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**AB-1800 Fire insurance: indemnity.** (2017-2018)

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**Assembly Bill No. 1800**

**CHAPTER 628**

An act to amend Section 2051.5 of the Insurance Code, relating to fire insurance, and declaring the urgency thereof, to take effect immediately.

[ Approved by Governor September 21, 2018. Filed with Secretary of State September 21, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1800, Levine. Fire insurance: indemnity.

Existing law defines the measure of indemnity for a loss under an open fire insurance policy and specifies time limits under which an insured must collect the full replacement cost of the loss. Existing law prohibits, in the event of a total loss of the insured structure, a fire insurance policy issued or delivered in the state from limiting or denying payment of the replacement cost of property if the insured decides to rebuild or replace the property at a location other than the insured premises. Existing law requires the measure of indemnity to be based upon the replacement cost of the insured property and prohibits it from being based upon the cost to repair, rebuild, or replace at a location other than the insured premises.

This bill would instead prohibit, in the event of a total loss of an insured structure, a fire insurance policy issued or delivered in this state from containing a provision that limits or denies, on the basis that the insured has decided to rebuild at a new location or to purchase an already built home at a new location, payment of the building code upgrade cost or the replacement cost, including any extended replacement cost coverage, to the extent those costs are otherwise covered by the terms of the policy or any policy endorsement. The bill would prohibit the measure of indemnity from exceeding, rather than requiring it to be based upon, the replacement cost, as specified. The bill would require all policy forms issued or renewed on and after July 1, 2019, to contain these provisions.

This bill would incorporate additional changes to Section 2051.5 of the Insurance Code proposed by AB 1772 and SB 894 to be operative only if this bill, AB 1772, and SB 894 are enacted and this bill is enacted last.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

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

**SECTION 1.** Section 2051.5 of the Insurance Code is amended to read:

**2051.5.** (a) (1) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less.

(2) If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.

(b) (1) Except as provided in paragraph (2), a time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall not be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit. Additional extensions of six months shall be provided to policyholders for good cause. In the event of a loss relating to a "state of emergency," as defined in Section 8558 of the Government Code, no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit. This section does not prohibit the insurer from allowing the insured additional time to collect the full replacement cost.

(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 is for a period of 24 months, but is subject to other policy provisions, provided that an extension of time required by this paragraph beyond the period provided in the policy does not increase the additional living expense policy limit in force at the time of the loss. This paragraph shall become operative on January 1, 2007.

(c) In the event of a total loss of the insured structure, a policy issued or delivered in this state shall not contain a provision that limits or denies, on the basis that the insured has decided to rebuild at a new location or to purchase an already built home at a new location, payment of the building code upgrade cost or the replacement cost, including any extended replacement cost coverage, to the extent those costs are otherwise covered by the terms of the policy or any policy endorsement. However, the measure of indemnity shall not exceed the replacement cost, including the building code upgrade cost and any extended replacement cost coverage, if applicable, to repair, rebuild, or replace the insured structure at its original location.

(d) This section does not prohibit an insurer from restricting payment in cases of suspected fraud.

(e) (1) On and after July 1, 2005, and only until July 1, 2019, all policy forms used by an insurer shall comply with this section, except for the changes made to this section by the act that added paragraph (2).

(2) On and after July 1, 2019, all policy forms issued or renewed by an insurer shall comply with this section in its entirety, including the changes made to this section by the act that added this paragraph.

**SEC. 1.3.** Section 2051.5 of the Insurance Code is amended to read:

**2051.5.** (a) (1) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less.

(2) If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.

(b) (1) (A) (i) A time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall not be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit.

(ii) In the event of a loss relating to a "state of emergency," as defined in Section 8558 of the Government Code, a time limit of less than 36 months from the date that the first payment toward the actual cash value is made shall not be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit.

(iii) This section does not prohibit an insurer from allowing the insured additional time to collect the full replacement cost.

(B) An insurer shall provide to a policyholder one or more additional extensions of six months for good cause pursuant to clause (i) or (ii) of subparagraph (A) if the insured, acting in good faith and with reasonable diligence, encounters a delay or delays in approval for, or reconstruction of, the home or residence that are beyond the control of the insured. Circumstances beyond the control of the insured include, but are not limited to, unavoidable construction permit delays, the lack of necessary construction materials, or the unavailability of contractors to perform the necessary work.

(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 is for a period of 24 months, but is subject to other policy provisions, provided that an

extension of time required by this paragraph beyond the period provided in the policy does not increase the additional living expense policy limit in force at the time of the loss.

(c) In the event of a total loss of the insured structure, a policy issued or delivered in this state shall not contain a provision that limits or denies, on the basis that the insured has decided to rebuild at a new location or to purchase an already built home at a new location, payment of the building code upgrade cost or the replacement cost, including any extended replacement cost coverage, to the extent those costs are otherwise covered by the terms of the policy or any policy endorsement. However, the measure of indemnity shall not exceed the replacement cost, including the building code upgrade cost and any extended replacement cost coverage, if applicable, to repair, rebuild, or replace the insured structure at its original location.

(d) This section does not prohibit an insurer from restricting payment in cases of suspected fraud.

(e) (1) On and after July 1, 2005, and only until July 1, 2019, all policy forms used by an insurer shall comply with this section, except for the changes made to this section by the act that added paragraph (2).

(2) On and after July 1, 2019, all policy forms issued or renewed by an insurer shall comply with this section in its entirety, including the changes made to this section by the act that added this paragraph.

**SEC. 1.5.** Section 2051.5 of the Insurance Code is amended to read:

**2051.5.** (a) (1) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less.

(2) If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.

