

To: Members of the Joint Committee on Health Coverage, Insurance and Financial Services

March 16, 2021 Public Hearing

RE: LD 694 --- Business Interruption Insurance Mandates

### **STATEMENT IN OPPOSITION TO LD 694**

The National Association of Mutual Insurance Companies (NAMIC)<sup>1</sup> and its members, thank you for the opportunity to express strong opposition to legislation referenced above and urge that the bill be given an Ought Not to Pass recommendation.

This bill would mandate that all business interruption insurance policies, retroactively and prospectively, cover claims for any loss of occupancy or business interruption directly or indirectly resulting from the Coronavirus disease 2019 pandemic or other pandemics declared by the World Health Organization.

If enacted, this would impose an overwhelming and unprecedented burden on the insurance industry, which is a critical source of jobs (14,000) and tax revenue in Maine contributing more than \$2 billion to the Maine gross state product and nearly \$100 million in premium taxes.<sup>2</sup> It would undermine the ability of insurers to pay legitimate claims and jeopardize the solvency of some insurers, and could lead to volatility in insurance rates for local consumers and businesses causing insurers to reconsider their willingness to provide insurance in Maine altogether.

#### **This Bill Is Unconstitutional.**

Constitutional scholars are aligned in the position that this type of legislation is unconstitutional based on several provisions of the U.S. Constitution, including The Contracts Clause; The Takings Clause; and The Due Process Clause.<sup>3</sup> The Committee should consider the time and taxpayer resources expended in this quixotic effort that would unnecessarily divert attention and focus from those policies which would truly benefit Maine's businesses and workers. Moreover,

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<sup>1</sup> The National Association of Mutual Insurance Companies is the largest property/casualty insurance trade group with a diverse membership of more than 1,400 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. NAMIC members lead the personal lines sector representing 66 percent of the homeowner's insurance market and 53 percent of the auto market.

<sup>2</sup> Key Facts: The Insurance Industry's Contribution To The Maine Economy <https://www.iii.org/publications/a-firm-foundation-how-insurance-supports-the-economy/state-fact-sheets/maine-firm-foundation>

<sup>3</sup> [Unconstitutional Insurance-Coverage Legislation is Not the Cure for COVID-19 | Washington Legal Foundation \(wlf.org\)](#)

all parties to legal contracts in Maine would justifiably question whether their rights under contract will be voided by the capris of the Legislature.

### **Business Interruption Insurance Is Not Designed to Cover Pandemics.**

In the US and throughout the world, business interruption policies typically insure against a wide range of potential events, but they do not and were not intended to cover pandemic communicable diseases like COVID-19. Consequently, premiums charged to insureds did not contemplate this type of coverage. Fundamental to how insurance benefits society is the principle that by spreading risk over a larger pool to cover the claims of a smaller pool of those who experience the risk will reduce premiums for all. This legislation turns that principle on its head by providing a coverage for a risk that is virtually universal in scope.

Moreover, business interruption coverage is a “property” policy that reimburses the insured for financial loss resulting from direct physical damage to the policyholder’s property (i.e., fire damage). This legislation alters this coverage to include “*any loss of occupancy or interruption to the operations of a business*” and specifically prohibits the denial of a claim because “*the insured has not suffered any physical damage or loss of property.*”

### **The National Association of Insurance Commissioners (NAIC) Opposes This Type of Legislation.<sup>4</sup>**

*“... NAIC opposed proposed legislation that would require insurance companies to retroactively pay for claims arising out of the COVID-19 pandemic losses that were not covered under the original policy, arguing that such actions could create a substantial solvency risk and undermine the ability of insurers to pay other types of claims. Further, the NAIC noted that insurance is not the ideal product to cover pandemic losses, due to the widespread nature of disease and the substantial number of policyholders affected simultaneously. Instead, the NAIC recommended direct federal intervention to address economic disruption related to the current COVID-19 pandemic and offered to work with Congress on potential solutions.”*

### **Federal Action Is the Appropriate Response.**

As stated, business interruption insurance is not designed to cover pandemics. Only the federal government is positioned to respond to universal cataclysmic events. In 2020, the federal response to the COVID-19 pandemic included \$6 trillion<sup>5</sup> in support of businesses, individuals, and institutions. Nearly 33,000 Maine businesses received forgivable loans through the Paycheck Protection Program (“PPP”) totaling more than \$2.6 billion.<sup>6</sup> The average recipient business has 10 employees and the average loan to the more than 1,500 Maine restaurants that received PPP loans was \$118,212.

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<sup>4</sup> [Business Interruption/Businessowner's Policies \(BOP\) \(naic.org\)](https://www.naic.org/industry/insurance/BOP/BOP_policies.htm)

<sup>5</sup> <https://www.google.com/amp/s/www.washingtonpost.com/business/2020/04/15/coronavirus-economy-6-trillion/%3foutputType=amp>

<sup>6</sup> [Maine SBA Paycheck Protection Program Recipient List - FederalPay](https://www.sba.gov/document/main-paycheck-protection-program-recipient-list)

Significantly, the additional \$1.9 trillion in the recently enacted “American Rescue Plan Act” includes more than \$ 60 billion to support small businesses.<sup>7</sup> This includes \$29 billion for the “Restaurant Recovery Act,” a new grant program that provides direct relief to restaurants.

**Mainers Proved Resilient and So Has Maine’s Economy.**

Despite the tragic and serious impacts COVID-19 has had on the national economy, Mainers’ strength, fortitude, and determination to adapt and overcome these challenges positions Maine for a strong come-back. The Colby Economic Outlook<sup>8</sup> asserts “a sense of confidence in the Maine economy.” Colby “predicts that restaurant and lodging sales will grow back 33.35% in 2021 and a strong 8.03% in 2022... bringing the state to pre-pandemic levels.” In terms of employment, Colby predicts “2021 to completely offset the decline in 2020 with a 26.41% increase in tourism employees...”

Adding to this appropriate sense of optimism, Governor Mill’s recently announced “Moving Maine Forward” plan<sup>9</sup> charts a safe course to fully open Maine’s important hospitality industry by this summer.

For these reasons, NAMIC and its member companies respectfully ask that you consider the potential adverse impact this legislation could have on the businesses and residents of Maine. Thank you for your consideration.

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Respectfully Submitted,

Rory Whelan

Regional Vice President, Northeast  
National Association of Mutual Insurance Companies

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<sup>7</sup> [What's in the \\$1.9 trillion rescue plan for small businesses - CNN](#)

<sup>8</sup> [Colby Economic Outlook | December 2020 \(documentcloud.org\)](#)

<sup>9</sup> [Moving Maine Forward | Covid-19](#)