

Exploring Calif. Wildfire Insurance's Legislative Landscape

By **Jan Larson and Jenna Conwisar** (May 26, 2022, 5:26 PM EDT)

In California, warmer temperatures and longer days mean wildfire season is fast approaching.

This year, Californians are already on edge with unprecedented water restrictions intended to prevent Southern California from running out of water before the summer ends.[1] Thanks to these alarmingly dry conditions caused by the worst megadrought in at least 1,200 years, the 2022 wildfire season has the potential to be fraught with exceptional peril for residents.[2]

Insurance providers have been facing off with state regulators over how to keep California homeowners and business owners protected while keeping insurers financially viable.[3]

The result has been lower limits and dramatically higher premiums for some policyholders, and in many instances, nonrenewals of existing insurance policies and an inability to place new insurance policies in the marketplace. And with climate change expected only to exacerbate California's wildfire risk, policyholders and insurers are scrambling for a long-term solution.

The Unpredictable Insurance Landscape in California

With losses expected to increase and state regulators attempting to exert pressure on the insurance industry, some insurers have engaged in a variety of actions to significantly limit the availability of fire insurance coverage for California homeowners and business owners, such as nonrenewals after years of renewed coverage and significant increases to premiums. Oftentimes, property owners are then left unable to obtain replacement coverage.

Specific to fire insurance, insurance companies purport to make rate-setting and nonrenewal decisions based on a property's fire risk score. Fire risk scores are typically calculated by third parties on behalf of insurers, and they are shrouded in mystery.

Most property owners may not know they have a fire risk score, let alone know what their score is.[4] And when they do inquire, many policyholders have been frustrated that they cannot obtain information from their insurers as to how their property's location is being rated.



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After one recent significant increase in insurer-initiated insurance policy nonrenewals, the state of California implemented a series of mandatory one-year moratoriums to prevent insurers from canceling or not renewing insurance policies in certain high-fire risk ZIP codes.[5]

The process by which the moratoriums are implemented is as follows: Once the governor declares a state of emergency in certain counties due to wildfires, the insurance commissioner — currently, Ricardo Lara in California — issues a declaration detailing affected ZIP codes within and adjacent to the wildfire perimeter.

The one-year moratorium then begins on the date of the governor's emergency declaration. As of May 10, there were nine active moratoriums covering 618,700 policyholders across 31 counties.[6]

In response, some insurers continue to exit the market in California. American International Group Inc. is making plans to alert 9,000 high net worth customers that their policies will not be renewed next year.[7] Chubb Ltd. is also decreasing its coverage in California, claiming it can no longer "charge an adequate price for the risk." [8]

But other insurance companies are cautiously reemerging, unable to resist the demand in California's market. For example, notwithstanding recent losses, Allstate Insurance Co. recently signaled that it would start offering homeowner coverage to new California customers for the first time since 2009.[9][10]

State Legislators' Attempts to Create a Secure Safety Net: The FAIR Plan

To address the unpredictability and instability in the insurance market and to ensure all Californians have access to basic residential fire insurance, the California FAIR Plan pools licensed insurers, writes policies for consumers and distributes profits, losses and expenses in proportion to each participating insurers' state market share.[11] When consumers are left without options, the FAIR Plan ensures they still have at least some layer of protection.

To qualify for a FAIR Plan, a property owner may not be eligible for a plan in the traditional marketplace. FAIR Plan-eligible properties must meet specific building requirements and be either a single-family home, townhome, condo or a rental unit in California.[12] Regularly unoccupied homes or homes with preexisting damage do not meet the FAIR Plan criteria.[13]

Crucially, FAIR Plan premiums are typically higher than those of comparable insurance policies in the traditional marketplace. This makes FAIR Plan policies a less than ideal option of last resort for property owners whose prior policies have recently been nonrenewed by their former insurers.

Nonetheless, the FAIR Plan's market share has steadily increased since 2017.[14]

State Legislators' Attempts to Focus on Mitigation and Reporting

In an attempt to build upon the legislative progress made with the FAIR Plan and to address the ongoing hard insurance market conditions, California legislators in recent terms have introduced bills aimed at tempering the fire insurance availability issue, though few make it to the governor's desk.

Much of the recent proposed legislation falls generally into two categories. First, incentivizing mitigation strategies to better protect communities and soothe insurer fears and second, creating working groups

to study the anticipated effects of potential insurance regulation and report the results to state lawmakers.

In relation to the first category, state legislators are attempting to pass bills that will encourage homeowners, business owners and local governments to invest in mitigation strategies and actions intended to harden homes, businesses and local communities against wildfire risk, the results of which may minimize the scope of any impact and damages.

