAHL
ROBERT D. GROHKE
PHILIP T. KILDUFF
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MARY-LOU SMITH
RUSSELL L. SPARLING
JOHN T. STUDEBAKER
BRIAN L. WALKUP
THOMAS D. WHELAN
DAVID E. WHITTINGTON
JIMMIE WING
DEPUTIES

Such proposed section would require the Insurance Commissioner, after notice and public hearing, to promulgate such rules and regulations as conditions warrant are necessary to administer the provisions relating to unfair practices of insurers.

Section 11374 of the Government Code provides as follows:

"11374. Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

"Any existing rules or regulations conflicting with this section are hereby repealed." (Emphasis added).

Under such Section 11374, it is necessary, first, to determine whether an attempted regulation lies within the scope of the authority conferred upon the agency, and, second, if it is concluded that the agency has the power to adopt the regulation, whether the regulation is "reasonably necessary to effectuate the purpose of the statute" (Ralphs Grocery Co. v. Reimel (1968), 69 Cal. 2d 172, 175).

The Insurance Code vests no specific authority in the Insurance Commissioner to adopt rules and regulations to implement those provisions of the code relating to unfair practices of insurers. Further, even assuming the commissioner has the implied authority to adopt such regulations, A.B. 1353, as amended, would require* him to do so, thus effecting a substantive change in the law in this regard.

* "Shall" is mandatory (Sec. 16, Ins. C.).

Honorable Clark L. Bradley - p. 3 - #16132

However, notwithstanding the fact that A.B. 1353, as amended, would, should the bill be enacted, require the Insurance Commissioner to enact such appropriate rules and regulations as are necessary to administer the unfair practice provisions, any rules or regulations adopted by him would, of course, still be subject to the requirements of Section 11374 of the Government Code that they be consistent, and not in conflict, with Section 790.10, as added by the bill, and reasonably necessary to effectuate the purposes of Section 790.10.

Very truly yours,

George H. Murphy
Legislative Counsel


By

Brian L. Walkup
Deputy Legislative Counsel

BLW:caf

Two copies to Honorable Jack R. Fenton,
pursuant to Joint Rule 34.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **ACIC v. Dave Jones (DOI) (Appeal)**
No.: **S226529**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 9, 2015, I served the attached **APPELLANT'S MOTION FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Clerk, Court of Appeal
Second Appellate District, Division One-
300 South Spring Street, 2nd Floor
Los Angeles, California 90013
(Hand-Delivered)

Clerk, Los Angeles County Superior Court
Honorable Gregory W. Alarcon
Department 36
111 North Hill Street
Los Angeles, California 90012

Gene Livingston, Esq.
Greenberg Traurig LLP
1201 "K" Street, Suite 1100
Sacramento, California 95814
(Attorneys for Plaintiffs and Respondents)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 9, 2015, at Los Angeles, California.

Linda Richardson
Declarant



Signature