

Legislative History for Connecticut Act

PA 15-126

HB6865

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Transcripts from the Joint Standing Committee Public
Hearing(s) and/or Senate and House of Representatives
Proceedings

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2015**

**VOL.58
PART 9
2795 – 3145**

/pt
HOUSE OF REPRESENTATIVES

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May 14, 2015

[pause]

SPEAKER SHARKEY:

Have all the members voted? Have all the members voted? Members please check the board to make sure your vote is properly cast.

If all the members have voted, the machine will be locked and the Clerk will take a tally. Will the Clerk please announce the tally.

CLERK:

House Bill 7029 as amended by House "A"

Total Number Voting 146

Necessary for Passage 74

Those voting Yea 143

Those voting Nay 3

Absent and not voting 5

SPEAKER SHARKEY:

The bill as amended passes. [gavel] Will the Clerk please call Calendar 230?

CLERK:

On Page 12, House Calendar 230, Favorable Report of the Joint Standing Committee of Insurance and Real Estate, Substitute House Bill 6865, AN ACT CONCERNING

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COINSURANCE CLAUSES IN CERTAIN COMMERCIAL INSURANCE
POLICIES AND CONTRACTS.

SPEAKER SHARKEY:

Representative Megna.

REP. MEGNA (97th):

Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

SPEAKER SHARKEY:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the bill.

Will you remark, sir?

REP. MEGNA (97th):

Thank you, Mr. Speaker. Mr. Speaker, this bill simply creates the uniformity between the regulated and surplus lines markets in terms of applications of coinsurance clauses that are inserted in those policies.

The reason why we do this bill here is because surplus lines companies can often use fair market value or any value they need to do to ensure a risk and provide a policy for that policy holder and this simply provides a protection to a small business owner or a large business owner when they purchase a policy

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with a coinsurance clause in it with the understanding that is based on the replacement cost less the wear and tear depreciation of that piece of commercial real property, and with that, I'd ask the Chamber to adopt this bill, Mr. Speaker, thank you.

SPEAKER SHARKEY:

Thank you, sir. Would you care to remark? Would you care to remark further on the bill that's before us? Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker, and thank you to the Chairman for his description of the bill before us. I think he alluded to saying that what we're trying to do is make the non-admitted insurance market conform to the admitted insurance market with regard to coinsurance clauses, and that is indeed the intent of the legislation before us.

However, I would say that I have some objections to that, and I will try and go through them as quickly as I possibly can.

Essentially, the non-admitted insurance market is exactly that. The fact is that they are not regulated the same way that the admitted insurance carriers are in our state and I think that it's somewhat

unprecedented to put into statute a requirement about the insurance contract that they offer.

I would say for the second issue that I have, that this is a private contract between a policyholder and an insurance company, and it is outside the purview of the regulatory body in our state, and I think based on that, we have little right to interfere with their contractual agreement.

Third, I would say that these particular type of insurance policies fulfill a significant need in the marketplace. The type of insurance policies we're talking about are commercial property insurance policies that are often in high risk parts of our state and the insurance protection that would be afforded to these folks in the admitted market is exceptionally expensive, in fact cost prohibitive or not available at all.

And the owners of these properties in an effort to try and conduct business and stay profitable have to make decisions about their insurance coverage.

What this policy would do if adopted, is prohibit them from making the decision that they would choose to make and purchase insurance at a value that is agreeable to them and the insurance company that

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they've made this contract with, and something that they can afford without passing the cost onto their tenants.

I would also say that the cost may become so prohibitive based on this that many of these landlords might elect to go entirely without insurance. So I see a tremendous potential disruption to the marketplace and I'm not alone.

The State of Connecticut Insurance Department was one of the four submitted testimonies on this particular bill, all four in opposition and in fact, the Insurance Department noted the same, exact comments that I just made.

They stated that they oppose this bill and would encourage the Committee not to prohibit the use of coinsurance clauses from commercial insurance policies, and the elimination of coinsurance as proposed in this legislation, many insurance will receive a substantial rate increase, which I think is dangerous to the marketplace, and they will not be permitted to issue a policy for less than 100 percent replacement value. They further say that they believe this will disrupt the commercial market.

