

**ANALYSIS OF THE APPLICABILITY OF AMENDED INSURANCE
CODE SECTION 2051.5(b)(2) TO 2017 AND 2018 WILDFIRE VICTIMS**

SUMMARY

This memorandum concludes that victims of the 2017 and 2018 California wildfires may invoke the 12-month extension for recovery of insurance payments for additional living expenses (ALE) set forth in the 2018 amendments to Insurance Code section 2051.5. Such application of the 12-month ALE extension does not violate the general rule against retroactive application of legislation, because (1) it does not impose new and different liabilities under existing insurance policies, and (2) at the time of the wildfires, the insurers stood warned under existing law that this recovery period could be statutorily extended. This is true for both types of ALE coverage—fixed dollar limits and duration limits. And even if viewed as being retroactive, such application is authorized as having been intended by the Legislature.

LEGISLATIVE HISTORY

**1. Insurance Code section 2051.5(b)(2) as amended by SB 894
effective Jan. 1, 2019**

Subdivision (b)(2) of Insurance Code section 2051.5 was amended by SB 894 on September 21, 2018, effective January 1, 2019, to provide: “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.*” (Emphasis added.) The amendment added the provisions for extensions beyond 24 months.

SB 894 was introduced on January 12, 2018, to revise various provisions in Insurance Code sections 675.1 and 2051.5 and to add Insurance Code section 10103.7. The revisions to subdivision (b)(2) of section 2051.5 as introduced on January 12 remained the same throughout seven bill amendments—on February 26, March 8, May 2, May 23, June 14, July 5, and August 24—and in the bill as ultimately enacted.

2. Author’s background information on SB 894 as introduced, indicating intent to benefit 2017 wildfire victims

After SB 894 was introduced, its author, Senator Bill Dodd, responding to a “background information request” by the Senate Insurance Committee dated February 14, 2018, provided an analysis explaining the reasons why the bill was needed, among which was the following statement: “[*D*]ue to the magnitude of the 2017 wildfires, we know that the rebuilding process for some policyholders will exceed 24 months due to the various processes that must take place prior to the rebuilding process, which includes completing the debris removal process, locating qualified contractors, and creating a complete scope of the loss, just to name a few. As a result, *some policyholders may need to receive ALE for 36 months or more*; however, without having the ability to receive ALE for a longer period of time along with not having an option to receive additional extensions for good cause, some policyholders may be forced to make unwise decisions.” (Sen. Bill Dodd, analysis of SB 894 in response to background information request from Sen. Com. on Insurance (Feb. 14, 2018) p. 2, emphasis added.) The analysis added: “No amendments [are] planned at this time.” (*Id.* at p. 3.)

This indicates that at SB 894’s outset, it was *intended to benefit 2017 wildfire victims* for whom *delays in rebuilding efforts were likely*, and that no change in that purpose by future amendment was anticipated.

3. Committee analysis of March 8 version of AB 894 indicating intent to benefit 2017 wildfire victims and understanding that 12-month ALE extension would not increase policy benefits

A Senate Insurance Committee report on SB 894 as amended on March 8, 2018, included the following statement: “*The magnitude of the 2017 fires and record losses in urban areas like Santa Rosa at a time when the construction industry had already been struggling to keep up with construction demand suggest that reconstruction delays due to the massive need for debris removal, permitting demand and lack of contractors and materials are likely.* The extended timeframes proposed in this legislation *do not increase the benefits payable under the policy*, but

allow the insured to collect the benefits they are due for losses incurred if they face significant delays.” (Sen. Com. on Insurance, Analysis of Sen. Bill No. 894 (2017-2018 Reg. Sess.) as amended March 8, 2018, p. 3, emphasis added.)

This statement is significant in two respects:

- It indicates that subsequent to the February 14 background information, throughout the bill’s amendments on February 26 and March 8, the bill’s intended purpose continued to be to benefit 2017 wildfire victims for whom delays in rebuilding efforts were likely.
- It indicates that early in the legislative process, AB 894’s 12-month ALE extension was understood as not increasing policy benefits.

4. Proposal and deletion of retroactivity provision

A revision in the March 8 version of SB 894 added a proposed retroactivity provision, which stated: “Paragraph (1) of subdivision (c) of section 675.1 of the Insurance Code, as amended by this bill, and *paragraph (2) of subdivision (b) of Section 2051.5* of the Insurance Code, as amended by this bill, *shall be applied retroactively to any applicable claim filed on or after July 1, 2017.*” (Sen. Bill 894 (2017-2018 Reg. Sess.) as amended March 8, 2018, § 5, emphasis added.)

No committee analysis ever suggested, however, that this proposed retroactivity provision was necessary for the 12-month ALE extension to apply to 2017 wildfire victims. The February 14 statement of background information assumed such application without the bill’s inclusion of a retroactivity provision.

The May 2 version of the bill changed the proposed retroactivity provision by adding language stating that it would apply only “for policies in effect on or after January 1, 2019.” The changed provision stated: “Subdivision (c) of section 675.1 of the Insurance Code, as amended by this bill, and paragraph (2) of subdivision (b) of Section 2051.5 of the Insurance Code, as amended by this bill, shall be applied retroactively *for policies in effect on or after January 1, 2019*, with respect to any applicable claim filed on or after July 1, 2017.” (Sen. Bill 894 (2017-2018 Reg. Sess.) as amended May 2, 2018, § 5, emphasis added.) By changing the proposed retroactivity provision to make it applicable only to policies in effect after January 1, 2019, the provision was made inapplicable to victims of the 2017 wildfires.

The May 23 version of the bill deleted the language making the proposed retroactivity provision applicable to Insurance Code section 2051.5(b)(2). (Sen. Bill

