April 24, 2020

The Honorable Ronnie Cromer
410 Gressette Building
Columbia, SC 29201

Re: Oppose Senate Bill 1188

Dear Chairman Cromer:

While we sympathize with the countless businesses and individuals who have been significantly impacted by this pandemic, we are writing to express our opposition to Senate Bill 1188, which seeks to retroactively mandate insurance coverage for business interruption claims related to COVID-19 – regardless of existing policy terms, limitations, and exclusions. This proposal is not only unconstitutional, but would jeopardize the financial stability and future of South Carolina's insurance market. Our collective efforts should focus on advocating to Congress to continue providing appropriate financial stimulus.

Insurers are working with those affected by the pandemic and remain committed to paying for losses that are covered under the terms of their contracts, but we strongly oppose this proposed legislation.

Standard business interruption policies have not been written, nor has premium been collected, to cover losses caused by communicable disease.

The National Association of Insurance Commissioners (NAIC) is the collective body of state insurance regulators whose mission includes serving the public interest by facilitating the fair and equitable treatment of insurance consumers and promoting the reliability, solvency and financial solidity of insurance institutions. NAIC has stated that attempts to mandate retroactive business interruption coverage, as S 1188 proposes, are misguided. The NAIC recently published the following:

> *"Business interruption policies were generally not designed or priced to provide coverage against communicable diseases, such as COVID-19 and therefore include exclusions for that risk. 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. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing."*

As the NAIC points out, insurers must be able to rely on the plain language of the policy contract to establish what is covered and what is not. Since most insurance policies do not provide coverage for losses related to bacteria and virus transmission, retroactively invalidating exclusions or mandating coverage would be unjust and require insurers to pay for policyholders' business costs and lost profits for which no premium has been collected. S 1188 and related proposals would force insurers to pay economic losses that amount to a significant portion of the U.S. gross domestic product (GDP), and could potentially impair the solvency of a number of insurers and significantly damage their ability to pay other claims for which coverage has been provided. Simply, the insurance industry lacks the capital that would be required to pay these claims and continue to meet the obligations of future losses that are covered under the policy (for example, wind, fire, auto accidents, etc).

Additionally, S 1188 would retroactively rewrite contract provisions and create a dangerous precedent. Requiring insurers to provide coverage where none exists is in direct conflict with the U.S. Constitution's non-impairment clause, which is intended to safeguard the integrity of contracts against unwarranted interference by the State. As a rule, contracts should not be tampered with by subsequent laws that would change or modify the rights and obligations of the parties.

Furthermore, S 1188's proposal to "reimburse" commercial insurers by assessing all licensed insurers would do nothing to cure the bill's constitutional and financial infirmities. An assessment upon all licensed insurers writing all lines of insurance would impose additional costs upon every insurer providing coverage, and ultimately each policyholder in South Carolina, and create an especially unfair burden on companies that do not write insurance for commercial lines. Also, these assessments could trigger automatic retaliatory taxes upon South Carolina's domestic insurers competing in other states.

Neither insurers nor states themselves have unlimited access to capital or debt that can fund programs as large as that proposed by S 1188. Only the federal government can borrow such sums, and Congress is already responding to the COVID-19 crisis through various stimulus measures aimed at assisting small businesses. For example, the CARES Act (HR 748) expands aid offered through the Small Business Administration (SBA) by allowing businesses to apply for forgivable loans to assist with payroll, utilities, rent, and other fixed business costs. Under most federal disaster relief programs, an applicant must certify that they have exhausted all other financial assistance options, including insurance, prior to seeking relief. If insurers' bacteria and virus exclusions are invalidated, this legislation would prevent any South Carolina business from applying for this relief while the constitutionality and the individual claim's merits are undoubtedly litigated. Such delays defeat the goal of distributing funds to businesses as soon as practicable.

In conclusion, we ask that you oppose S 1188 as it would unconstitutionally rewrite existing insurance contracts, potentially undermine the solvency of many insurers, and impose unfair burdens on all insurers and their policyholders across all lines of the industry. Instead of placing the burden of uncovered business interruption losses upon insurers, Congressional action is better equipped to respond to these types of scenarios.

We appreciate your willingness to hear the significant concerns of our industry relative to this proposed legislation. COVID-19 has presented all of us with challenges and uncertainty. The insurance industry is working with those adversely affected by the pandemic where possible. For example, some insurers have voluntarily extended due dates for premiums and waived late fees, paused non-renewals, and/or issued refunds or premium credits. As part of a broad business coalition, insurers are also advocating for additional federal measures to assist businesses that have been impacted by emergency orders. Please consider us to be a partner and a resource as we all continue to deal with the consequences from this outbreak.

Sincerely,

Russ Dubisky
Executive Director

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NAMIC NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES