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STATE OF CONNECTICUT

INSURANCE DEPARTMENT

**Testimony of the
Connecticut Insurance Department
Before
The Insurance and Real Estate Committee
February 24, 2015**

Raised Bill SB 412—An Act Concerning Prior Review of Insurance Department Guidelines and Bulletins

Chairmen Crisco and Megna, Ranking Members, and Members of the Committee, the Insurance Department appreciates the opportunity to submit written testimony on Raised Bill 412.

This legislation will require the Insurance Department to submit to the Insurance and Real Estate Committee all guidelines and bulletins the Department intends to issue and prohibits the Department from issuing any such guidelines and bulletins until at least 60 days after such submission to the Committee.

The Insurance Department respectfully opposes this legislation because it will undermine the Department's ability, as an executive branch agency, to faithfully and timely execute and administer the statutes the Department is duty bound to enforce for the protection of the insurance consuming public and financial stability of the industry it regulates.

The Insurance Department, like every other insurance regulatory agency in the U.S., has a need to communicate with the industry it regulates. The Department does so, through notices, bulletins, guidelines and press releases that are published on the Department's website (www.ct.gov/cid) and address a multitude of topics. We have attached a listing of the latest bulletins, as published on the CID website. The Insurance Department last year issued 30 bulletins on a variety of topics, though the average number over the past four years has been about 22 bulletins. Most bulletins alert the insurance companies or other Department licensees of the requirements of existing law or of changes in the insurance statutes.

There are also instances when there is an urgent matter that requires the Insurance Department to issue guidance to the insurance industry on an expedited timeframe. A recent example is Bulletin PC-76 issued February 5, 2015 to property and casualty insurance companies about filing requirements for compliance with the Terrorism Risk Insurance Program Reauthorization Act of 2015 that was signed into law by the President on January 12, 2015. A copy of this bulletin is attached. The requirements of Raised Bill 412 if applied to the issuance of this bulletin would have delayed its issuance for two months and would have undermined the Department's ability to timely advise the industry of the requirements of law and protect insurance consumers with respect to impermissible terrorism risk exclusions in insurance policies.

Another instance is the very short window in which the Department operates when it must issue weather-related bulletins. The Department issues with all due haste a series of bulletins when Connecticut is in the path of tropical storms and/or hurricanes. Those bulletins communicate Department guidelines and state laws that govern business practices of prompt claims handling, premium payment grace periods, credentialing of emergency claims adjusters and issues that may be affected by a major event.

Several Department bulletins are issued near the end of each year to provide guidance to insurance companies on the financial reporting requirements under Connecticut law which incorporates by reference accounting procedures and practices prescribed by the National Association of Insurance Commissioners and NAIC annual financial statement instructions which are modified from year to year, typically near the end of the year. Raised Bill 412 would cause the Insurance Department to delay its guidance to the industry for the preparation of financial reports which are due to be filed no later than March 1st for the preceding calendar year.

The Insurance Department also may, periodically, issue a notice or guideline to a segment of the insurance industry reminding them of the requirements of law as administered and interpreted by the Department. These notices and guidelines are chiefly published by the Department's Property and Casualty Division and, like bulletins, are displayed on the Department's website.

It is in the consumer's best interest that the Department maintains the flexibility to timely communicate with the industry it regulates. Please know that should this Committee or any member of the General Assembly have concerns about any particular action the Department has taken, the Commissioner or her staff are available and eager to understand your concerns.

For these reasons, the Department respectfully requests that the Committee not take action on Senate Bill 412.

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.



