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STATEMENT

AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION (APCIA)

S.B. No. 1002 – AN ACT CONCERNING LABOR ISSUES RELATED TO COVID-19, PERSONAL PROTECTIVE EQUIPMENT AND OTHER STAFFING MATTERS

HB 6595 AN ACT CONCERNING LABOR MATTERS RELATED TO COVID-19, PERSONAL PROTECTIVE EQUIPMENT AND OTHER STAFFING ISSUES

LABOR AND PUBLIC EMPLOYEES COMMITTEE

March 11, 2021

The American Property Casualty Insurance Association (APCIA)[1] appreciates the opportunity to comment on Senate Bill No. 1002, An Act Concerning Labor Issues Related to COVID-19, Personal Protective Equipment and Other Staffing Matters and House Bill 6595 An Act Concerning Labor Matters Related to COVID-19, Personal Protective Equipment and Other Staffing Issues. With members comprising nearly 60 percent of the U.S. property casualty insurance market, APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association.

House Bill 6478 would add millions of dollars in new costs for Connecticut businesses and distort the basic purpose of workers' compensation – by making Connecticut employers liable for COVID-19 cases that are unrelated to work. The bill unfairly shifts the cost of pandemic response to employers and jeopardizes the stability of the workers' compensation system. The bill also contains other adverse provisions relating to permanent partial disability benefits, burial expenses, and discrimination allegations that would further increase costs to Connecticut employers and impair the workers' compensation system.

The Bill's COVID-19 Presumption Violates Basic Principles of Workers' Compensation
Workers' compensation is a no-fault system that guarantees injured workers prompt indemnity benefits and unlimited medical care, without any deductibles or co-payments, even in the absence of any fault by the employer. This no-fault system benefits both Connecticut employers and Connecticut employees. Prior to enactment of workers' compensation in 1913, an injured worker was without remedy for the workplace injury unless he or she successfully proved negligence on the part of the employer, and similarly, was without remedy if the employer could prove the employee's own negligence contributed to the injury. In return for no-fault compensation, the employer was free from the threat of civil litigation. Essential to maintaining this no-fault workers' compensation

[1] Effective January 1, 2019, the American Insurance Association (AIA) and the Property Casualty Insurers Association of America (PCIAA) merged to form the American Property Casualty Insurance Association (APCIA). Representing nearly 60 percent of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

system, however, *is proof that the covered injury or disease arose out of and in the course of employment.* Requiring Connecticut employers to cover injuries on an absence of fault basis without proof that the injury or disease arose out of and in the course of employment violates basic core principles underlying the workers' compensation system.

The Presumption that COVID-19 is and Occupational Disease Is a Fiction

House Bill 6478 states "COVID-19 is an occupational disease" and provides that for purposes of adjudicating workers' compensation claims, an employee who has been diagnosed with COVID-19 shall be presumed to have contracted the virus "as an occupational disease arising out of and in the course of employment." The presumption that anyone who contracts COVID-19 must have contracted it at the workplace, however, is a fiction that lacks scientific and medical proof. COVID-19 represents a global pandemic, now with over 112 million cases worldwide and almost 2.5 million deaths, precisely because it is not an occupational disease but instead is a disease of ordinary life transmitted between persons who are in close contact with an infected person. People contract the disease in any place where people congregate, including restaurants, stores, public transportation, restaurants, bars, sporting events, houses of worship, social and political meetings and rallies and hundreds of other places. Many people contract the disease at home if another person living in the premises is infected.

While the presumption may have been somewhat defensible in the very early stages of the pandemic, when citizens were staying in place at home, it is impossible to justify creating a presumption that applies to all employees and under the current social context now that Connecticut and the rest of the country is returning more to normal social operations. Presumptions create a fiction that all COVID-19 diseases somehow arise only out of the workplace even though people are now traveling, going to restaurants and bars, attending social events and participating in other large-scale events. As people now return to full-scale social, public and other cultural activities, it would be unfair to place the economic burden on Connecticut employers and falsely presume that everyone who has contracted a pandemic disease during this time contracted it in the workplace.

Businesses Are Already Under Threat Due to Severe Economic Pressures of The Pandemic

Connecticut employers are already facing extreme economic pressures brought on by a global pandemic. As businesses seek to recover from the pandemic and its economic consequences, it seems both unreasonable and unfair to ask Connecticut businesses to bear the additional burden of paying indemnity and medical benefits to patients of the pandemic, absent any evidence that the person contracted the disease in the course and scope of his or her employment.

The Scope of The Bill Is Extremely Broad

House Bill 6478 would apply the presumption to any and all employees. No other states have enacted such a broad and far-reaching presumption. While most states have not adopted presumption legislation, in the overwhelming majority of states enacting a presumption, such legislation has been restricted in scope. Usually, the bill extends to only first responders and/or health care providers who regularly treat and diagnose COVID-19 patients. Even the very few states that have extended the presumption beyond first responders or health care providers have limited the scope to certain enumerated essential employees. House Bill 6478 is the broadest presumption bill and would put all Connecticut employers at a disadvantage to businesses operating in other states.

