

ASSEMBLY THIRD READING  
AB 2167 (Daly and Cooley)  
As Amended May 4, 2020  
2/3 vote

## **SUMMARY:**

Establishes the structure of an "insurance market action plan" designed to make homeowners' insurance more available in high-risk areas of the state.

### **Major Provisions**

- 1) Establishes a structure that would allow the commissioner an expedited procedure to authorize insurers to agree to a legal mandate to write more insurance in risky places in the state.
- 2) Establishes the Insurance Market Action Plan (IMAP) law designed to make homeowners' insurance more available in defined high-risk areas of the state.
- 3) Provides that counties that qualify based on formulas included in SB 292 (Rubio) of the current legislative session may benefit from an IMAP.
- 4) Specifies that an insurer may make an IMAP filing with the Insurance Commissioner (commissioner) seeking approval of rates that will enable it to write more insurance in high-risk regions of the state.
- 5) Provides that an IMAP filing shall include:
  - a) A request for adequate rates;
  - b) A plan for maintaining an insurer's solvency to the extent that policy counts rise in concentrated ways in IMAP counties;
  - c) Parcel and community-level mitigation that will be needed for the insurer to implement the IMAP; and
  - d) A list of the areas in the state where the insurer proposes to issue new policies, and where the insurer cannot issue new policies.
- 6) Requires the commissioner to act on an IMAP filing within 120 days, provided that the insurer includes specified information in the IMAP filing, including maintaining its previously filed rate data, other than the inclusion of reinsurance costs in the IMAP filing.
- 7) Provides that if reinsurance is included in an IMAP filing, it shall be an arm's length transaction, and comply with other Department of Insurance (DOI) requirements.
- 8) Provides that an IMAP filing is automatically withdrawn if it is not acted upon within the 120-day period.
- 9) Provides that, if the commissioner approves an IMAP filing, the insurer accepts a legal mandate to write more insurance in high-risk locations in the state, as specified.

- 10) States that the provisions of the bill are NOT severable.
- 11) Contains detailed Legislative findings and declarations with respect to global warming, development in the wildfire urban interface (WUI), and the need for market solutions to the current insurance availability problems facing parts of the state.
- 12) Provides that this bill shall take effect only if SB 292 (Rubio) is also signed into law.

**COMMENTS:**

- 1) *Background.* In light of several years of major wildfire disasters, insurers, particularly name-brand, large market share insurers, have concluded that a) they are too concentrated in certain regions of the state, and b) rates are inadequate across the board, but especially in the high risk regions of the state. As a consequence, these insurers have increased the rate of homeowners' insurance nonrenewals, generating stress in the market. While there is always the California FAIR Plan – the "insurer of last resort" – that will insure ANY property owner who loses insurance, a private market alternative is always preferable. However, the current regulations adopted by the commissioner to implement Proposition 103 of 1988 make it difficult for insurers to voluntarily write more insurance in high-risk regions. The intent of this bill is to allow each insurer to individually identify the impediments it faces to writing more insurance in these high-risk regions, and make a filing with the commissioner that allows those company-specific reasons to be addressed. Rather than a "one-size-fits-all" mandate, IMAP is designed to be a more precise tailored approach to inducing a market-based incentive for increased writing in high-risk regions of the state.
- 2) *Proposition 103.* As an initiative statute, California's rate regulation system is largely beyond the control of the Legislature, because amendments to that initiative statute must both be passed by a 2/3 vote, and "further its purposes." Courts have zealously guarded the People's right to limit Legislative action to undermine initiatives, and the Legislature has limited options to mandate anything with respect to rate-making. It is for this reason that AB 2167 takes a permissive approach. It authorizes insurers to make a filing under terms that, if accepted, would trigger a mandate to issue policies that otherwise does not exist in the law. However, it is entirely up to the Insurance Commissioner whether or not to approve the rate filing on those terms. The prior approval authority of the commissioner is not challenged or limited in any way by the bill's proposals.

Nonetheless, Consumer Watchdog (CW), the successor organization to the original proponents/drafters of Proposition 103, views the proposal as a wholesale attack on the authority the initiative (and the courts, interpreting the initiative statute) have granted the commissioner. It is not clear why a law drafted in 1988 should be expected to have anticipated the sort of availability disruption currently facing homeowners in the high risk regions of the state, but CW argues that the bill defeats the purposes of Propositions 103, and is contrary to law. On the other hand, Proposition 103 itself contemplates market assistance plans (which is what IMAP is), and does nothing to limit the commissioner's authority to propose or establish such a plan. It is only the next step – creating a "joint underwriting authority" – that is reserved to the commissioner by the initiative statute.