Governor Dannel P. Malloy

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LATEST BULLETINS	
02/18/2015	BULLETIN HC-90-15 (NEW) Filing Requirements for Individual and Small Group Health Insurance Policies Subject to ACA
02/18/2015	BULLETIN HC-81-15 (NEW) Health Insurance Rate Filing Submission Guidelines
02/05/2015	BULLETIN PC-76 (NEW) Filing Procedures for Compliance with the Terrorism Risk Insurance Program Reauthorization Act of 2015
12/10/2014	BULLETIN S-16 (NEW) Telephonic Applications (This bulletin repeals and replaces Bulletin S-15)
12/08/2014	BULLETIN IC-36 (NEW) Connecticut Catastrophe Preparation - Emergency Contact and Adjuster Placard Information (This bulletin repeals and replaces Bulletin IC-30)
12/05/2014	BULLETIN IC-35 Connecticut General Statutes §§ 38a-354 and 38a-354a
12/01/2014	BULLETIN HC-101 Health Insurance Coverage for Work Related Injuries, Accidents, and/or Sicknesses
12/01/2014	BULLETIN FS-4-14 Annual Statement - Click here for Checklists
12/01/2014	BULLETIN FS-4AR-14 Financial Reporting Requirements for ALL ACCREDITED REINSURERS
12/01/2014	BULLETIN FS-4C-14 Financial Reporting Requirements for CAPTIVE INSURERS
12/01/2014	BULLETIN FS-4RR-14 Financial Reporting Requirements for RISK RETENTION GROUPS
12/01/2014	BULLETIN FS-4SL-14 Financial Reporting Requirements for ALL ELIGIBLE SURPLUS LINES INSURERS

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STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Bulletin PC-76
February 5, 2015

TO: All Property & Casualty Insurers Writing Commercial Lines Insurance Products and All Insurers on the NAIC Quarterly Listing of Alien Insurers

RE: Filing Procedures for Compliance with the Terrorism Risk Insurance Program Reauthorization Act of 2015

Introduction

This Bulletin is intended to replace Bulletin PC-64 dated February 14, 2008 as a result of the passage of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (the "2015 Reauthorization"). The 2015 Reauthorization amends and extends the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701) until **December 31, 2020** (the "Act"). Some of the changes contained in the 2015 Reauthorization include:

- Requiring the Secretary of the Treasury to certify acts of terrorism in consultation with the Secretary of Homeland Security.
- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium of the preceding calendar year and the federal share of compensation at 85% of insured losses that exceed insurer deductibles until January 1, 2016, at which time the federal share shall decrease by 1 percentage point per calendar year until equal to 80%.
- Amending the program trigger to apply to certified acts with insured losses exceeding \$100 million for calendar year 2015, \$120 million for calendar year 2016, \$140 million for calendar year 2017, \$160 million for calendar year 2018, \$180 million for calendar year 2019, and \$200 million for calendar year 2020 and any calendar year thereafter.
- Increasing the mandatory recoupment of the federal share through policyholder surcharges to 140 percent from 133 percent.

Program Trigger and the \$5,000,000 Threshold

The 2015 Reauthorization contains a program trigger of \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is triggered. The program trigger is adjusted on an annual basis.

With respect to aggregate losses that fall below the \$5,000,000 threshold, please note that the Insurance Department will not allow insurers to exclude or limit coverage for losses that are otherwise within the scope of the policy and fail to be certified *acts of terrorism* solely because they result from events with aggregate losses that fall below the \$5,000,000 threshold in Section 102(1)(B) of the Act. Insurers required to file policy forms may submit language containing coverage limitations for certified *acts of terrorism* that exceed the Act's \$100 billion industry aggregate.

Exclusions or Limitations for Lines of Business Not Defined as "Property and Casualty Insurance" under the Act

The Department will permit some limitations in coverage for *acts of terrorism* for certain commercial lines of business not defined as *property and casualty insurance*¹ subject to the following:

For policies providing **property insurance** coverage the following limitations apply:

- Exclusion for *acts of terrorism* only apply if the *acts of terrorism* result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period;
- Exclusions for *acts of terrorism* are not subject to the limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are releases, and it appears that one purpose of the terrorism was to release such materials.

¹ Section 102 of the Act provides that the term "property and casualty insurance" (A) means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability insurance; and (B) Does not include--

- (i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;
- (ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U. S.C. 4901)) or title insurance;
- (iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;
- (iv) insurance for medical malpractice;
- (v) health or life insurance, including group life insurance;
- (vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.);
- (vii) reinsurance or retrocessional reinsurance;
- (viii) commercial automobile insurance;
- (ix) burglary and theft insurance;
- (x) surety insurance;
- (xi) professional liability insurance; or
- (xii) farm owners multiple peril insurance.

