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LD 694 – AN ACT CONCERNING BUSINESS INTERRUPTION

TESTIMONY IN OPPOSITION BY THE MAINE ASSOCIATION OF INSURANCE COMPANIES MARCH 16, 2021

Senator Sanborn, Representative Tepler, honorable members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services, I am Charlie Soltan, a resident of Winthrop, Maine and testifying on behalf of the Maine Association of Insurance Companies. (MAIC) The MAIC is a group of Maine based/domiciled property & casualty (P&C) insurance companies insuring Maine homeowners, motor vehicle owners, businesses and healthcare professionals and systems. Collectively, MAIC members wrote \$337,000,000 in premium during 2020.

We strongly oppose LD 694. If enacted, LD 694 threatens not only our ability to insure commercial interests, but also to insure homeowners, auto owners and all other insureds. We believe that within short order, LD 694, if passed, could eliminate most of the domestic P&C insurers, many of which have been in business for over 100 years. We believe this is why insurance regulators across the country oppose this type of legislation and that no state has enacted such legislation.

We have great admiration and empathy for Maine businesses, their employees, and all Mainers that have suffered in the past year during this near unprecedented pandemic. Every person and business in this state, the country, and the world has endured unimaginable and drastic changes to their personal and professional lives. The reach and impact of COVID-19 has left no region of the world, let alone Maine, unaffected. As a direct result, governments everywhere and on every level, have taken action in a multitude of ways to protect the health, safety and economic wellbeing of its citizens.

In the United States alone, the federal government has committed trillions of dollars to this relief. (\$4 trillion in 2020) Just this past week, the American Rescue Plan committed another \$1.9 trillion to further address the continuing health and economic challenges that have been wrought by the virus. Fortunately, Maine will see a sizable portion of this new relief, estimated to be \$6 billion dollars. Furthermore, within the American Rescue Plan is the Restaurant Revitalization Fund set at **\$28.6 billion** which promises independent and small-chain restaurants, bars, caterers, breweries, and

tasting rooms up to \$5-\$10 million in Grants, not loans. Restaurants owned by women, people of color, and veterans will receive application priority in the first three weeks of the program when it begins.

The extent of this relief is a clear and unequivocal demonstration that only public government can provide relief on such a scale. The private market, whether insurance or otherwise, cannot support the breadth and depth of needed relief when an emergency of global proportions occurs.

Despite this relief and assistance, LD 694 proposes to extract additional compensation for claims explicitly excluded from business policies. LD 694 would be disastrous public policy if enacted.

First, in Section 2 of the bill, the Sponsor seeks to broaden insurance coverage for business interruption losses by retroactively expanding coverage to March 15th, 2020.

Since 2006 approximately, most if not all Maine approved commercial policies that cover business interruption losses, losses caused by virus, pandemic, bacteria or other microorganisms that are capable of inducing physical distress, illness or disease, are explicitly excluded from coverage. Therefore, for years, parties to the commercial contract acted reasonably; insurers did not collect any premium from policyholders to cover the excluded risk and policyholders did not expect to pay for coverage not offered or available.

By seeking to retroactively create coverage, the Sponsor has created several constitutional infirmities resulting from her legislation. First, the Due Process Clause does not permit the retroactive application of a statute if it has especially harsh and oppressive consequences, or results in manifest injustice. Second, laws that substantially interfere with existing contractual rights and obligations violate the Contracts Clause. And third, uncompensated regulatory takings violate the Takings Clause where government has unfairly singled out a property owner to bear a burden that should be borne by the public as a whole. These core principles of our law are so well discussed and grounded in our legal jurisprudence we have not cited to the numerous cases stating and reaffirming the same. In singling out P&C carriers to bear the economic consequences of COVID-19, even though expressly having excluded this risk, LD 694 implicates and violates each and every one of these constitutional protections.

Moreover, the practical results of the retroactivity would likely lead to the insolvency of most of the domestic carriers in Maine. As stated above, MAIC carriers collected \$337,000,000 in premium in 2020, to cover all lines of insurance, not just commercial insurance. Yet the exposure to the industry has been estimated to be between \$400 million to \$1.7 billion per month! This may seem to be outlandish, but when put in perspective, it is far from it. Maine's GDP in 2019 was \$67.717 billion.

Thus the range is reasonable. And as the MAIC members looked at their specific exposures, compared to their collected premium, the retroactive loss exposure likely exceeds the ability to financially cover them, likely leading to receivership. If this were to play out, then these companies would also not have the ability to cover auto, homeowners and other businesses losses that were explicitly covered and for which Mainers had paid for and expect coverage for. This would be grossly unfair to all Maine insureds. While the Maine Guaranty Fund would step in to manage claims of insolvent carriers, if enough carriers become insolvent, even the Maine Guaranty Association would be threatened, leaving Maine policyholders with no ability to recover their insurance claims.

Going forward, Section 1 of the bill would prohibit all insurers offering not only commercial insurance, but any policy insuring against loss or damage to property, from excluding coverage for any loss of occupancy or business interruption directly or indirectly resulting from the COVID-19 pandemic or any future pandemic declared by the World Health Organization or the United States government. Because this new section 2454 would be placed in Chapter 27 of the Maine Insurance Code, it applies to ALL insurance and annuity contracts other than reinsurance, most policies delivered outside of the state and wet marine and transportation insurance. This means homeowner policies, and many other types of personal and commercial lines policies, are implicated.

Because of the breadth of the application, we believe most insurers will 1. Not write any insurance in Maine; 2. Choose to avoid writing policies covered by this section for Maine residents, properties and businesses; 3. Or if written, of such limited scope as to be impractical; and/or 4. Would be priced so as not to be affordable.

Another severe impact for carriers going forward if LD 694 were to pass, is that the reinsurance market will continue to exclude coverage for pandemic. This strips primary carriers, like members of the MAIC, from securing coverage to limit their exposure to large single and aggregate losses. This would severely limit the ability of primary carriers to offer the number of policies they currently offer and thereby restrict competition in Maine and drive premium levels even higher.

We think it is important to remind the Committee of how fortunate Maine is to have the current healthy, competitive and affordable P&C market. Maine ranks as one of the lowest cost states for P&C insurance and that benefits all Mainers and Maine businesses. LD 694, if passed, would blow that paradigm up very quickly. Sound public policy that preserve Maine's competitive marketplace requires that LD 694 be given a unanimous Ought Not to Pass vote.