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I think based on the fact that there is little outcry from policyholders, insurance companies, or those affected in the marketplace, and there is only testimony in opposition, and there is a danger of disrupting our current insurance marketplace in the state, I would urge my colleagues to vote in opposition to this bill. Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, sir. Would you care to remark further on the bill that's before us? Representative Scott.

REP. SCOTT (40th):

Thank you, Mr. Speaker. I also rise in opposition to this bill. The coinsurance clause is a very necessary vehicle in calculating premiums and evaluating coverages, so I would encourage my colleagues on both sides of the aisle to vote against this bill. Thank you.

SPEAKER SHARKEY:

Thank you, sir. Would you care to remark further on the bill that's before us? If not, staff and guests to the Well of the House. Members take your seats. The machine will be opened.

CLERK:

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The House of Representatives is voting by roll.

The House of Representatives is voting by roll. Will members please return to the Chamber immediately.

[pause]

SPEAKER SHARKEY:

Have all the members voted? Have all the members voted? Will the members please check the board to make sure the vote is properly cast.

If all the members have voted, the machine will be locked and the Clerk will take a tally. Mr. Clerk, if you would, would you please indicate that the Speaker wishes to be counted in the affirmative on this bill.

[applause]

SPEAKER SHARKEY:

Thank you, Mr. Clerk.

CLERK:

Mr. Speaker, please stay close to the Chamber.

[applause/laughter]

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SPEAKER SHARKEY:

Touché, sir, touché. Will the Clerk please announce the tally.

CLERK:

After the correction, House Bill 6865.

Total Number Voting 146

Necessary for Passage 74

Those voting Yea 83

Those voting Nay 63

Absent and not voting 5

SPEAKER SHARKEY:

The bill passes. [gavel] Will the Clerk please call Calendar 277.

CLERK:

On Page 17, House Calendar 277, Favorable Report of the Joint Standing Committee on Insurance and Real Estate. Substitute House Bill 6920, AN ACT CONCERNING REVISIONS TO THE PROPERTY AND CASUALTY INSURANCE STATUTES.

SPEAKER SHARKEY:

Representative Megna.

REP. MEGNA (97th):

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SENATE**

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Will you remark further on the bill? Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President, I stand in support of this bill. I think it's the third or perhaps fourth year in a row that this has run. Senator Slossberg's shaking her head like she's seen it before. I urge adoption. Thank you.

THE CHAIR:

Thank you. Will you remark further on the bill? Will you remark further on the bill? If not, Senator Cassano.

SENATOR CASSANO:

If not, I would urge it be placed on the Consent Calendar. Thank you.

THE CHAIR:

Seeing no objection, so ordered, sir. Mr. Clerk.

CLERK:

Also on Page 19, Calendar 542, Substitute for House Bill No. 6865, AN ACT CONCERNING COINSURANCE CLAUSES IN CERTAIN COMMERCIAL INSURANCE POLICIES AND CONTRACTS, Favorable Report of the Committee on Insurance and Real Estate. There's an amendment.

THE CHAIR:

Senator Crisco, good evening, sir.

SENATOR CRISCO:

Good evening, ma'am. Madam President, I move acceptance of the Joint Committee's Favorable Report in concurrence with the House.

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The motion's on acceptance and passage in concurrence.
Will you remark, sir?

SENATOR CRISCO:

Yes, Madam President. Madam President, this bill will require insurance policies covering commercial real property that include a coinsurance clause to state on the policy's declaration page the minimum dollar amount of coverage needed to avoid terminating the clause.

It would also prohibit the coinsurance clause from being delivered if the policy defines depreciation differently than set forth in Section 38a-301.

THE CHAIR:

Will you remark further on this bill? Will you remark further on this bill? Senator Kelly.

SENATOR KELLY:

Thank you, Madam President, through you I have a couple of questions to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR KELLY:

Thank you very much. Senator Crisco, can you explain what coinsurance is?

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Yes, Madam President, through you to Senator Kelly, if I recall from my days as an insurance student at the University of Connecticut, it basically states that the entity being insured carry a certain percentage of the value of his insurance.

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THE CHAIR:

Senator Kelly.

SENATOR KELLY:

And with regards to this bill, what we're really looking at is in the fire insurance lines, and in particular surplus lines, through you, Madam President?

