Office of Senate Floor Analyses
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THIRD READING

Bill No: SB 872
Author: Dodd (D), et al.
Introduced: 1/21/20
Vote: 21

SENATE INSURANCE COMMITTEE: 9-2, 5/14/20
AYES: Rubio, Archuleta, Dodd, Galgiani, Glazer, Hueso, Mitchell, Portantino, Roth
NOES: Jones, Moorlach
NO VOTE RECORDED: Bates, Borgeas

SUBJECT: Residential property insurance: state of emergency

SOURCE: California Department of Insurance

DIGEST: This bill grants to commercial insureds the same minimum time limits granted to homeowners to collect full replacement cost value when a structure is damaged or destroyed by an event declared a "state of emergency"; prohibits an insurer from deducting the land value from the replacement cost when a homeowner or commercial insured rebuilds or purchases an existing structure on another property; streamlines the process for residential property insurance claims and adds consumer protections to the process for settling personal contents and additional living expense (ALE) claims; and requires insurers to provide a 60-day grace period for nonpayment in an area impacted by a declared state of emergency.

ANALYSIS:

Existing law:

Time to Collect Replacement Value

1) Requires property insurance to pay the actual cash value of the damaged property until it has been repaired, rebuilt, or replaced, and establishes minimum periods to collect the full replacement cost of a structure once the insurer has made a first payment.

a) Grants the insured at least 12 months to collect the full replacement cost of a damaged structure.

b) If the loss is due to an event that was declared a "state of emergency," grants an insured homeowner at least 36 months, as well as one or more six-month extensions, if the insured acting in good faith encounters delays in the reconstruction process.

Additional Living Expense Coverage (ALE)

2) Requires homeowners insurance to provide ALE for at least 24 months if the loss resulted from an event declared to be a state of emergency and requires extensions of up to 12 additional months, for a total of 36 months, if the insured acting in good faith encounters delays in the reconstruction process.

Relocation

3) Prohibits homeowners insurance, in the event of a total loss, from limiting or denying payment of building code upgrade cost or the replacement cost on the basis that the insured rebuilds, or purchases an existing home, at a new location.

This bill:

Time to Collect Replacement Value

1) Grants commercial property insureds the same minimum time limits to collect full replacement value as those that apply to homeowners**.**

Additional Living Expense Coverage

2) Revises or clarifies the rules governing ALE benefits for insureds who have lost their homes or cannot live in their homes.

   a) Requires ALE to cover all reasonable expenses incurred by the insured to maintain a comparable standard of living, including housing, furniture rental, food, transportation, storage, and boarding of pets and noncommercial livestock.

   b) Authorizes an insured to collect the fair rental value of the dwelling in lieu of itemized expenses.

   c) If the loss resulted from an event declared to be a state of emergency, requires ALE to provide the following:

i) Expenses accrued after the direct physical loss has been remediated if the premises remains uninhabitable because of direct damage to neighboring premises or public infrastructure that was covered by an insured peril.

ii) For claims filed after January 1, 2021, an advance payment of at least four months if the home was a total loss.

Personal Contents Coverage

3) Revises the rules applicable to claims filed after January 1, 2021, that govern claims for lost or damaged personal property, i.e. "contents coverage," (appliances, furniture, clothing, etc.) resulting from a declared state of emergency and requires the insurer to:

   a) Provide an advance payment of no less than 25% of the policy limit for contents without an inventory of lost items but allows the insurer to require proof for additional payments;

   b) Accept an inventory in a reasonable form that provides substantially the same information as the insurer's form but allows the insurer to request additional information if reasonable; and

   c) Accept an inventory of contents that includes groupings of personal property, including clothing, books, food items, etc.

Relocation

4) Revises rules applicable to claims where the insured chooses to build a new home or purchase an existing home on a different piece of property.

   a) Prohibits the insurer from deducting the value of the new land from the replacement cost.

   b) Applies the new rules regarding the land value deduction, as well as the existing rule against deducting building code upgrade coverage and replacement cost, to commercial properties.

Grace Period

5) Requires an insurer to offer a 60-day grace period for nonpayment of premium for policies on property located in areas affected by a declared state of emergency.

6) Declares that the provisions of this bill are severable.

Background

In 2017 and 2018, California experienced the largest and most destructive wildfires in its history. Following those fires, the California Department of Insurance (CDI) requested that insurers follow voluntary procedures designed to expedite claims for impacted homeowners. This bill codifies some of those procedures and requires the insurer to provide advance payments of a portion of the ALE and personal contents coverage after a state of emergency; accept alternative forms of inventories for claims for lost contents; and provide a 60-day grace period for nonpayment of premium.

This bill also creates or expands other consumer protections:

- Expands minimum time periods to collect replacement cost value to commercial properties;
- More explicitly defines and expands what is covered under ALE;
- Expands the rules that apply to insureds that relocate and applies those rules to commercial properties.

Time to Collect Replacement Cost. Existing law provides a homeowner a minimum of 36 months to collect full replacement cost, as well as extensions for good cause, following a declared state of emergency. This bill would apply the extensions to commercial properties as well.

CDI argues that, prior to legislation in 2018 that extended the time limit to 36 months from 24, the minimum time to collect full replacement cost along with good cause extensions applied to commercial properties as well. According to CDI, the 2018 legislation unintentionally replaced the original generic language providing the extensions with new language that only applies to residential properties. Some insurance trade representatives argue that the committee analyses and stakeholder discussions regarding the original legislation (AB 2199, Kehoe, Chapter 311, Statutes of 2004) did not include commercial properties.

Additional Living Expenses (ALE). ALE helps homeowners pay for the additional costs of living outside the home while waiting to rebuild, repair, or replace the home after it has been physically damaged. In addition to codifying some expedited claims procedures, this bill provides homeowners with more ALE options and requires the insurer to:

- Provide insureds the option to collect the fair rental value of the lost property rather than seek reimbursement. Insurers may provide ALE in the form of reimbursement so that the insured must incur the expenses first and provide receipts to collect the benefit. This bill would require insurers to offer claimants the option to collect the fair rental value of the lost home on a monthly basis instead of documenting monthly expenses.

- Cover "all reasonable additional expenses incurred by the insured to maintain a comparable standard of living," including housing, furniture rental, food, transportation, storage, and boarding of pets and noncommercial livestock.

- Provide ALE when the home remains uninhabitable even though the damage has been repaired. ALE usually only covers expenses while the home remains uninhabitable due to covered damage. This bill fills in a gap in coverage where the property has been repaired but remains unusable for some other reason, such as a lack of electricity or water.

Relocation. After a total loss, the insured may rebuild the existing home or purchase another home at a different location. Some insurers have been deducting the value of the new land from the replacement cost value when a homeowner purchases elsewhere. This practice is consistent with that used in auto insurance when a vehicle is "totaled" and is intended to avoid overcompensating the insured; the insurer pays the fair market value of the vehicle but takes ownership.

However, the practical effect of deducting the land value may force the insured to purchase a lesser value dwelling, borrow money, or come up with cash out of their own pockets. This bill prohibits an insurer from deducting the value of the land. It also applies that rule to commercial properties and extends to commercial properties the rules against limiting recovery because the insured chooses to relocate.

Potential Impact on Rates. According to CDI, the provisions implementing the expedited procedures and time limit extensions should not impact rates significantly because they only provide what the insured would have received anyway. Several insurance trade associations disagree and argue that this measure will significantly expand the kinds of expenses that must be reimbursed, such as the circumstances under which extended ALE payments will be required, while simultaneously reducing the level of scrutiny for contents claims.

Because CDI anticipates that only a few consumers will take advantage of some of the changes offered in this bill, such as those who move to a new location, and that those changes will have a minimal impact (assuming that consumer behavior does not change because of this bill or other factors).

The effect of some changes, like the expansion of ALE to cover expenses after a damaged home has been repaired, is less clear. CDI lacks the necessary data to provide a reliable impact estimate. Theoretically, savings from faster claims settlement and lower ALE costs could offset, at least in part, additional costs.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/17/20)

California Department of Insurance (source)
Consumer Federation of California
Rural County Representatives of California
United Policyholders

OPPOSITION: (Verified 5/17/20)

American Property Casualty Insurance Association
National Association of Mutual Insurance Companies
Pacific Association of Domestic Insurance Companies
Personal Insurance Federation of California

ARGUMENTS IN SUPPORT: Rural County Representatives of California (RCRC) writes in support that residents in RCRC member counties have been experiencing these difficulties for years in relation to high severity wildfires such as the Butte, Rim, and Valley Fires, and more recently in disastrous fires such as the Tubbs Fire, Camp Fire and Kincade Fire. These recent fires have only underscored the need for relief to property owners suffering losses who are trying to move on and recover some sense of normalcy after such a devastating event.

ARGUMENTS IN OPPOSITION: Opponents explain that historic financial losses place tremendous upward pressure on the price of homeowners insurance, and have forced many insurers to safeguard their solvency (and their ability to pay claims in the event of another disaster) by limiting the amount of insurance they sell in high fire-risk areas of the state. They argue that, absent adequate rates that reflect the new costs imposed by this bill, SB 827 may exacerbate the homeowners insurance availability challenges in high fire-risk areas of the state.

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