Residential Property Insurance: Wildfire Resilience

Introduced in February 2020, A.B. 2367 would have created a wildfire resilience task force to establish minimum standards for fire-hardened homes and communities. The task force would have included the insurance commissioner, the director of the Governor's Office of Emergency Services and the state fire marshal, and would have worked in consultation with the California Department of Forestry and Fire Protection and the Governor's Office of Planning and Research.

A.B. 2367 also would have authorized the insurance commissioner to promulgate regulations requiring insurers to incentivize homeowners to undertake mitigation actions as part of insurance premiums. A.B. 2367 ultimately did not pass.

Property Insurance Discounts

Introduced in February 2021, A.B. 1439 would have required discounted policies for insured homes or commercial properties in areas where the local government is contributing to a local wildfire protection or mitigation program.

For example, California communities like Montecito and San Mateo have made aggressive steps toward fire prevention through vent retrofitting programs and neighborhood chipping programs. A.B. 1439 ultimately did not pass.[15]

The Catastrophic Wildfire Insurance Act

Also introduced in February 2021, A.B. 1522 would have established the California Wildfire Insurance Authority to serve as a marketplace for catastrophic wildfire insurance. The California Wildfire Insurance Authority would have been overseen by a three-member governing board and been formed as a privately funded and publicly managed nonprofit entity.

Furthermore, the bill would have established the Catastrophic Wildfire Insurance Fund to reimburse participating insurers and the California Wildfire Protection Program to provide recommendations on home hardening strategies for high-risk residential property owners. A.B. 1522 ultimately did not pass.

Homeowners' Insurance: Home Hardening

Introduced on Feb. 1, A.B. 1755 would require admitted insurers to provide policies to homeowners who have taken certain concrete steps to harden their home against fire, including installing ember and fire-resistant vents and a noncombustible gutter, regularly cleaning away fallen leaves and needles from roofs, gutters and decks, and blocking any spaces between the roof covering and sheathing.

It also would create a Wildfire Protection Grant Program to help homeowners pay for these types of

mitigation improvements. A.B. 1755 is expected to be considered during this year's spring term.

As to the second category, state legislators that favor additional regulation of the insurance industry are exploring bases for further policymaking.

Insurance: Reporting

Introduced on Feb. 17, A.B. 2450 would require the insurance commissioner to convene a working group dedicated to studying the feasibility, implications and advisability of allowing admitted insurers to offer homeowners' insurance policies that include a deductible for covered losses resulting from wildfires.

The working group must include representatives from the insurance industry and the FAIR Plan, consumer advocates, and staff from the California Department of Insurance, the California Legislature and governor's office. The insurance commissioner would then be required to publish a report of the group's findings. A.B. 2450 is expected to be considered this spring.

Residential Property Insurance: Wildfire Risk Information Reporting

Introduced in December 2020, S.B. 72 would require the California FAIR Plan Association to conduct a study on how concentration risks affect the FAIR Plan's policies in high fire risk areas. The report must then be submitted to the California Department of Insurance, the California Natural Resources Agency, the California Senate Insurance Committee and the California Assembly Insurance Committee.

Furthermore, S.B. 72 would require the insurance commissioner to submit a report making geographic recommendations for vegetation management projects to the secretary for the California Natural Resources Agency. The bill is currently in the committee stage.

The California Insurance Commissioner and Governor's "Safer from Wildfires" Regulatory Framework

Meanwhile, the California Department of Insurance and the California governor's office **revealed** its Safer from Wildfires collaborative framework and corresponding regulations in February.[16] Safer from Wildfires is a ground-up, three-pronged approach outlining mitigation strategies for reducing risk by protecting the structure, protecting the immediate surroundings working together as a community.

According to the framework, "[i]nsurance availability and affordability respond to risk," so increasing mitigation efforts will make Californians and their properties safer while lessening the economic consequences on state and local governments.[17]

Protecting the Structure

The Safer from Wildfires framework recommends structure protection measures, such as Class-A Fire rated roofs, maintaining a 5-foot, ember-resistant zone around a home, noncombustible 6 inches at the bottom of exterior walls, ember and fire-resistant vents, upgraded windows — double paned or added shutters — and enclosed eaves.

Protecting the Immediate Surroundings

To protect the immediate surroundings of structures, the framework recommends clearing vegetation and debris from under decks, removing combustible sheds and other outbuildings from the immediate

surroundings of the home and ensuring defensible space compliance — including trimming trees and removing brush and debris from yards.

Community Mitigation

Finally, the framework outlines the following community mitigation elements:

- A community with a clearly defined boundary and a local risk assessment in consultation with the local fire district or state fire agency;
- A community with an identified evacuation route, cleared of vegetative overgrowth, and evacuation plan contingencies;
- Clear funding sources to implement community mitigation activities and meet clear risk reduction goals; and
- Integrated and up-to-date local planning documents pertinent to community wildfire risk.

