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Testimony in Opposition to
LD 694, *An Act Concerning Business Interruption Insurance*

Senator Sanborn, Representative Tepler and distinguished members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services:

My name is Vivian Mikhail and I represent State Farm, testifying today in opposition to LD 694.

State Farm is the largest property and casualty insurer in the United States. Its business insurance policies, like most in the industry, do not provide coverage for virus-related losses and specifically exclude loss caused by virus. Business interruption coverage requires accidental, direct physical loss to covered property caused by a covered peril, such as fire, hurricanes and tornadoes.

This is the case because insurance coverage works by spreading risk, which is not achievable in situations where losses are catastrophic and nearly universal, such as a viral pandemic (*i.e.*, a virus affecting a lot of people and places). The NAIC has specifically stated that the industry is incapable of covering such losses, explaining that: "Insurance 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."[1]

In the context of the previously unimaginable economic suffering of this past year, it feels uncomfortable and even inhumane to reduce the relevant analysis of the measure before you to a discussion of numbers and dollars. But in order to convey the devastating effect this legislation would have on the industry- and then directly on its insureds- some comparisons are pertinent and significant. Since the COVID-19 pandemic started, continuity losses of all small businesses nationwide (with or without business interruption coverage) could be at least $255 billion per month. [2] This level of demand would exhaust industry surpluses designated to pay all property/casualty claims, including homeowner and auto policies, in just two months.

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[1] *See* NAIC Policy Position for a Federal Pandemic Risk Insurance Program, Oct. 22, 2020 (https://content.naic.org/article/statement_naic_policy_position_federal_pandemic_risk_insurance_progra m.htm).

[2] APCIA estimate (Sources used: APCIA using publicly available data sources including Bureau of Labor Statistics (employment, wages), Insurance Services Office (Verisk Analytics, Inc.), Houston Chronicle (average revenue and profit), and other published reports.

Put another way, that $255 billion number dwarfs the annual industry premiums for all commercial property risks countrywide in those key insurance lines of $46 billion per year, or about $4 billion a month. [3]

To further illustrate the extreme magnitude of the current crisis, we note that the 2005 hurricane season resulted in the industry processing the most claims ever handled in one year: three million. Small businesses that suffered coronavirus-related losses could produce as many as 30 million claims, which is ten times the 2005 record.

These figures do not mean that insurers are not well-capitalized. Rather, they help to show that the industry is not in a financial position to pay for vast losses that are not now and were never intended to be insured, because the industry quite simply is not designed to function that way. In its charge to serve its struggling constituents, the legislature should not consider a model that will create a crisis in the insurance industry and further harm to Mainers. LD 694 mandates coverage for known risks for which an insurer did not underwrite or collect premiums, and would result in exactly that compounding crisis and additional harm.

At its core, this legislation is about parties to a contract. By enacting such a bill, the legislature would in effect be rewriting contracts of insurance between insurers and insureds, raising serious constitutional problems and legal challenges. This undoubtedly would draw the state into unnecessary, costly and protracted litigation which the state very likely will not win, providing false hope for constituents across Maine. Passage of this legislation would be an unprecedented step taken by no other state. Both the District of Columbia and New Jersey specifically have declined to pass bills similar to LD 694.

A stable federal government is the only entity capable of handling the massive fallout from a pandemic crisis like the one we are all living through. Mandating insurance coverage sets a concerning legal precedent that undermines the very nature of all contracts while jeopardizing the solvency of the insurance industry.

Please let me know if you have questions or would like additional information. Thank you for your time today and we look forward to being available to you at the work session.

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[3] APCIA and Reinsurance Association of America (RAA) estimates, using S&P Global Market Intelligence and adjusting to remove personal lines components.