



# House of Representatives

General Assembly

**File No. 68**

January Session, 2011

Substitute House Bill No. 6238

*House of Representatives, March 14, 2011*

The Committee on Insurance and Real Estate reported through REP. MEGNA of the 97th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE ACTUAL CASH VALUE OF A BUILDING.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-307 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 Except as provided in section 38a-307a, the standard form of fire  
4 insurance policy of the state of Connecticut, with permission to  
5 substitute for the word "Company" a more accurate descriptive term of  
6 the type of insurer, shall be as follows:

7 [Space for insertion of name of company or companies issuing the  
8 policy and other matter permitted to be stated at the head of the  
9 policy.]

10 [Space for listing amounts of insurance, rates and premiums for the  
11 basic coverages insured under the standard form of policy and for  
12 additional coverages or perils insured under endorsements attached.]

T1  
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In Consideration of the Provisions and Stipulations  
Herein or Added Hereto

AND OF ..... DOLLARS PREMIUM

this company, for the term	}	from the .... day of .... 20..	{	at noon, Standard Time, at location of
of ....		to the .... day of .... 20..		property involved

to an amount not exceeding ..... Dollars,  
does insure .....

13 and legal representatives, to the extent of the actual cash value of the  
 14 property at the time of loss, but not exceeding the amount which it  
 15 would cost to repair or replace the property with material of like kind  
 16 and quality within a reasonable time after such loss, without allowance  
 17 for any increased cost of repair or reconstruction by reason of any  
 18 ordinance or law regulating construction or repair, and without  
 19 compensation for loss resulting from interruption of business or  
 20 manufacture, nor in any event for more than the interest of the  
 21 insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY  
 22 REMOVAL FROM PREMISES ENDANGERED BY THE PERILS  
 23 INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER  
 24 PROVIDED, to the property described hereinafter while located or  
 25 contained as described in this policy, or pro rata for five days at each  
 26 proper place to which any of the property shall necessarily be removed  
 27 for preservation from the perils insured against in this policy, but not  
 28 elsewhere. The actual cash value at the time of loss for a building  
 29 described herein shall be the amount which it would cost to repair or  
 30 replace such building with material of like kind and quality, minus  
 31 reasonable depreciation. As used herein, "depreciation" means a  
 32 decrease in value of real property over a period of time due to wear  
 33 and tear.

34 Assignment of this policy shall not be valid except with the written  
35 consent of this Company.

36 This policy is made and accepted subject to the foregoing provisions  
37 and stipulations and those hereinafter stated, which are hereby made a  
38 part of this policy, together with such other provisions, stipulations  
39 and agreements as may be added hereto, as provided in this policy.

40 In Witness Whereof, this Company has executed and attested these  
41 presents.

42 .... (Secretary).

43 .... (President).

44 Concealment, fraud. This entire policy shall be void if, whether  
45 before or after a loss, the insured has wilfully concealed or  
46 misrepresented any material fact or circumstance concerning this  
47 insurance or the subject thereof, or the interest of the insured therein,  
48 or in case of any fraud or false swearing by the insured relating  
49 thereto.

50 Uninsurable and excepted property. This policy shall not cover  
51 accounts, bills, currency, deeds, evidences of debt, money or securities;  
52 nor, unless specifically named hereon in writing, bullion or  
53 manuscripts.

54 Perils not included. This Company shall not be liable for loss by fire  
55 or other perils insured against in this policy caused, directly or  
56 indirectly, by: (a) Enemy attack by armed forces, including action  
57 taken by military, naval or air forces in resisting an actual or an  
58 immediately impending enemy attack; (b) invasion; (c) insurrection;  
59 (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order  
60 of any civil authority except acts of destruction at the time of and for  
61 the purpose of preventing the spread of fire, provided that such fire  
62 did not originate from any of the perils excluded by this policy; (i)  
63 neglect of the insured to use all reasonable means to save and preserve  
64 the property at and after a loss, or when the property is endangered by  
65 fire in neighboring premises; (j) nor shall this Company be liable for  
66 loss by theft.

67 Other Insurance. Other insurance may be prohibited or the amount  
68 of insurance may be limited by endorsement attached hereto.

69 Conditions suspending or restricting insurance. Unless otherwise  
70 provided in writing added hereto this Company shall not be liable for  
71 loss occurring (a) while the hazard is increased by any means within  
72 the control or knowledge of the insured; or (b) while a described  
73 building, whether intended for occupancy by owner or tenant, is  
74 vacant or unoccupied beyond a period of sixty consecutive days; or (c)  
75 as a result of explosion or riot, unless fire ensue, and in that event for  
76 loss by fire only.

77 Other perils or subjects. Any other peril to be insured against or  
78 subject of insurance to be covered in this policy shall be by  
79 endorsement in writing hereon or added hereto.

80 Added provisions. The extent of the application of insurance under  
81 this policy and of the contribution to be made by this Company in case  
82 of loss, and any other provision or agreement not inconsistent with the  
83 provisions of this policy, may be provided for in writing added hereto,  
84 but no provision may be waived except such as by the terms of this  
85 policy is subject to change.

86 Waiver provisions. No permission affecting this insurance shall  
87 exist, or waiver of any provision be valid, unless granted herein or  
88 expressed in writing added hereto. No provision, stipulation or  
89 forfeiture shall be held to be waived by any requirement or proceeding  
90 on the part of this Company relating to appraisal or to any  
91 examination provided for herein.

92 Cancellation of policy. This policy shall be cancelled at any time at  
93 the request of the insured, in which case this Company shall, upon  
94 demand and surrender of this policy, refund the excess of paid  
95 premium above the customary short rates for the expired time. This  
96 policy may be cancelled at any time by this Company by giving to the  
97 insured and any third party designated pursuant to section 38a-323a, a  
98 thirty days' written notice of cancellation accompanied by the reason

99 therefor with or without tender of the excess of paid premium above  
100 the pro rata premium for the expired time, which excess, if not  
101 tendered, shall be refunded on demand. Notice of cancellation shall  
102 state that said excess premium (if not tendered) will be refunded on  
103 demand. Where cancellation is for nonpayment of premium at least ten  
104 days' written notice of cancellation accompanied by the reason therefor  
105 shall be given.

106 Mortgagee interests and obligations. If loss hereunder is made  
107 payable, in whole or in part, to a designated mortgagee not named  
108 herein as the insured, such interest in this policy may be cancelled by  
109 giving to such mortgagee a ten days' written notice of cancellation.

110 If the insured fails to render proof of loss such mortgagee, upon  
111 notice, shall render proof of loss in the form herein specified within  
112 sixty (60) days thereafter and shall be subject to the provisions hereof  
113 relating to appraisal and time of payment and of bringing suit. If this  
114 Company shall claim that no liability existed as the mortgagor or  
115 owner, it shall, to the extent of payment of loss to the mortgagee, be  
116 subrogated to all the mortgagee's rights of recovery, but without  
117 impairing mortgagee's right to sue; or it may pay off the mortgage debt  
118 and require an assignment thereof and of the mortgage. Other  
119 provisions relating to the interests and obligations of such mortgagee  
120 may be added hereto by agreement in writing.

121 Pro rata liability. This Company shall not be liable for a greater  
122 proportion of any loss than the amount hereby insured shall bear to  
123 the whole insurance covering the property against the peril involved,  
124 whether collectible or not.

125 Requirements in case loss occurs. The insured shall give immediate  
126 written notice to this Company of any loss, protect the property from  
127 further damage, forthwith separate the damaged and undamaged  
128 personal property, put it in the best possible order, furnish a complete  
129 inventory of the destroyed, damaged and undamaged property,  
130 showing in detail quantities, costs, actual cash value and amount of  
131 loss claims; AND WITHIN SIXTY DAYS AFTER THE LOSS, UNLESS