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you to Senator Kelly, yes.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President, with regards to this bill, I remember in Committee the testimony that did come from the Connecticut's own Insurance Department, and the real concern here with regards to what this does, and basically what we're looking at is somebody who, with regards to fire insurance has been pushed into what is known as a surplus line. And a surplus line is a line of insurance that handles more risky properties and in all likelihood somebody who's already made claims with regards to standard fire insurance.

And the concern that the Commissioner for the Department brought forth to the Committee was that by getting rid of the coinsurance requirement, many insureds will receive a substantial rate increase as the insureds will not be permitted to issue a policy for less than 100 percent of the replacement value.

In essence, what this bill is going to do is to anybody that is going to be purchasing fire insurance under a surplus line, and these are individuals that

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already have some sort of risk component or a higher risk component in their insurability, they're going to be forced to pay higher premiums.

And I think what we see time and time again with many of the initiatives that come out of this building is that we continue to put more burden and costs on people living in Connecticut, which makes it more and more expensive to stay here, to raise a family and to live here.

And so we've got to be mindful, and I think this is one of those bills that we need to keep in mind the costs that are attached to the bill, and what we're going to be doing is forcing people who already have a risk component in their insurability, they're going to be forced to pay more because we enacted this bill.

I didn't think that was a good idea at Committee. I still don't believe it to be a good idea now, and I stand and ask my fellow Senators to vote against the bill. Thank you.

THE CHAIR:

Thank you. Will you remark further? Will you remark further? Senator Kane.

SENATOR KANE:

Thank you, Madam President. I rise for the purpose of an amendment.

THE CHAIR:

Oh, please proceed, sir.

SENATOR KANE:

The Clerk is in possession of LCO 8704. I'd ask the Clerk call the amendment and I be allowed to summarize.

THE CHAIR:

Mr. Clerk.

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CLERK:

LCO No. 8704, Senate "A" offered by Senator Kane.

THE CHAIR:

Senator Kane.

SENATOR KANE;

Thank you, Madam President, I move adoption.

THE CHAIR:

Motion is on adoption. Will you remark, sir?

SENATOR KANE:

I will, thank you, Madam President. Just, what's today, Monday? Friday or Saturday when I came in and I brought my newspaper from home and I started glancing through it and I read an article about the Exchange raising fees on the industry of 22 percent, and I thought that that seemed a bit exorbitant and it seemed like such a high rate to be charging without any approval from this Body, whether it be the Insurance and Real Estate Committee or any other committee having cognizance of that matter.

And it just, you know, to Senator Kelly's point about raising costs, things like this, when the industry, and we are supposedly the insurance capital of the world, gets charges of these type of rates, then what happens, Madam President, is it just gets passed along to the consumer.

So simply put, this amendment would, prior to the assessment, the change in assessment of the user fee charged to a health carrier of more than 10 percent the board shall submit a proposed change with the Joint Standing Committee and the General Assembly having cognizance of matters relating to insurance.

So similar to a rate increase that we talked about, energy costs, a week or two ago and the rising costs and how these companies have to go to PURA in order to get approval, similar to anything else we do in this

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Body, I think the Health Exchange should be held to that same accountability, that they should come in front of the Insurance and Real Estate Committee anything over 10 percent, because I think a 22 percent rate increase seemed rather high to me, and the article just stated that.

So I would ask that the members of this Body support this amendment and I'd ask for a roll call vote.

THE CHAIR:

A roll call vote will be had. Senator Kelly.

SENATOR KELLY:

Thank you, Madam President, I have a few questions, through you to the proponent of the amendment.

THE CHAIR:

Please proceed, sir.

SENATOR KELLY:

With regards to this amendment, did you set a threshold as to how much the percentage increase needs to be to trigger a hearing, through you, Madam President?

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President, and I did. If such change is for more than 10 percent increase, through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

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Thank you, Madam President, and when triggered, what would then the Exchange need to do, through you, Madam President?

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President, the board shall submit such proposed change with the Joint Standing Committee of the General Assembly having cognizance of matters relating to insurance, through you.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

And through you, Madam President, what would you envision being part of the discussion or information that would be shared with the General Assembly by the exchange, through you, Madam President?

THE CHAIR:

Senator Kane.

SENATOR KANE:

Well, as far as the process goes, through you, Madam President, that not later than 30 days after the submission, the Committee would hold a public hearing and vote to approve or reject such change.