- 3) *Rates.* It is clear that an insurer's IMAP filing would include rate increases, at least with respect to that insurer's previously approved rates. But insurers are not obligated to offer policies at those rates, and in fact, this is partly why nonrenewals are increasing. Clearly,

there is a broad consensus that the recent wildfire experience points to an inadequacy of rates in California's highest risk regions. But IMAP is designed to give consumers *better* options. Currently, if nonrenewal activity continues, policyholders in high risk regions will be relegated to the limited coverage offered by the FAIR Plan, with high rates that are generally associated with the "insurer of last resort" – when you insure ONLY high risk properties, your rates are by definition likely to be high. The IMAP proposal is intended to incentivize insurers to voluntarily write policies with better coverage, and for lower prices, than the FAIR Plan can offer. If a specific IMAP filing does not meet this standard, the commissioner is under no obligation to approve it.

- 4) *Reinsurance*. Reinsurance is in essence an insurance policy that an insurance company buys. Homeowners buy insurance because the total loss, however unlikely, of their home is a financial risk too great to leave to chance. By the same token, insurance companies face certain "what if" risks that are too great for them to leave to chance. For example, an insurance company may have all of the data in the world to manage the risk of "one-off" fires here and there across the state, and would not use reinsurance to protect it against minor spikes in its predictions. But a wildfire of the magnitude we have seen in the past few years is a different matter, and the "spike" in claims payments an insurer may face could bankrupt a company. In fact, one insurer did become insolvent as a direct consequence of the Camp Fire that devastated Paradise.

For reasons more logically applicable to insurance that covers a large number of small losses, DOI regulations prohibit including actual reinsurance costs in the ratemaking process. That is one of the reasons why there is an availability disruption in some places in California, and it is one of the reasons the IMAP proposal suggests inclusion of reinsurance in rates. A statement that former-Insurance Commissioner Dave Jones made as a Member of the SB 901 Wildfire Commission is instructive. The former Insurance Commissioner stated:

"So I did ask that question [with respect to including reinsurance in the rate formula] when I was Insurance Commissioner and offered to change those regulations if I could get a legally binding commitment from the homeowner writers to insure those homes, and they declined to make that commitment."

This comment is important because, in the event an insurer files an IMAP proposal that includes reinsurance, and the commissioner approves it, there *will be a legally binding commitment* as hoped for by former-Commissioner Jones.

#### **According to the Author:**

AB 2167 (and its companion measure, SB 292 (Rubio)) is designed to address the Governor's statement in his signing message last year for AB 1816 (Daly). AB 1816 adopted several consumer protection and market assistance provisions designed to address the homeowners' insurance issues in California's high fire-risk regions. In signing the bill, the Governor stated "We must do more." AB 2167 is designed to be a market-based proposal that contains a mechanism for insurers to make filings with the Insurance Commissioner, that are entirely within the control of the Insurance Commissioner to approve or deny, that specify the terms and conditions upon which the insurer will accept a *legal mandate* to issue more policies in high-risk areas.

**Arguments in Support:**

Supporters generally argue that this bill is the only viable market-based vehicle that can address the insurance availability concerns of homeowners in high-risk locations in the state. It fully retains the role of the commissioner in approving any plan that an insurer might file.

**Arguments in Opposition:**

Opponents broadly assert that there is no proven need for this bill (despite the fact that many opponents have proposed alternative means to address the same problem) and that the Legislature has no business impeding the right of the Insurance Commissioner to be wholly in charge of this policy issue, due to the delegation of authority provided by the voters when Proposition 103 was enacted in 1988.

**FISCAL COMMENTS:**

According to the Assembly Appropriations Committee, based largely on estimates provided by the DOI, increased costs in the low millions are expected due to frictional costs associated with IMAP filings. It is not clear why DOI believes new legal regulatory costs are required by the bill, as the proposed statute merely allows the DOI to ignore its current regulations that prohibit inclusion of reinsurance and the use of state of the art modeling. The DOI also appears to anticipate an increase in rate applications, which implies that there are insurers ready and willing to write more high-risk insurance if appropriate terms and conditions are approved by the commissioner.

**VOTES:****ASM INSURANCE: 14-0-0**

**YES:** Daly, Mayes, Berman, Bigelow, Robert Rivas, Chen, Cooley, Cooper, Frazier, Gipson, Grayson, Kamlager, Voepel, Wood

**ASM APPROPRIATIONS: 17-0-1**

**YES:** Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

**ABS, ABST OR NV:** Gonzalez

**UPDATED:**

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