For policies providing **liability insurance** coverage the following limitations apply:

- Exclusion for *acts of terrorism* only apply if the *acts of terrorism* result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period; or
- Fifty or more persons sustain death or *serious physical injury* for related incidents that occur within a 72-hour period. For purposes of this provision *serious physical injury* means:
 - Physical injury that involves a substantial risk of death;
 - Protracted and obvious physical disfigurement; or
 - Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions for *acts of terrorism* are not subject to the limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

Terrorism Exclusions Not Permitted by the Insurance Department

The Department will **not** permit terrorism exclusions for:

- Workers' Compensation Insurance or Excess Workers' Compensation Insurance
- Commercial Automobile Financial Responsibility Limits, notwithstanding the above limitation related to commercial automobile insurance
- Personal Risk Insurance

Standard Fire Policy Matters Under Connecticut Law

Conn. Gen. Stat. § 38a-307a provides that “until the expiration of the Terrorism Insurance Program established in the federal Terrorism Risk Insurance Act of 2002 (P.L. 107-297) (“TRIA”) as amended from time to time, for a commercial risk insurance policy, the standard form of fire insurance policy set forth in Conn. Gen. Stat. § 38a-307 of the general statutes, as amended by this act, may provide that the company shall not be liable for loss by fire or other perils insured against in the policy caused, directly or indirectly, by terrorism, as defined by the Insurance Commissioner, provided the premiums charged for such policy shall reflect any savings projected from the exclusion of such perils.” It should be noted that the Commissioner has adopted the new definition of an *act of terrorism* set forth in the Act.

The limited exclusion permitted by Conn. Gen. Stat. § 38a-307a applies only when the insured has rejected coverage for terrorism. The limited exclusion will end upon the expiration of TRIA. Companies that incorporate the permitted limited exclusion must also provide a credit or

reduction in premium to reflect any savings projected from the exclusion. Such filings must be made on the “Expedited SERFF Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing” attached to this Bulletin. Under Connecticut law, the requirements for fire coverage are established by law and where applicable, must meet or exceed the provisions of the Standard Fire Policy. This statutorily mandated coverage cannot be waived.

Submission of Rates and Policy Form Language

Rates

If an insurer relies on an advisory organization to file loss costs and related rating systems on its behalf, no rate filing is required unless an insurer plans to use a different loss cost multiplier than is currently on file for terrorism coverage. Insurers that develop and file rates independently may choose to maintain their currently filed rates or submit a new filing. The rate filing should provide sufficient information for the reviewer to determine what price would be charged to a business seeking to cover losses resulting from certified *acts of terrorism*. The Department will accept filings that contain a specified percentage of premium to provide for terrorism coverage for *insured losses* as defined under Act. Insurers may also choose to use rating plans that take into account other factors such as geography, building profile, proximity to target risks and other reasonable rating factors. The insurer should state in the filing the basis that it has for selection of the rates and rating systems that it chooses to apply. The supporting documentation is required to be sufficient for the reviewer to determine if the rates are excessive, inadequate or unfairly discriminatory. For the convenience of insurers, the Department will waive its requirements for supporting documentation for rates for certified *acts of terrorism* for filings that apply an increased premium charge of between 0% and 6% and do not vary by application of other rating factors.

Policy Forms

Insurers subject to policy form regulation must submit the policy language that they intend to use to the Department. The policy form must define *acts of terrorism* consistent with the Act and this Bulletin. The definitions, terms and conditions used in the policy forms are required to be complete and accurately describe the coverage that will be provided under the policy. Insurers must withdraw or replace any currently effective forms that are not in compliance with the Act. The Department reminds insurers that any deviations from ISO must be accompanied by a side-by-side comparison along with a detailed explanation for any deviations.

Filers are required to use the SERFF system for submitting terrorism products and the attached Expedited SERFF Transmittal Form. Filers should use the term “**TRIA2015**” in the SERFF product name field to indicate a filing related to terrorism made in connection with the 2015 Reauthorization and use a TOI of 35.0 Interline and the appropriate Sub-TOI when submitting a terrorism filing. The SERFF system alleviates the need to provide additional information in support of a request for expedited review. Since the provisions of the 2015 Reauthorization are already in effect, the Department will permit insurers and advisory organizations to place rates and policy forms that are in compliance with the 2015 Reauthorization into immediate use prior to filing with the Department.