If the Committee fails to hold a public hearing or vote to approve it within a 30-day period the change shall be deemed approved.

So the point is that the Committee can hold a hearing, take in evidence and then if they feel that it's not necessary, they don't have to have a hearing at all and it would simply be approved by their inaction.

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So all we're looking for is that day in court, if you will, that will allow the industry to come and talk about the proposed rate increase, through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President, and thank you, Senator Kane for bringing this issue forward. Many times these, and to the viewers at home, I know it's 10:30 at night. I know it's getting late, but many of the issues that we talk about here in the Capitol tend to be very complex.

But what I'd like to do is just boil it down to the viewers at home so that they understand what we're talking about and why this issue is just that important.

When we talk about the Exchange assessment, what we're talking about is a fee that is placed on every single small health, group health policy, and quite frankly it becomes a job killer. It becomes a job killer because this assessment is levied on those policies, which forces small business to increase their costs and ultimately that is passed on to the company's bottom line, and when you don't have a healthy bottom line, you don't hire more people.

Now Senator Kane referenced the increase this past week and it happened on Wednesday. Right now there's 1.35 percent tax, I like to call it, on premium. We use the word assessment but in essence whenever the government tells someone that they have to give money to the government or to a government purpose, in essence that's a tax.

So it was 1.35 percent and it was raised to 1.65 percent, which is anywhere from an 18 to 22 percent increase in one year, and if we had a 22 percent increase in health premiums, or long-term care premiums, or life premiums, property and casualty

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premiums, we'd be calling for the exact public hearing that Senator Kane is proposing.

That's why this makes sense, is that we have right now the ability of the Exchange to increase this tax, if you will, without any repercussions or coming back to the General Assembly or the people of Connecticut and asking whether or not this initiative is appropriate, and whether or not, quite frankly, they're spending the money in a prudent way.

Now we'll hear time and time again from the Exchange that it is self sustaining. The only reason it's self sustaining is that it has this ability to tax. It can go and levy an assessment against premium, but that's pushed right down on the consumer and it's taking money out of the consumer's pocket without a voice as to whether or not that is appropriate, and whether or not the money that's being forced to the Exchange is being spent in a fiscally prudent manner.

That's why this makes so much sense. It's practical. It's common sense, quite frankly, but yet it isn't in existence, and I think that it's something that should be. Because when it comes to this type of actions, people need to know where their money's going.

Now initially to run the Exchange it cost anywhere from 40 to 45 million to roll it out and I understand that there are many initial costs that are incurred in that, but to continue to have those types of expenses, and I know that they're coming down, but still the costs that we're putting in without any supervision, I'm not so sure are the appropriate way to go.

And I'm sure that the individuals in the small group health market that are paying the cost of the Exchange would agree that the tax on their premium and the money they're giving to the State of Connecticut's Exchange is just a blank check and an open book that is going to go and be spent at their discretion with no oversight or supervision.

I think this amendment will provide that much needed insight and oversight. As Senator Kane said, it's not that it's, that there's going to be these denials, but at least to have the ability to have the Exchange come

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and explain what's going on, I think would go a long way to not only providing that supervision and insight, but also giving the people in the small group health market the comfort that their assessments are being spent in a wise manner.

I would certainly hope that everyone in the Circle will view this the same way and support the amendment. Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark? Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President. Madam President, I respect the opinion of my two colleagues, Senator Kane and Senator Kelly, but I think it's a great idea that could be reviewed by the Insurance Committee during the next Session, and I welcome their participation in addressing this issue, but I would ask the Circle at this time to reject the amendment. Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark further? Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President, and I stand in firm support of Senator Kane's amendment and thank him for thinking twice about what he heard. It is a shocking number to hear 12 to 18 percent increase in the tax, if you will on the Exchange.

And Senator Kelly raises some very good points about the operation of the Exchange and how the Exchange is expected to be self sufficient. It is the Affordable Care Act that put the Exchange in business and it seems ironic that the Affordable Care Act has not allowed this Exchange to become self sufficient fairly quickly, based upon the revenues that they've already taken in, approaching \$50 million.

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And so let me remind members of the Senate that when a private insurance, health insurance carrier seeks to increase their premiums, they have to do a pretty good dance before state regulators before that's allowed to happen. But yet when it's a government entity known as the Exchange and they need some more money, they just push a button.