A Broad Presumption Bill Would Be Prohibitively Expensive

While it may not be possible to provide a precise estimate of how expensive a COVID-19 presumption might be, it is clear that the additional costs could pose a significant threat to the system and significantly increase costs for Connecticut businesses. The National Council on Compensation Insurance ("NCCI"), the licensed rating organization for Connecticut workers' compensation, has estimated that the cost increase resulting from this bill's proposed presumption could range between 7% and 47%.

The Presumption Lacks Sufficient Medical Proof

House Bill 6478 allows the presumption to be triggered by a mere diagnosis of COVID-19 made by either a doctor, a physician assistant or an advanced practice registered nurse where a lab test is not available. A mere diagnosis by a doctor, physician assistant or advanced practice registered nurse, however, is not sufficient medical proof that a worker has COVID-19. A subjective diagnosis based on mere symptoms, such as a sore throat and high fever, clearly is not adequate proof a patient has COVID-19. However, often a provider will diagnosis COVID-19 based on these general symptoms that could apply to any number of diseases or illnesses. Allowing coverage and authorizing medical treatment based merely on a subjective diagnosis or a diagnosis and/or a laboratory test is medically unsound, unnecessarily costly, and dangerous to the extent it subjects the worker to unneeded, potentially harmful treatment. Medical literature demonstrates that a patient has COVID-19 based on (1) results of a diagnostic lab test, (2) an appropriate incubation period, and (3) symptoms and signs that require medical treatment. *See* Infectious Diseases Society of America Guidelines on the Diagnosis of COVID-19, https://www.idsociety.org/practice-guideline/covid-19-guideline-diagnostics/ Once these three objective tests are satisfied, it is appropriate to say a patient has contracted COVID-19. Moreover, an antibody test is not an appropriate laboratory test. An antibody test only determines whether a person has been exposed to the coronavirus associated with COVID-19 and the patient's body has developed antibodies in response to the exposure. It does not indicate the person has developed the disease and requires treatment. The appropriate test to determine if a patient has contracted COVID-19 is a positive polymerase chain reaction ("PCR") test. Based on a survey of the most current medical literature, both The Council of State and Territorial Epidemiologists (CSTE) and Infectious Diseases Society of America (IDSA) have concluded that the most appropriate test to determine whether an individual currently has COVID-19 is the PCR test, www.cdc.gov/coronavirus/2019-ncov/lab/testing.html. The test is readily available in the United States. *See* https://www.labcorp.com/tests/139900/2019-novel-coronavirus-covid-19-naa and www.questdiagnostics.com/home/Covid-19/HCP/

The Bill Appears Retroactive

House Bill 6478 does not specify that the presumption is to apply only to claims filed after enactment of the bill and appears to be retroactive in application. Retroactive application of a bill that fundamentally changes the nature of coverage for claims under the workers' compensation act is fundamentally unfair and inequitable. Neither employers nor insurers ever calculated that ordinary diseases of life would be presumed to be covered workers'' compensation claims absent any proof that such diseases were contracted in the course and scope of employment.

The Bill Contains Several Other Costly, Adverse Provisions

In addition to its broad presumption provisions, House Bill 6478 also contains other costly, adverse provisions that, if enacted, would further significantly increase costs for Connecticut businesses at a time when employers are already under economic stress from the pandemic. Such provisions include the following:

- This bill would greatly expand the workers eligible to receive compensation for certain post-traumatic stress injuries to include police officers, firefighters, emergency medical services personnel, Department of Correction employees, dispatchers and health care providers engaging in activities responding to COVID-19. While APCIA recognizes the important services that these dedicated workers provide, we have serious concerns about the potential impact of expanding coverage under the workers compensation system for post-traumatic stress injuries for all of these additional groups of employees. Claims of this nature present greater challenges to the workers compensation system in terms of determining whether such claims are work-related and expanding eligibility for compensability of such claims could considerably burden the system and have a significant impact on workers compensation costs.
- This bill would also increase burial benefits from the current $4,000 to $20,000. This is a *500% increase* in benefits and while the magnitude of the increase is objectionable, it is even more alarming because the 500% increase would apply retroactively to "any case in which the employee died on or after October 1, 1998." Applying a 500% burial benefit increase to any case arising on or after October 1, 1988 is extremely dangerous.
- APCIA also has concerns with the provisions mandating a new notice of controversy filing requirement for insurers or employers and allowing additional parties to request hearings. The notice of controversy filing is unnecessary because a From 43 is already required to be filed if medical care is a contested issue. Also, allowing additional parties to request hearings will only increase hearings and unnecessarily delay proceedings.
- Lastly, House Bill 6478 contains language greatly expanding the circumstances where an employee may bring a civil action against the employer. Currently, such civil actions may be brought only if the employer discharges or discriminates against an employee for filing a workers' compensation claim. The bill, however, would expand the right to such civil actions based on allegations that the employee was disciplined for filing a claim or if the employee was "misinformed" or "deliberately dissuaded" from filing a claim. Adding actions based on allegations of "discipline" "misinforming" or "dissuading" is too loose and ambiguous a standard to allow the remedy of a civil action and would likely result in the filing of dubious civil actions, increasing costs for Connecticut businesses and adding unnecessary delays, costs, and court actions to a workers' compensation system that remains balanced and healthy only when there is an absence of unnecessary costs, delays and disputes.

For the foregoing reasons, APCIA urges your Committee NOT to advance this bill. Thank you for the opportunity to offer comment in opposition to SB 1002 and HB 6595.

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