

Calif. Toxic Testing Bill Carries Major Insurance Implications

By **Eli Flesch**

Law360 (February 5, 2026, 8:55 PM EST) -- A California bill that would mandate safety standards for the testing and clearance of homes after wildfires could make toxicity concerns more central to a claims process in which living expenses are at stake for people wary of returning to contaminated homes.



A bill introduced last month in the California Legislature would direct the state's Department of Toxic Substances Control to adopt emergency rules establishing standards for the investigation, environmental testing and removal of toxic contaminants after wildfires. (AP Photo/Ethan Swope)

While policyholder attorneys say A.B. 1642 could help ensure insurers make claims decisions on property damage and living expenses using scientific standards, carrier advocates say the industry's response will depend on how standards are written, but could include higher premiums and less coverage to account for higher claims costs.

The bill could be particularly relevant to homeowners who didn't suffer the total loss of their properties, but are dealing with smoke damage claims, and in some instances, findings that the structure and contents of their home have been exposed to toxins.

Meanwhile, experts said that the bill in its current form leaves important questions unanswered, including how a mid-2027 deadline for the state of California to adopt standards could aid victims of the Los Angeles fires, which struck in January 2025.

"People just want to go back home safely," said Kevin Pollack, a Los Angeles attorney with ACTS Law LLP who litigates smoke claims. "Anything that is going to create objective measures to be able to evaluate that in a reasonable way, is all families want."

Under the bill, introduced Jan. 27 by state assembly member John Harabedian (D-Pasadena), the Department of Toxic Substances Control would need to adopt emergency regulations by July 2027 that establish standards for the investigation, environmental testing, and removal of toxic contaminants after a wildfire.

Homeowners have become particularly concerned with contaminants since the January 2025 wildfires in Los Angeles, where the blazes destroyed cars, appliances and other infrastructure containing chemicals harmful to human health. After testing, elements like lead and beryllium have been found in homeowners' properties.

Forestry experts have warned that such toxins are more likely to be found in conflagrations in the wildland-urban interface — zones where wilderness collides with developed areas. The size of the interface in the U.S. has increased dramatically in recent decades, with the Forest Service reporting the area contains about 44 million homes.

A key concern for homeowners wary of returning to contaminated homes has been the availability of additional living expense coverage, which provides money to help fund living expenses when their property is uninhabitable and the claims evaluations are ongoing. But policyholder attorneys including Pollack say that homeowners are running up against the limits of that coverage while debating insurers about proper remediation.

Pollack said in other instances, policyholders are running up against time issues.

In those circumstances, there might still be funds available, but Pollack said an insurer might take the position that a property can be remediated in a way that comports with the opinion of their chosen restoration vendor. The insurance company would then say the policyholder should have started that restoration, before cutting off additional living expense benefits, he said.

"Which in my view is unreasonable," Pollack told Law360. "There's case-law around the country that speaks to if the insurance company is causing an impasse — there's a disagreement over scope that's outside the insured's control — that those benefits should continue to be made available under the law."

Allison Adey, a legislative advocate with the Personal Insurance Federation of California, which lobbies on behalf of insurers' interests, said her group is still analyzing A.B. 1642. The brevity of the bill, she added, has created speculation about where it could go, but that her group was interested in working with Harabedian on it.

She added that it has become increasingly clear after the LA fires that there is a missing data set of preexisting baseline toxin levels, and that lack of data is particularly relevant to smoke claims.

"That has made it very hard under the terms of the contract to determine when a home has been returned to its pre-event conditions," she said. "And that is the obligation of the insurer — is to make sure that a home is returned to its pre-event conditions."

A proper study of baseline toxin levels should be a statewide endeavor, she said.

While toxins in homes remain a persistent struggle for homeowners, there are indications that levels of some toxins have normalized. In November, public health experts with the LA Fire Health Study found that high post-fire airborne levels of the carcinogen chromium-6 had returned to the typical lows detected in Los Angeles.

Spencer Kook, an LA-based insurance regulatory attorney with Hinshaw & Culbertson LLP, said the bill could be positive for consumers and the insurance industry, but that depends on what the Department of Toxic Substances Control ultimately declares. He said there's some reason to be concerned that the regulations will result in increased claims costs, meaning increased premiums.

But he added that "clear and uniformly applied standards specifying what must be tested, how testing must be conducted, and what levels must be met before re-occupancy should reduce litigation over these

issues, serve to potentially lower administrative costs and help expedite claims resolutions."

Meanwhile, experts said the bill in its current form leaves important questions unanswered, including how a mid-2027 deadline for the state of California to adopt standards could aid victims of the Los Angeles fires, which struck in January 2025.

Derek Chaiken, an LA-based policyholder attorney with the Merlin Law Group, said that there was a big question of when the law could be put in place. While the bill's text calls for it to take immediate effect as an urgency statute, it also gives the Department of Toxic Substances Control no later than July 1, 2026, to adopt the standards.

"Could it actually help people that were impacted by the Southern California wildfires last year?" he said. "It really depends on how quickly you can agree on standards."

Linda Bondi Morrison, an Orange County-based carrier attorney with Tressler LLP, said additional standards could add extra steps to the adjustment process, even if an adjuster opines that only a certain level of cleanup is needed. That could include extra attention to soil remediation, or hiring a consultant to test for the presence of lead.

"These are some of the drivers that are going to increase the cost of adjusting claims, which is ultimately going to impact premium, or a decision to write coverage," she said.

Attorneys also questioned who would advise on standards, especially after a San Francisco Chronicle investigation found members of a smoke damage task force established by state insurance regulators had financial ties to the insurance industry.

"Will the insurance industry be allowed to insinuate themselves into the process and have their own people try to influence what these standards are?" said David E. Weiss, a Reed Smith LLP policyholder attorney. "Hopefully that won't be the case, but it's unclear."

Weiss also said it would be good to hear from insurance regulators on how standards would be implemented with respect to insurance companies, given that the language of the A.B. 1642 itself does not directly reference insurance matters. However, the subject did come up in a Jan. 27 statement announcing the bill.

"This bill makes one thing clear: when it comes to our families' health we trust science, not insurance company guesswork," assembly member Harabedian said in the statement. "AB 1642 will create a statewide scientific standard for when it's safe to return to a home after a wildfire. Public health will be the standard, not the exception."

A spokesperson for Harabedian didn't immediately respond to requests for comment.

While much of the discussion around A.B. 1642 has concerned the damage to and remediation of structures, experts noted that the bill's testing requirements would extend to the "inside and outside of homes, schools, and workplaces in residential areas," per the bill.

Insurance attorneys have generally said that coverage for something like soil remediation is much more limited. That's as toxins like lead, arsenic and mercury have been detected in soil samples around Los Angeles following last year's fires.

The Los Angeles County Board of Supervisors last April allocated \$3 million for soil testing, but homeowners have found themselves in pitched battles with insurers over coverage for testing, and have born the cost of that themselves in some instances.

Amy Bach, executive director of the consumer group United Policyholders, said that carriers should be legally mandated to pay for such testing.

"Insurers should be paying for testing before cleaning, and post-clearing testing," said Amy Bach, executive director of the consumer group United Policyholders. "That should be an absolute obligation on insurance companies."

--Editing by Amy Rowe and Nick Petruncio.