Insurance Commissioner Lara assures stakeholders that the framework is "an important step forward in providing clear guidance to homeowners and insurance companies alike on the actions they can take to keep their properties safe." [18]

The interagency partnership hopes these "science-driven" strategies will protect property owners in what is "the first time that state agencies have been brought together to identify mitigation actions that insurance companies should consider for existing homes and businesses." [19]

A few weeks after announcing the Safer from Wildfires framework, Lara followed it up with new proposed regulations from the California Department of Insurance. The proposed regulations would allow homeowners to have more control over their fire risk score — the score insurance companies use to set rates and premiums — by ensuring insurers consider consumer mitigation efforts and providing a homeowner risk score appeals process. [20]

Specifically, REG-2020-00015 would mandate that insurers take into account community-level mitigation efforts — such as whether the property is located in a shelter-in-place community or a Firewise USA site in good standing — and property-level mitigation efforts — such as whether the property clears vegetation and debris from under decks, removes combustible structures or contains building hardening measures like enclosed eaves or fire-resistant vents. [21]

It further permits policyholders to appeal their fire risk score orally or in writing, and instructs insurers to respond to any such appeal with a reconsideration and decision within 30 days. A public hearing on the proposed regulations was held on April 13. [22]

The Contested Race for California Insurance Commissioner in November 2022

Assembly Member Marc Levine, D-Greenbrae, is hoping to snatch Lara's role as insurance commissioner in the upcoming general election on Nov. 8.

Levine is running on holding insurance companies accountable by strengthening oversight and regulation, preventing insurance discrimination against underserved communities by increasing transparency on rate-setting and supporting wildfire victims and communities by expanding access to

affordable property insurance, increasing investment in ongoing wildfire management and mitigation measures and guaranteeing homeowner insurance to homeowners who harden their homes against wildfires.[23]

Levine described his plan for expanding insurance coverage this way:

If you look at auto insurance, there's something called the good driver standard. If you're a good driver, you must be given insurance. The same thing should be true with home insurance. If you've done defensible space, if your community has invested in that, if you've done home hardening, that's essentially the good driver standard. And if you've done that insurers must be required to issue insurance.[24]

Practical Tips for Policyholders Preparing for Wildfire Season

Against the backdrop of California's legislative efforts to increase protection for homeowners and business owners in the insurance market, policyholders that experience a wildfire-related loss, or a loss as a result of any other risk within the scope of their individual insurance policy, should consider making the initial insurance-related assessments discussed below.

There are important aspects to the insurance claims preparation process that should be taken into account to better position a homeowner or business owner for a successful recovery under their individual insurance policy for property damage and business interruption losses.

Document the Damage and Loss

Policyholders should document physical property damage to both the exterior and interior of their homes or businesses using photographs, video and inventories of any lost items — e.g., personal property — any business interruption losses using historical business records and sales data to establish lost income evaluations, and any post-loss expenditures incurred immediately following the loss — including mitigation efforts — as well as any subsequent work related to the loss, e.g., repair/replacement estimates, appraisals, etc.

Identify Potentially Applicable Types of Insurance Coverage

Homeowners' insurance policies are designed to provide coverage for property damage losses caused by covered events, while commercial property insurance policies typically include coverage for both property damage losses and business interruption losses associated with covered events. Policyholders should contact their insurance broker for assistance if their copy of their insurance policy — or policies — has been lost as a result of the particular event.

Protect Insured Privileges

It is important to note that any communications with inspectors, accountants, consultants and insurance brokers who may be assisting with the insurance claim may not be protected by a legal privilege. Consider the role of in-house counsel or outside counsel in protecting communications regarding the preparation and submission of the insurance claim.

Prepare and Submit the Insurance Claim

Provide notice of the insurance claim under any potentially applicable insurance policies as soon as reasonably possible following the loss — include the policyholder's name, address of the insured property, approximate date of loss and any available initial details or description relating to the loss. Other more detailed documentation can be submitted as it becomes available and/or as it is requested by the insurer — e.g., repair/replacement estimates, appraisals, etc.

Next, review the insurance policy to confirm any deadlines for the submission of a more detailed proof of loss for business interruption-related losses, and if necessary, seek agreed-upon extensions from the insurer.

Finally, maintain records of all communications with the insurer and keep early communications at a high level to allow time for the insurance claim to be fully evaluated. In-house counsel or outside counsel can coordinate communications with the insurer to ensure that the information provided is consistent and favorably postures the insurance claim for a recovery under the insurance policy.

Conclusion

Elected officials and insurance companies continue to face the complex task of identifying and implementing effective, long-term solutions to the persistent risk of wildfires in California. This process will require the cooperation of all stakeholders.

As the recent legislative efforts have shown, there is an increasingly important role for mitigation efforts by individual homeowners and business owners in order to protect their property and a renewed investment in ensuring transparency in the insurance market that is paid to insure residential and commercial property.

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