So this really makes good sense. It makes perfect sense that they have to come to the General Assembly and tell us what's the reasoning behind the increase and I'm sure that in that process the questions would be asked, can you get along with less?

I'm especially in favor of the ability to reject and although I don't like the idea of it being automatic approval if no public hearing is held, that seems to be the way that we do business here. Frankly, I think it should be compulsory that a public hearing be held if the increase is over 10 percent. Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark further? Will you remark further? If not, Mr. Clerk, will you call for a roll call vote and the machine will be open on Senate "A."

CLERK:

Immediate roll call has been ordered in the Senate.
Immediate roll call on Senate Amendment Schedule "A" has been ordered in the Senate.

[pause]

THE CHAIR:

All members have voted? All members have voted? The machine will be closed. Mr. Clerk, will you call the tally.

CLERK:

On Senate Amendment Schedule "A"

Total Number Voting 35

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Necessary for Passage	18
Those voting Yea	15
Those voting Nay	20
Absent/not voting	1

THE CHAIR:

Senate "A" fails. [gavel] Will you remark further on the bill? Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President. I would like to request a roll call vote.

THE CHAIR:

On the bill. Will you remark further on the bill? Seeing not, Mr. Clerk, please call for a roll call vote on the bill.

CLERK:

Immediate roll call has been ordered in the Senate.
Immediate roll call ordered in the Senate.

THE CHAIR:

If all members have voted, all members have voted, the machine will be closed. Mr. Clerk, will you call the tally.

CLERK:

On House Bill 6865

Total Number Voting	36
Necessary for Passage	19
Those voting Yea	22
Those voting Nay	14
Absent/not voting	0

THE CHAIR:

The bill passes. [gavel] Mr. Clerk.

CLERK:

**JOINT
STANDING
COMMITTEE
HEARINGS**

**INSURANCE AND
REAL ESTATE
PART 4
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2015

REP. VAIL: Okay. Because I'm --

ERIC GEORGE: What I don't want to commit to is that -- how long does it take me to get you that information. But I will absolutely reach out and start that process right away.

REP. VAIL: Okay. Because that would be good.

ERIC GEORGE: I understand.

REP. VAIL: The sooner the better.

ERIC GEORGE: Yes.

REP. VAIL: And I'm sure everybody else would be interested in having that information to look at as well. So...

ERIC GEORGE: Yes.

REP. VAIL: Thank you.

REP. MEGNA: Any other questions? Thank you very much. Stay there. 6865.

ERIC GEORGE: Still Eric. House Bill 6865, disclosures concerning co-insurance clauses. House Bill 6865 would require insurance policies covering commercial real property which have co-insurance clauses in them to state on the declaration page the minimum amount of coverage needed to avoid triggering the clause. Given the nature of the commercial insurance contract, I would offer that this is really untenable. The declaration page is issued at the beginning of the policy's term and remains in effect for at least one year. After the policy's inception it is very possible, often happens, that the insured may make changes or improvements to the real

property they're building and that could impact the value of the -- of the building. The insured may not even know that the changes that were made have impacted the value. So this change could render the insured's original calculation not accurate any more and as to the minimum dollar amount of coverage that would be needed for the insured to avoid triggering the co-insurance clause. So with that as the background, through no fault of the insured, it would inherently be prevented from enforcing the contract's co-insurance provisions due to a change in the nature of the risk in vali -- instituted by the insured, even though the insured's covered amount was actually inadequate to avoid triggering such provisions under the contract. So we don't think that this bill should pass.

REP. MEGNA: Do you feel that -- doesn't the carrier -- I mean, co-insurance clauses in commercial policies, I mean, they can -- sometimes they're really sleazy. It's in small print. The declaration says you have a deductible, you have five hundred thousand insurance. But if you don't read the small print and understand the numbers, that guy may never -- that business person may never get -- might get fifty cents on a dollar if there's a hundred thousand dollar claim or less.

Isn't there any oblig -- whose obligation is it? Is it the carrier or the agent to say, "Hey, listen, buddy, you have a co-insurance clause in here. You need to have a million dollars insurance otherwise you're going to eat half of every claim that's" -

ERIC GEORGE: I think that's shared responsibility. I think it's shared responsibility of the insurer to make sure it's clear and -- and

direct. I think it's also -- the agent definitely has the -- the one-on-one contact with the insured. So I think that it's shared responsibility. But I do think -- to your point, I think the insured needs to be as educated as possible about what is in and what is not in their insurance policy. I couldn't agree with you more.