132 SUCH TIME IS EXTENDED IN WRITING BY THIS COMPANY, THE  
133 INSURED SHALL RENDER TO THIS COMPANY A PROOF OF  
134 LOSS, signed and sworn to by the insured, stating the knowledge and  
135 belief of the insured as to the following: The time and origin of the loss,  
136 the interest of the insured and of all others in the property, the actual  
137 cash value of each item thereof and the amount of loss thereto, all  
138 encumbrances thereon, all other contracts of insurance, whether valid  
139 or not, covering any of said property, any changes in the title, use,  
140 occupation, location, possession or exposures of said property since  
141 the issuing of this policy, by whom and for what purpose any building  
142 herein described and the several parts thereof were occupied at the  
143 time of loss and whether or not it then stood on leased ground, and  
144 shall furnish a copy of all the descriptions and schedules in all policies  
145 and, if required, verified plans and specification of any building,  
146 fixtures or machinery destroyed or damaged. The insured, as often as  
147 may be reasonably required, shall exhibit to any person designated by  
148 this Company all that remains of any property herein described, and  
149 submit to examinations under oath by any person named by this  
150 Company, and subscribe the same; and, as often as may be reasonably  
151 required, shall produce for examination all books of account, bills,  
152 invoices and other vouchers, or certified copies thereof if originals be  
153 lost, at such reasonable time and place as may be designated by this  
154 Company or its representative, and shall permit extracts and copies  
155 thereof to be made.

156 Appraisal. In case the insured and this Company shall fail to agree  
157 as to the actual cash value or the amount of loss, then, on the written  
158 demand of either, each shall select a competent and disinterested  
159 appraiser and notify the other of the appraiser selected within twenty  
160 days of such demand. The appraisers shall first select a competent and  
161 disinterested umpire; and failing for fifteen days to agree upon such  
162 umpire, then, on request of the insured or this Company, such umpire  
163 shall be selected by a judge of a court of record in this state in which  
164 the property covered is located. The appraisers shall then appraise the  
165 loss, stating separately actual cash value and loss to each item; and,  
166 failing to agree, shall submit their differences, only, to the umpire. An

167 award in writing, so itemized, of any two when filed with this  
168 Company shall determine the amount of actual cash value and loss.  
169 Each appraiser shall be paid by the party selecting him and the  
170 expenses of appraisal and umpire shall be paid by the parties equally.

171 Company's options. It shall be optional with this Company to take  
172 all, or any part, of the property at the agreed or appraised value, and  
173 also to repair, rebuild or replace the property destroyed or damaged  
174 with other of like kind and quality within a reasonable time, on giving  
175 notice of its intention so to do within thirty days after the receipt of the  
176 proof of loss herein required.

177 Abandonment. There can be no abandonment to this Company of  
178 any property.

179 When loss payable. The amount of loss for which this Company  
180 may be liable shall be payable thirty days after proof of loss, as herein  
181 provided, is received by this Company and ascertainment of the loss is  
182 made either by agreement between the insured and this Company  
183 expressed in writing or by the filing with this Company of an award as  
184 herein provided. This Company and the insured may agree in writing  
185 to a partial payment of the amount of loss as an advance payment.  
186 Any advance payment shall be credited against the total amount of  
187 loss due to the insured. An advance payment shall not affect the  
188 requirement of this Company to pay the total amount of loss not later  
189 than thirty days after proof of loss.

190 Suit. No suit or action on this policy for the recovery of any claim  
191 shall be sustainable in any court of law or equity unless all the  
192 requirements of this policy shall have been complied with, and unless  
193 commenced within eighteen months next after inception of the loss.

194 Subrogation. This Company may require from the insured an  
195 assignment of all right of recovery against any party for loss to the  
196 extent that payment therefor is made by this Company.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	38a-307

**INS**      *Joint Favorable Subst.*

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The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

This bill makes clarifying changes to the standard homeowner's insurance policy language. There is no state or municipal fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sHB 6238*****AN ACT CONCERNING THE ACTUAL CASH VALUE OF A BUILDING.*****SUMMARY:**

The law provides the standard language for a fire insurance policy (e.g., homeowners' insurance). It defines the term "actual cash value" as the amount it would cost to repair or replace property with material of like kind and quality.

This bill retains the definition in existing law for property other than a building. It redefines "actual cash value" with respect to a building insured under the policy as the amount it would cost to repair or replace the building with material of like kind and quality, minus reasonable depreciation. It defines "depreciation" as a decrease in real property's value over time due to wear and tear.

EFFECTIVE DATE: October 1, 2011

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 14 Nay 4 (02/24/2011)