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## STATEMENT

PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA (PCI)

**H.B. 5516 – AN ACT REQUIRING CONCERNING THE PROVISIONS OF THE STANDARD  
FIRE INSURANCE POLICY AND COMMERCIAL PROPERTY INSURANCE POLICIES BY  
NONADMITTED INSURERS**

COMMITTEE ON INSURANCE AND REAL ESTATE

March 8, 2016

The Property Casualty Insurers Association of America (PCI) appreciates the opportunity to comment on H.B. 5516, an act concerning the provisions of the standard fire insurance policy and commercial property insurance policies by nonadmitted insurers. 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 improperly expand the types of disputes which may be submitted to the appraisal process under the standard fire policy and would place inappropriate limitations on coinsurance clauses in commercial property policies issued by surplus lines insurers.

**A. Expansion of the appraisal process to disputes involving scope of loss:**

The insurance appraisal process set forth in the standard fire policy allows for the resolution of disputes regarding the valuation of a covered loss. Pursuant to the appraisal process, when there is a dispute relative to the valuation of a covered loss, each party selects a competent and impartial appraiser and the appraisers select an umpire or, if they are unable to agree on the selection of an umpire, the umpire will be appointed by the court. The appraisers shall appraise the loss and if they fail to agree on the value of the loss, the differences shall be submitted to the umpire for determination.

Appraisal is a valuable tool to resolve factual disputes concerning the quantification of the value of a covered loss. Appraisals are not, however, an appropriate forum for resolving disputes which include issues relating to scope of loss and whether a loss or a portion of a loss is covered under the policy. Appraisers often do not have the necessary legal background to make such determinations, nor do appraisals have the necessary procedural protections to ensure the appropriate and equitable determination of such issues. Determinations relative to the scope of coverage are legal issues which require contractual interpretation and are beyond the scope of an appraisal.

The language of this bill could be interpreted to expand the issues which could be determined through the appraisal process. Coverage issues could be appropriate for determination through the appraisal process under this bill and, if this bill were to pass, adjusters and contractors would be inappropriately interpreting contractual language. Under this scenario, interpretations of policy language would be highly unpredictable and insurers would not be able to rely on court precedent to know what the language in their policies means and would, accordingly, be unable to accurately price their policies. In addition, under this scenario, claims payment determinations for the same or similar losses may inequitably result in vastly different payment amounts to different policyholders. This would result in some policyholders receiving more than others for similar losses and PCI would submit that, not only is this inappropriate, but it would be grossly unfair. Additionally, if insurers are required to pay claims which they should not pay under the provisions of their contract due to the inappropriate use of the appraisal process for the determination of contract issues, then costs will increase which could impact premiums.

**B. Coinsurance clauses in commercial property policies issued by surplus lines insurers:**

This bill would require nonadmitted insurers to “use market value for purposes of such coinsurance clause” for commercial property policies issued 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.

Coinsurance clauses serve to encourage insureds to carry an appropriate amount of insurance in relation to the value of their property. These clauses may be appropriate for some risks, notwithstanding whether an alternate definition of “depreciation” is utilized. By limiting 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.