(b) (1) Except as provided in paragraph (2), a time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall not be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit. Additional extensions of six months shall be provided to policyholders for good cause. In the event of a loss relating to a "state of emergency," as defined in Section 8558 of the Government Code, no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit. This section does not shall prohibit the insurer from allowing the insured additional time to collect the full replacement cost.

(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 no less than 24 months from the inception of the loss, but shall be subject to other policy provisions. An insurer shall grant an extension of up to 12 additional months, for a total of 36 months, if an insured acting in good faith and with reasonable diligence encounters a delay or delays in the reconstruction process that are the result of circumstances 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 lack of available contractors to perform the necessary work. Additional extensions of six months shall be provided to policyholders for good cause.

(c) In the event of a total loss of the insured structure, a policy issued or delivered in this state shall not contain a provision that limits or denies, on the basis that the insured has decided to rebuild at a new location or to purchase an already built home at a new location, payment of the building code upgrade cost or the replacement cost, including any extended replacement cost coverage, to the extent those costs are otherwise covered by the terms of the policy or any policy endorsement. However, the measure of indemnity shall not exceed the replacement cost, including the building code upgrade cost and any extended replacement cost coverage, if applicable, to repair, rebuild, or replace the insured structure at its original location.

(d) This section does not prohibit an insurer from restricting payment in cases of suspected fraud.

(e) (1) On and after July 1, 2005, and only until July 1, 2019, all policy forms used by an insurer shall be in compliance with this section, except for the changes made to this section by the act that added paragraph (2).

(2) On and after July 1, 2019, all policy forms issued or renewed by an insurer shall comply with this section in its entirety, including the changes made to this section by the act that added this paragraph.

**SEC. 1.7.** Section 2051.5 of the Insurance Code is amended to read:

**2051.5.** (a) (1) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less.

(2) If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.

(b) (1) (A) (i) A time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall not be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit.

(ii) In the event of a loss relating to a "state of emergency," as defined in Section 8558 of the Government Code, a time limit of less than 36 months from the date that the first payment toward the actual cash value is made shall not be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit.

(iii) This section does not prohibit an insurer from allowing the insured additional time to collect the full replacement cost.

(B) An insurer shall provide to a policyholder one or more additional extensions of six months for good cause pursuant to clause (i) or (ii) of subparagraph (A) if the insured, acting in good faith and with reasonable diligence, encounters a delay or delays in approval for, or reconstruction of, the home or residence that are beyond the control of the insured. Circumstances beyond the control of the insured include, but are not limited to, unavoidable construction permit delays, the lack of necessary construction materials, or the unavailability of contractors to perform the necessary work.

(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 no less than 24 months from the inception of the loss, but shall be subject to other policy provisions. An insurer shall grant an extension of up to 12 additional months, for a total of 36 months, if an insured acting in good faith and with reasonable diligence encounters a delay or delays in the reconstruction process that are the result of circumstances 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 lack of available contractors to perform the necessary work. Additional extensions of six months shall be provided to policyholders for good cause.

(c) In the event of a total loss of the insured structure, a policy issued or delivered in this state shall not contain a provision that limits or denies, on the basis that the insured has decided to rebuild at a new location or to purchase an already built home at a new location, payment of the building code upgrade cost or the replacement cost, including any extended replacement cost coverage, to the extent those costs are otherwise covered by the terms of the policy or any policy endorsement. However, the measure of indemnity shall not exceed the replacement cost, including the building code upgrade cost and any extended replacement cost coverage, if applicable, to repair, rebuild, or replace the insured structure at its original location.

(d) This section does not prohibit an insurer from restricting payment in cases of suspected fraud.

(e) (1) On and after July 1, 2005, and only until July 1, 2019, all policy forms used by an insurer shall be in compliance with this section, except for the changes made to this section by the act that added paragraph (2).

(2) On and after July 1, 2019, all policy forms issued or renewed by an insurer shall comply with this section in its entirety, including the changes made to this section by the act that added this paragraph.

**SEC. 2.** (a) Section 1.3 of this bill incorporates amendments to Section 2051.5 of the Insurance Code proposed by this bill and Assembly Bill 1772. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 2051.5 of the Insurance Code, (3) Senate Bill 894 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1772, in which case Section 2051.5 of the Insurance Code, as amended by Assembly Bill 1772, shall remain operative only until the operative date of this bill, at which time Section 1.3 of this bill shall become operative, and Sections 1, 1.5, and 1.7 of this bill shall not become operative.

(b) Section 1.5 of this bill incorporates amendments to Section 2051.5 of the Insurance Code proposed by this bill and Senate Bill 894. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2019, (2) each bill amends Section 2051.5 of the Insurance Code, (3) Assembly Bill 1772 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 894, in which case Section 2051.5 of the Insurance Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of Senate Bill 894, at which time Section 1.5 of this bill shall become operative, and Sections 1.3 and 1.7 of this bill shall not become operative.

(c) Section 1.7 of this bill incorporates amendments to Section 2051.5 of the Insurance Code proposed by this bill, Assembly Bill 1772, and Senate Bill 894. That section of this bill shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2019, (2) all three bills amend Section 2051.5 of the Insurance Code, and (3) this bill is enacted after Assembly Bill 1772 and Senate Bill 894, in which case Section 2051.5 of the Insurance Code, as amended by Assembly Bill 1772 and Senate Bill 894, shall remain operative only until the operative date of this bill, at which time Section 1.7 of this bill shall become operative, and Sections 1, 1.3, and 1.5 of this bill shall not become operative.

**SEC. 3.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to better protect California property owners from rampant wildfire damages as soon as possible, it is necessary that this act take effect immediately.