REP. MEGNA: The only thing it says -- it says, you know, a hundred percent co-insurance, eighty percent co-insurance sometimes there. If an individual sees five hundred thousand dollars insurance.

ERIC GEORGE: Sure.

REP. MEGNA: And he's never going to collect it, even if the place burns down to the ground. He's never going to get it.

ERIC GEORGE: If there is a specific issue that has occurred that this bill is trying to fix, maybe we can talk about that, rather than making such a broad change.

REP. MEGNA: Okay. Thank you. Are there any questions?

Representative Vail.

REP. VAIL: Just from -- Mr. Chairman, I believe it's their agent's responsibility. You know, that's my understanding, as being an agent, that it would be my job to make my client aware of everything on their policy, good and bad.

REP. MEGNA: As an independent agent, yeah.

REP. VAIL: Yes.

REP. MEGNA: I see it with the direct riders also, where they're one and the same, you know. The agents, the Nationwide agent and the -- keep poking fun, Eric, over here in the -- yeah, okay. Are there any other questions?

ERIC GEORGE: Should I go on?

REP. MEGNA: No, stay there. You got another one.

ERIC GEORGE: That's what I meant. So House Bill 6870, CUUIPA, Connecticut Uninsured Unfair Insurance Practices Act. House Bill 6870 would make it an unfair claims settlement practice for an insured to offer settlement to an insured and then, quote, stating or implying, end quote, that if the insured doesn't accept the offer the insured must institute litigation in order to recover amounts due under the insurance policy.

The vagueness of the language "stating or implying" to trigger the potential liability under CUUIPA makes this ripe for misuse. And I'll give you an example. If an insured rejects an -- if an insured rejects an insurer's settlement offer and then threatens to sue the insurer if it doesn't offer more money, does an adjuster's response that the offer is final and that the insured is within her rights to sue constitute stating or implying that the insured must institute litigation? I mean, I think that would be a reasonable interpretation of what stating or implying could mean. So obviously, this could be problematic from an abuse and misuse standpoint. I will answer any questions on CUUIPA.

REP. MEGNA: Are there any questions? No? Thank you very much. Don't go anywhere. 6864.

FTR



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STATEMENT

PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA (PCI)

H.B. 6865 – AN ACT REQUIRING CERTAIN DISCLOSURES CONCERNING COINSURANCE CLAUSES IN COMMERCIAL INSURANCE POLICIES AND CONTRACTS

COMMITTEE ON INSURANCE AND REAL ESTATE

March 5, 2015

The Property Casualty Insurers Association of America (PCI) appreciates the opportunity to comment on H.B. 6865, an act requiring certain disclosures concerning coinsurance clauses in commercial insurance policies and contracts. Our comments are provided on behalf of the member companies of PCI, a national property casualty trade association with over 1,000 member companies. PCI member companies provide 36 percent of Connecticut's property casualty insurance coverage.

This bill would prohibit coinsurance clauses in policies delivered by nonadmitted insurers when the policy defines "depreciation" differently than as set forth in Section 38a-301. Nonadmitted insurance represents that insurance coverage that consumers cannot otherwise find available in the admitted market of private insurers licensed to transact business in the state. In that situation, Connecticut surplus lines law permits the licensed surplus lines broker to export out of the jurisdiction of the state and procure such insurance coverage with an unauthorized but eligible surplus lines insurer. Critical, however, to this placement is the acknowledgement that such insurance, not able to be placed in the admitted market, represents a unique or nonstandard risk. As a result, the surplus lines insurer in order to properly underwrite that risk, must rely on the flexibility and freedom to negotiate the coverage form.

This bill would restrict the coverage flexibility and freedom which is inherent in nonadmitted insurance. The restrictions imposed on nonadmitted insurers pursuant to this bill are contrary to the basic principles associated with surplus lines insurance which allow the insurance needs of difficult to place risks to be met by nonadmitted insurers due to the ability of such insurers to tailor policy provisions to the unique risks. Without this freedom and flexibility, nonadmitted insurers may not be able to write policies for certain risks which may make it difficult, or even impossible, to obtain coverage for such risks.

