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TESTIMONY OF ERIC A. CIOPPA

SUPERINTENDENT OF INSURANCE

BUREAU OF INSURANCE

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

In Opposition to L.D. 694

"An Act Concerning Business Interruption Insurance"

Presented by Representative Lori Gramlich

Before the Joint Standing Committee on Health Coverage, Insurance & Financial Services

March 16, 2021 at 10:00 a.m.

Senator Sanborn, Representative Tepler, and members of the Committee, I am Superintendent of Insurance Eric Cioppa.

I am here today to testify in opposition to L.D. 694. Although we recognize the widespread pain felt by businesses that have struggled through pandemic-related closures and disruptions, making retroactive changes to insurance coverage is not a suitable means of relief. We are concerned that L.D. 694 would have the unintended consequences of damaging the commercial property insurance market and causing long-term harm to Maine policyholders.

There are two primary elements of this bill, both of which we have serious concerns with. The first would effectively require insurers to pay for pandemic-related business interruptions and losses of occupancy notwithstanding policy language that specifically excludes such losses. Although some commercial policies include coverage for loss of occupancy and business interruption, most coverage is neither designed nor priced to cover income lost to pandemics such as COVID-19.[1] This limitation is reflected in insurance premiums, which are tailored to account for expected losses and would likely be significantly higher if they needed to account for an added pandemic exposure that the insurer was willing to sell at any price. Notably, insurers file commercial property rates with the Bureau of Insurance and we only approve those rates if they are neither excessive nor inadequate.

Requiring insurers to retroactively cover the widespread business losses that have resulted from COVID-19 could render insurance rates that were adequate when filed, suddenly inadequate. This could have ripple effects that would exacerbate the pandemic's negative economic impact. If insurers lack the equity capital to absorb the unanticipated claims, it could compromise their ability to pay losses that are actually covered under their policies. For this reason, similar proposals have drawn criticism from insurance experts and opposition from the National Association of Insurance Commissioners.[2] The resulting unfunded loss

[1] Business income and loss of occupancy coverage generally only applies when there has been physical damage to the insured property from a covered event, such as fire or windstorm. Also, insurers, who have long been aware of the widespread business disruptions that could result from a pandemic, commonly use contracts containing communicable disease exclusions that specifically exclude pandemic-related losses. Bisco, Jill *et al.*, "Business Interruption Insurance and COVID-19: Coverage and Issues and Public Policy Implications," 39 Journal of Insurance Regulation 5, 4 (2020).

[2] Wisconsin School of Business, "Pandemic Business Interruption Insurance Coverage: Insights from WSB Survey of Insurance Experts," (May 15, 2020) *available at* https://content.naic.org/sites/default/files/Pandemic%20Business%20Interruption%20Insurance%20Coverage-

could cause severe financial distress, and in some cases the risk of insolvency. That, in turn, would place further stress on the market through the guaranty fund assessments that are levied on solvent insurers to finance claims against insolvent insurers.

The second element of the proposal would, retroactive to March 15, 2020, prohibit property insurers from excluding or limiting coverage for pandemic-related losses of occupancy or business interruptions. This would expose insurers to a category of risk that is poorly-suited for insurance products. As the NAIC explained, "[i]nsurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period."[3] Insurers would likely find it difficult to factor pandemic-related exposures into their premiums and the Bureau would have a similar challenge determining when rates are excessive or inadequate. Maine businesses would certainly face higher premiums, and would not have the option of buying a more limited policy in order to get coverage they could afford. They could also find themselves with fewer coverage options if insurers are unwilling to take on the risk and uncertainty of future pandemics.

Thank you, I would be glad to answer any questions now or at the work session.

%20Insights%20from%20WSB%20Survey%20of%20Insurance%20Experts.pdf; NAIC Statement on Congressional Action Relating to COVID-19 (Mar. 25, 2020) *available at* https://content.naic.org/article/statement_naic_statement_congressional_action_relating_covid_19.htm.

[3] NAIC Statement on Congressional Action Relating to COVID-19 (Mar. 25, 2020) *available at* https://content.naic.org/article/statement_naic_statement_congressional_action_relating_covid_19.htm.