

Assembly Bill No. 1772

Passed the Assembly August 31, 2018

Chief Clerk of the Assembly

Passed the Senate August 31, 2018

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2018, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1772, Aguiar-Curry. 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. In the event of a loss relating to a state of emergency, as defined, existing law establishes a minimum time limit of not less than 24 months from the date that the first payment toward the actual cash value is made during which the insured may collect the full replacement cost of the loss, subject to the policy limit, as specified.

This bill would extend the minimum time limit during which an insured may collect the full replacement cost of a loss relating to a state of emergency to 36 months. The bill would require that additional extensions of 6 months be provided to policyholders for good cause under that circumstance. The bill would also require that policy forms issued by an insurer be in compliance with these changes on and after July 1, 2019. The bill would also make technical changes.

This bill would incorporate additional changes to Section 2051.5 of the Insurance Code proposed by AB 1800 and SB 894 to be operative only if this bill, AB 1800, 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.

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) (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 payment of the replacement cost in the event the insured decides to rebuild or replace the property at a location other than the insured premises. However, 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.

(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 by an insurer shall be in compliance 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 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 by an insurer shall be in compliance 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) (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 payment of the replacement cost in the event the insured decides to rebuild or replace the property at a location other than the insured premises. However, 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.

(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 by an insurer shall be in compliance 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 by an insurer shall be in compliance 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 both this bill and Assembly Bill 1800. 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 1800, in which case Section 2051.5 of the Insurance Code, as amended by Assembly Bill 1800, 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 shall not become operative.

(b) Section 1.5 of this bill incorporates amendments to Section 2051.5 of the Insurance Code proposed by both 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, but this bill becomes operative first, (2) each bill amends Section 2051.5 of the Insurance Code, (3) Assembly Bill 1800 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 1800, 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 1800 and Senate Bill 894, in which case Section 2051.5 of the Insurance Code, as amended by Section 1.3 of this bill, shall remain operative only until the operative date of Senate Bill 894, at which time Section 1.7 of this bill shall become operative, and Sections 1 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 ensure that the changes made by the bill extending the minimum time periods during which insureds may collect the full replacement cost of a loss take effect for as much of the 2018 “fire season” as possible, it is necessary that this act take effect immediately.

Approved _____, 2018

Governor