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

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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 the 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
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