Coinurance clauses serve to encourage insureds to carry an appropriate amount of insurance in relation to the value of their property, especially on replacement cost policies. These clauses may be appropriate for some risks, notwithstanding whether an alternate definition of "depreciation" is utilized. By prohibiting the use of these clauses by nonadmitted insurers under these circumstances, this bill may make it difficult for some risks to obtain the insurance coverage which is needed or desired for the risk.

Accordingly, for the foregoing reasons, PCI urges your Committee NOT to advance this bill.



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

**Testimony of the
Connecticut Insurance Department
Before
The Insurance and Real Estate Committee
March 5, 2015**

**Raised Bill No. 6865 AN ACT REQUIRING CERTAIN DISCLOSURES CONCERNING
COINSURANCE CLAUSES IN COMMERCIAL INSURANCE POLICIES AND CONTRACTS**

Chairmen Crisco and Megna, Ranking Members Kelly and Sampson, and Members of the Committee, the Insurance Department appreciates the opportunity to submit written testimony on Raised Bill No 6865.

The Department opposes this Bill and would encourage the Committee not to prohibit the use of coinsurance clauses from a commercial insurance policy as this is an important provision which serves several purposes. Coinsurance is a property insurance provision that reduces the insured's loss recovery if the limit of insurance purchased by the insured is not at least equal to a specified percentage (commonly 80 percent) of the value of the insured property. For example, if a building valued at \$250,000 is insured with a policy containing an 80% coinsurance clause, the policyholder must purchase at least \$200,000 in coverage. If the policyholder purchased less than \$200,000, he or she would be responsible for the proportionate share of the loss.

By elimination of coinsurance as proposed in this legislation, many insureds will receive a substantial rate increase, as insurers will not be permitted to issue a policy for less than 100% replacement value. Therefore, many commercial risk consumers will lose the ability to request a coinsurance rating option to substantially lower their premium. We believe this will disrupt the commercial market for property insurance and may cause the unintended consequence for consumers. To ensure a consumer is fully aware of the coinsurance clause and how it works the Department would support the "disclosure" portion of this bill so all commercial insureds are aware of the coinsurance provision and the point in which it will be triggered. As the Department does not regulate forms and rates of surplus lines (non-admitted market), all references to "nonadmitted" should be removed.

The Connecticut Insurance Department appreciates this opportunity to comment on and respectfully asks that Raised Bill 6865 not be given a Joint Favorable Report.

About the Connecticut Insurance Department: The mission of the Connecticut Insurance Department is to protect consumers through regulation of the industry, outreach, education and advocacy. The Department recovers an average of more than \$4 million yearly on behalf of consumers and regulates the industry by ensuring carriers adhere to state insurance laws and regulations and are financially solvent to pay claims. The Department's annual budget is funded through assessments from the insurance industry. Each year, the Department returns an average of \$100 million a year to the state General Fund in license fees, premium taxes, fines and other revenue sources to support various state programs, including childhood immunization.



INSURANCE ASSOCIATION OF CONNECTICUT

SUITE 607 • 21 OAK STREET, HARTFORD, CT 06106 • PHONE (860) 547-0610 • FAX (860) 547-0615

Statement**Insurance Association of Connecticut****Insurance and Real Estate Committee****March 5, 2015****HB 6865, AN ACT REQUIRING CERTAIN DISCLOSURES CONCERNING
COINSURANCE CLAUSES IN COMMERCIAL INSURANCE POLICIES AND
CONTRACTS**

I am Eric George, President of the Insurance Association of Connecticut (IAC). The Insurance Association of Connecticut (IAC) opposes HB 6865, AN ACT REQUIRING CERTAIN DISCLOSURES CONCERNING COINSURANCE CLAUSES IN COMMERCIAL INSURANCE POLICIES AND CONTRACTS.

HB 6865 would require insurance policies covering commercial real property that include a coinsurance clause to state, on the policy's declaration page, the minimum dollar amount of coverage needed to avoid triggering the clause. Such a requirement would be untenable, given the nature of the commercial insurance contract, and should be rejected.

