



Property Casualty Insurers
Association of America

Shaping the Future of American Insurance

2600 South River Road, Des Plaines, IL 60018-3206

STATEMENT

PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA (PCI)

H.B. No. 5230 – AN ACT CONCERNING VARIOUS CHANGES TO PROPERTY AND CASUALTY INSURANCE STATUTES.

COMMITTEE ON INSURANCE AND REAL ESTATE

February 28, 2012

The Property Casualty Insurers Association of America (PCI) appreciates the opportunity to comment on H.B. 5230, which would make a number of major changes relative to commercial property and homeowners insurance. 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 43 percent of Connecticut's property casualty coverage.

PCI has serious concerns with a number of the provisions of this bill. These concerns will be addressed by bill section and are as follows:

Section 1. Hurricane Deductible Provisions

Section one of this bill would codify, with some notable modifications, many of the provisions in the guidelines recently issued by the Insurance Department relative to hurricane deductibles. These guidelines were developed by the Department after months of consideration and discussion to address issues which arose in conjunction with Hurricane Irene. While the insurance industry does not agree with all of the provisions in the guidelines, we do agree with the process by which they were developed and that addressing issues related to hurricane deductibles through guidelines issued by the Insurance Department is the best course of action.

Insurance plays an important role in assisting in recovery following disasters. Once the first responders have left the scene, it is insurers that are looked to next to provide the financial assistance needed to rebuild and recover. Each disaster and the issues resulting from each disaster are different and regulators need the flexibility to be able to deal with unanticipated issues. By putting in statute the Insurance Department's hurricane deductible guidelines, this bill would take away this necessary flexibility. If this bill is enacted, then if issues arise in the future following a hurricane related to deductibles, the legislature would have to come back into session and pass legislation in order to address issues which may require provisions which do not comport with this proposed language. This process may result in unnecessary delay at a time when quick action may be necessary.

PCI also has concerns with the provisions of this legislation which differ from the guidelines. The guidelines were just issued in December, 2011, with compliance required by March 1, 2012. Insurance companies have been in the process of complying with the new guidelines and this legislation would make changes to requirements in this regard, thereby requiring insurers to begin compliance efforts anew if this bill were passed. This will add unnecessary burdens and expense to writing policies in Connecticut.

Specifically, among the differences between the guidelines and this bill, this bill would require written notice of the hurricane deductible to be provided to “prospective” insureds prior to policy issuance. PCI is concerned that this requirement would be very burdensome and PCI is further concerned that this requirement would make it difficult to sell policies over the telephone or internet in a time efficient manner. This bill also differs from the Department guidelines relative to the permissible deductible duration. The Department guidelines would allow deductibles to continue to be applied until the earlier of 24 hours following the termination of the last hurricane warning or 24 hours after the hurricane is downgraded for any part of CT. While this legislation tracks the guidelines relative to the downgraded storm durational criteria, it differs from the guidelines regarding the first criteria and would require the application of the deductibles to cease upon the end of the hurricane warning, as opposed to 24 hours after such ending. Highly Damaging winds will continue beyond the end of the hurricane warning and it is only equitable that insurers should be authorized to impose hurricane deductibles during this period of high risk. In addition, it would be very difficult to determine whether damages occurred prior to or after the end of the hurricane warning, thereby leading to much potential confusion and litigation.

Section 2. Adding Mitigation To Services For Which Written Estimate and Scope of Work is Required

PCI is concerned about the addition of mitigation services to the services for which a written estimate and scope of work are required as well as the provisions requiring the voiding of contracts for mitigation services if the written estimate and scope of work are not provided. Mitigation services must be provided as soon as possible in order to limit additional losses and the written estimate/scope of loss requirements included in this bill may delay the provision of such services and increase losses.

Section 3. Provisions Relating To The Standard Fire Policy and Homeowners and Commercial Property Policies

PCI is concerned that the provisions of Section 3 will require insurers to make changes to all of their existing homeowners and commercial property coverage forms. Obviously, this would be very burdensome and expensive and the timely review of all of these filings would greatly strain the Insurance Department’s resources. Since the provisions of the standard fire policy already apply to homeowners and commercial property policies, it would seem that these additional burdens and expenses be undertaken by insurers with no benefit to consumers.

Section 4. Amendment To Appraisal Process

Section four of this bill would remove the requirement that appraisers selected by the insured and the insurer for the appraisal process be disinterested appraisers. The appraisal process is designed to quickly resolve differences relative to the amount of loss without requiring a lawsuit. The

appraisal clause is part of every fire policy in the United States and has been proven to be an effective way to resolve valuation disputes for many years.

By removing the disinterested requirement for appraisers in the appraisal process, this bill would abrogate one of the basic underlying tenets of the appraisal process – that unbiased experts evaluate loss to arrive at a fair and accurate valuation of the loss. If the disinterested requirement is removed, it is likely that the appraisal process could disintegrate into the insurance company adjuster and the public adjuster providing appraisals of the loss. PCI would submit that this is exactly the scenario that often results in disputes which necessitate the use of the appraisal process and would amount to a major step backward in the value of the appraisal process as a tool to resolve disputes.

Section 5. Replacement Cost Coverage

Section five of this bill would prohibit insurers from holding back a portion of the value of a replacement cost claim if the repair, rebuilding or replacement has not been completed by a date certain. Replacement cost coverage provides an additional benefit beyond the depreciated actual cash value loss so that the insured is able to repair or replace the property. One of the basic principles of replacement cost coverage requires that the insured not receive the expanded indemnification provided under replacement cost coverage until the property is actually repaired and/or replaced. As a result, the insured first collects their depreciated or actual cash value loss, and when the property is repaired or replaced in accordance with the conditions of the policy, the insured is paid the difference between the actual cash value loss and the replacement cost loss. The money withheld is customarily referred to as a “holdback.”

This bill would prohibit the insurer from withholding any payment in order to ensure that the property is rebuilt. This contradicts the premise upon which replacement cost coverage is based, which is to ensure that the homeowner is able to rebuild the property. Without a holdback, the insurer has no way to ensure that the property is rebuilt and the payment in excess of the depreciated value of the property simply becomes a windfall to the policyholder. Authorizing the provision of windfalls in connection with homeowners insurance would present moral hazard concerns and would not be beneficial. This would also likely result in increased premium costs for replacement cost coverage.

For the foregoing reasons, PCI urges your Committee to not favorably advance HB 5230.

