



April 17, 2020

The Honorable Vicki Schmidt  
Chair, Property and Casualty (C) Committee  
National Association of Insurance Commissioners  
1100 Walnut, Suite, Suite 1500  
Kansas City, MO 64106

Via email to [abrandenburg@naic.org](mailto:abrandenburg@naic.org)

Dear Commissioner Schmidt,

The Wholesale & Specialty Insurance Association (WSIA)<sup>1</sup> would like to thank the NAIC leadership for your comments issued to Congress on March 25 that expressed concerns with any measures that retroactively force coverage into existing contractual agreements. We strongly support this statement and appreciate the NAIC members' ensuring their perspective is made available to Congress in this critical area. As you have likely seen by now, [H.R. 6494](#) was filed this week by Rep. Mike Thompson (D-CA) that conflicts with the NAIC's statements. WSIA has filed [comments](#) in opposition to this bill and we are hopeful that it will not move forward.

Similarly, there are legislative proposals pending in seven states that conflict with the NAIC position. WSIA has sent letters in each instance indicating our strong opposition to any proposal that changes insurance contracts from their original intent. We appreciate the opportunity to provide comments to you expressing our opposition to all legislative efforts that would require insurers to pay for coverage that was never sold as we have done in each of the states with pending legislation.

As proposed, these bills would have far-reaching, significant negative impacts to all consumers and businesses relying on the insurance market to protect them now and in the future. These initiatives would retroactively change every insurance policy issued for loss of use and occupancy and business interruption so that each policy would effectively be rewritten to include coverage for business interruption during the declared state emergency due to the COVID-19 pandemic. If passed, they would

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<sup>1</sup> The Wholesale & Specialty Insurance Association (WSIA) is the non-profit association of insurance professionals and specialty market leaders dedicated to the wholesale distribution system. WSIA represents the interests of its members and the valuable role they play in the insurance market through networking, education, talent recruitment and development, regulatory and legislative advocacy for surplus lines, and by promoting the value of the wholesale distribution channel. WSIA is a world-class member service organization representing the entirety of the wholesale, specialty and surplus lines industry. The Wholesale & Specialty Insurance Association was formed in 2017 through the merger of the American Association of Managing General Agents (AAMGA) and the National Association of Professional Surplus Lines Offices (NAPSLO).

mandate insurance policy interpretation regardless of the clear wording of the policy itself, providing a coverage never intended when the policy was underwritten and priced.

Where there are insurance policies that provide coverage for COVID-19 pandemic business interruption losses, insurers should and will pay all properly submitted claims for which coverage exists. However, we oppose any retroactive modifications to insurance policies that do not include this coverage. Any action to fundamentally alter business interruption provisions specifically, or property insurance generally, to retroactively mandate insurance coverage for viruses by voiding those exclusions, would immediately subject insurers to claim payment liability that threatens solvency and the ability to make good on the actual promises made in existing insurance policies. Below we highlight and outline why we so strongly oppose these bills.

1. Insurers reserve assets to pay claims based on assumed risk factors. The risks detailed in an insurance policy provide the fundamental basis for calculating these reserves and setting the price of the insurance premium. In the case of proposed legislation, the insurer would be mandated to pay claims for coverage it did not sell and, losses that it did not prepare or reserve for, which exacerbates the risk of insolvency for any insurers issuing business interruption policies in this state. The [American Property and Casualty Insurance Association estimated](#) that the COVID-19 pandemic shutdown cost as much as \$383 billion for small businesses of less than 100 employees which would represent an unprecedented financial burden on insurers. Some, if not many or all, will likely have difficulty meeting their obligations to cover the perils they are contracted to cover, and which are expressly specified in their insurance policies. Fires, hurricanes, and other perils do not cease for a pandemic and policyholders experiencing insured losses, now and in the future, need to know insurers will be there to pay legitimate claims.
2. Mandating the payment of insurance that was never purchased would make the market unstable for insurers. Insurers will not know if policy terms will be discarded in the future based on crises, catastrophic events, or desired public policy outcomes. No contractual relationship can be secure when the parties cannot count on the contract to be honored. The bill would also have disastrous national ripple effects. Regulators in other states might compel their domiciled insurers to not pay claims based upon the passage of the bill because they would recognize its disastrous impact on the solvency of their domestic insurers.

In addition, Article 1, Section 10, Clause 1 of the United States Constitution clearly states, *inter alia*, that “[n]o State shall...pass any...ex post facto Law, or Law impairing the Obligation of Contracts.” The U.S. Constitution therefore explicitly prohibits states from passing any retroactive law that impairs contractual obligations, which is precisely what these proposals would do. Legislatively rewriting existing insurance contracts would run afoul of this constitutional prohibition against the government impairing private contracts. Passage would no doubt lead to unproductive, protracted litigation based on a flagrant violation of the U.S. Constitution.

3. WSIA has joined a group of three dozen organizations to propose the creation of a federal [COVID-19 Business and Employee Continuity and Recovery Fund](#) (“Recovery Fund”), which would distribute federal funds and liquidity to impacted businesses and their employees. We respectfully submit that active support for this type of comprehensive program is the most productive approach to

addressing the most current needs of businesses and their employees in these trying times—not violating the U.S. Constitution and setting a dangerous precedent in contract law and insurance policy.

Additionally, we would like to take this opportunity to thank you and your fellow NAIC members for the support and guidance you have provided throughout the national COVID-19 pandemic. In response to the quickly changing landscape in the insurance industry, on April 1, WSIA [issued a statement](#) with our policy positions on state regulatory and federal legislative responses to the impacts of the COVID-19 pandemic. This statement encourages all industry participants to thoughtfully and appropriately extend relief to insureds during this time and outlines some of the areas most accommodated. Additionally, there are some areas where it would be most helpful if regulators could provide accommodations for the industry as well, to help them meet these expectations and suggestions. The industry as a whole continues to work to do what is right and we hope you recognize these efforts as well.

Thank you for your time and please let us know if you have any questions.

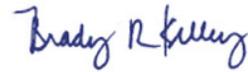
Sincerely,



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