The declaration page on such a policy is issued at the start of the policy term and remains in effect for at least one year. After the policy's inception, the insured could make additions or other substantive changes to the insured building which affect the building's value, and of which the insurer is unaware. That unforeseen change in value could render invalid the insurer's original calculation, as required by HB 6865, of the minimum dollar amount of coverage

necessary for the insured to avoid triggering the coinsurance clause. Through no fault of the insurer, it would apparently be prevented from enforcing the contract's coinsurance provisions due to the change in the nature of the risk initiated by the insured, even though the insured's coverage amount was actually inadequate to avoid triggering such provisions under the terms of the contract.

The new declaration page requirement in subsection (c) (2)(B) is unnecessary and misleading, potentially preventing proper implementation of valid coinsurance provisions in commercial insurance contracts. In addition, HB 6865 could impose a significant burden and expense on insurers as they could be forced to repeatedly complete full evaluations of commercial properties in order to attempt to maintain the applicability of coinsurance clauses. Premiums would have to be increased to reflect the new and unnecessary expenses incurred as a result of HB 6865.

IAC urges rejection of HB 6865. Thank you for the opportunity to present IAC's viewpoint.



NORTHEAST REGION
95 Columbia Street
Albany, NY 12210
518-462-1695
Fax 518-465-6023

**Raised Bill No. 6865 - AN ACT REQUIRING CERTAIN DISCLOSURES
CONCERNING COINSURANCE CLAUSES IN COMMERCIAL INSURANCE
POLICIES AND CONTRACTS**

March 5, 2015

The American Insurance Association is a leading national trade association representing over 300 major property and casualty insurance companies that collectively underwrite more than \$100 billion in direct property and casualty premiums nationwide. Our members range in size from small companies to the largest insurers with global operations and include insurance companies that write coverage on a nonadmitted basis. These insurers are often referred to as surplus lines or nonadmitted insurers. We have reviewed Raised Bill No. 6865 and greatly appreciate this opportunity to share our thoughts regarding the legislation.

Raised Bill No. 6865, modifying Section 38a-308 of the Connecticut statutes, would significantly restrict the use of coinsurance clauses in commercial real property policies issued by non-admitted insurers. The bill would also require disclosures on the declaration page of the policies regarding the coinsurance clauses in commercial real property insurance policies written by admitted and non-admitted insurers. These comments being offered address the bill's implications for the commercial real property policies that are written on a nonadmitted basis.

For the commercial real property policies issued by nonadmitted insurers, coinsurance clauses are prohibited or rendered null and unenforceable, if the commercial property policy defines "depreciation" in a way that differs from the definition provided for in 38a-307. If, however, the nonadmitted policy defines "depreciation" in a way that conforms with 38a-307, then the policy may have a co-insurance clause, but must disclose on its declaration page the percentage of the coinsurance clause and the minimum dollar amount of coverage needed to avoid triggering such clause.

These basic rules are set out in new subsection (c) of the bill. Subsection (c) is a difficult section to read at first blush, however, the bill appears to present several significant problems for the nonadmitted insurers. First the bill undermines "rate and form freedom" that has been the hallmark of the surplus lines or non-admitted business. The bill's prohibition or voiding of a policy provision hits at the heart of surplus lines. It is that very freedom that has permitted this marketplace to provide coverage to customers on a voluntary basis for risks not covered in the admitted market. Second, the bill's reference to voiding and making unenforceable the

coinsurance clause of a policy indicates an undermining of an existing policy, whether that is intended or not. The language does not limit itself to new policies that might be issued. Instead it requires the voiding of a term in an existing policy if a certain definition for "depreciation" is not followed in the policy. Moreover, it should be noted that conditioning the use of a coinsurance clause on *a particular definition for "depreciation"* also belies the form freedom. Third, the bill appears to send mixed messages. On the one hand, the nonadmitted insurers are specifically permitted in subsection (a)(1) of 38a-308 to define "depreciation" differently than as set forth in section 38a-307. In new subsection (c), however, using a definition that differs from 38a-307 renders negative consequences under a commercial real property policy. Further, the distinctions between admitted and nonadmitted commercial real property policies are being whittled in this bill.

We respectfully submit that we do not fully understand the reason for this bill or its purpose. We hope, therefore, there are opportunities beyond this hearing to examine the bill's intent and implications. AIA gladly extends its willingness to participate in further discussions on the bill in the future.

Alison Cooper
Regional Vice President, Northeast Region