

AMENDED IN SENATE AUGUST 19, 2004

AMENDED IN SENATE JUNE 22, 2004

AMENDED IN ASSEMBLY MAY 12, 2004

AMENDED IN ASSEMBLY MAY 6, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2962

**Introduced by Assembly Member Pavley
(Coauthors: Assembly Members Koretz, Lieber, and Maze)**

February 20, 2004

An act to amend Section 2051 of, and to add Section 675.1 to, the Insurance Code, relating to fire insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2962, as amended, Pavley. Fire insurance: valuation of loss.

Existing law generally regulates homeowners' insurance rates. Existing law prohibits an insurer from canceling a homeowners' insurance policy after it has been in effect for a specified period unless the cancellation is based on the occurrence of certain events.

This bill would provide that, in the case of a total loss to the insured structure under a homeowners' policy, if ~~the structure has not been rebuilt by the time of policy renewal, the insurer, upon renewal, after consultation with the insured, shall charge a rate that reflects the change, if any, in the insurer's exposure to loss. The bill would require insurers with current rate filings that do not allow for rate adjustments to reflect changes in exposure to loss to file the necessary amendments with the Insurance Commissioner by a specified date~~ *reconstruction of the*

primary insured structure has not been completed by the time of policy renewal, the insurer, prior to or at the time of renewal, and after consultation with the insured, shall adjust the limits and coverages, write an additional policy, or attach an endorsement to the policy that reflects the change, if any, in the insured's exposure to loss. It would require the insurer to adjust the premium charged to reflect any change in coverage. The bill would prohibit an insurer in these circumstances from canceling coverage while the destroyed structure is being rebuilt, except for specified reasons, and would require the insurer to offer to renew the policy at least once in certain circumstances.

The bill would allow insurers and the California Earthquake Authority, with respect to residential earthquake policies, to defer implementation of these provisions until October 1, 2005, and would set forth the means of their compliance with these provisions.

Under existing law, under an open policy, the measure of indemnity in fire insurance is the expense to the insured of replacing the thing lost or injured in its condition at the time of the injury, the expense being computed as of the time of the commencement of the fire.

This bill would provide, in addition, that under an open policy that requires payment of actual cash value, the measure of the actual cash value recovery shall be determined as follows: (1) in case of total loss to the structure, the policy limit or the fair market value of the structure, whichever is less, or (2) in case of a partial loss to the structure, or the total 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 depreciation, as specified, based upon its condition at the time of the injury or the policy limit, whichever is less.

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

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

1 SECTION 1. Section 675.1 is added to the Insurance Code, to
2 read:

3 675.1. In the case of a total loss to the primary insured
4 structure under a residential policy subject to Section 675, the
5 following provisions apply:

6 ~~(a) If the structure has not been rebuilt by the time of policy~~
7 ~~renewal, the insurer, upon renewal, after consultation with the~~
8 ~~insured as to what coverages might be needed, shall charge a rate~~



1 ~~that reflects the change, if any, in the insurer's exposure to loss.~~
2 ~~Insurers with current rate filings that do not allow for rate~~
3 ~~adjustments to reflect changes in exposure to loss shall file the~~
4 ~~necessary amendments with the commissioner within 90 days of~~
5 ~~the effective date of this section.~~

6 *(a) If reconstruction of the primary insured structure has not*
7 *been completed by the time of policy renewal, the insurer, prior to*
8 *or at the time of renewal, and after consultation by the insurer or*
9 *its representative with the insured as to what limits and coverages*
10 *might or might not be needed, shall adjust the limits and*
11 *coverages, write an additional policy, or attach an endorsement to*
12 *the policy that reflects the change, if any, in the insured's exposure*
13 *to loss. The insurer shall adjust the premium charged to reflect any*
14 *change in coverage.*

15 *(b) The insurer shall not cancel coverage while the primary*
16 *insured structure is being rebuilt, except for the reasons specified*
17 *in subdivisions (a) to (e), inclusive, of Section 676. The insurer*
18 *shall not use the fact that the primary insured structure is in*
19 *damaged condition as a result of the total loss as the sole basis for*
20 *a decision to cancel the policy pursuant to subdivision (e) of that*
21 *section. The insurer shall offer to, at least once, renew the policy*
22 *section.*

23 *(c) Except for the reasons specified in subdivisions (a) to (e),*
24 *inclusive, of Section 676, the insurer shall offer to, at least once,*
25 *renew the policy in accordance with the provisions of subdivision*
26 *(a) if the total loss to the primary insured structure was caused by*
27 *a disaster, as defined in subdivision (b) of Section 1689.14 of the*
28 *Civil Code, and the loss was not also due to the negligence of the*
29 *insured.*

30 *(d) With respect to policies of residential earthquake insurance,*
31 *the California Earthquake Authority, or any participating insurer,*
32 *as defined in subdivision (i) of Section 10089.5, may defer its*
33 *initial implementation of this section until no later than October*
34 *1, 2005.*

35 *(e) With respect to a residential earthquake insurance policy*
36 *issued by the California Earthquake Authority, the following*
37 *provisions apply:*

38 *(1) The participating insurer that issued the underlying policy*
39 *of residential property insurance on the primary insured structure*



1 shall consult with the insured as to what limits and coverages
2 might or might not be needed as required by subdivision (a).

3 (2) The California Earthquake Authority, in lieu of meeting the
4 requirements of subdivision (a), shall establish procedures and
5 practices that allow it to reasonably accommodate the needs and
6 interests of consumers in maintaining appropriate earthquake
7 insurance coverage, within the statutory and regulatory
8 limitations on the types of insurance coverages and the coverage
9 limits of the policies that the authority may issue.

10 SEC. 2. Section 2051 of the Insurance Code is amended to
11 read:

12 2051. (a) Under an open policy, the measure of indemnity in
13 fire insurance is the expense to the insured of replacing the thing
14 lost or injured in its condition at the time of the injury, the expense
15 being computed as of the time of the commencement of the fire.

16 (b) Under an open policy that requires payment of actual cash
17 value, the measure of the actual cash value recovery, in whole or
18 partial settlement of the claim, shall be determined as follows:

19 (1) In case of total loss to the structure, the policy limit or the
20 fair market value of the structure, whichever is less.

21 (2) In case of a partial loss to the structure, or loss to its
22 contents, the amount it would cost the insured to repair, rebuild,
23 or replace the thing lost or injured less a fair and reasonable
24 deduction for physical depreciation based upon its condition at the
25 time of the injury or the policy limit, whichever is less. In case of
26 a partial loss to the structure, a deduction for physical depreciation
27 shall apply only to components of a structure that are normally
28 subject to repair and replacement during the useful life of that
29 structure.

