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**15<sup>th</sup> House District**

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**60<sup>th</sup> House District**

**HOUSE BILL 589 SPONSOR TESTIMONY**  
**HOUSE INSURANCE COMMITTEE**

Chairman Brinkman, Vice-chair Antani, Ranking Member Boggs and members of the House Insurance Committee, thank you for allowing us the opportunity to provide testimony today on House Bill 589, legislation intended to address the issue of business interruption insurance for losses attributable to the global pandemic. Rep. Rogers and I appreciate the opportunity to introduce HB 589 to the members of the House's Insurance Committee.

We believe this legislation is straight-forward in its mechanics and purpose, so we will not belabor the point here. HB 589 intends to address concerns we heard repeatedly from small business owners in our respective districts—that despite paying premiums for business interruption insurance, claims submitted during this pandemic have been summarily denied. Subsequent to our introduction of this legislation nearly three months ago, Rep. Rogers and I have both heard from business owners from throughout Ohio expressing their support for this or similar legislation as well as the need for the Legislature to address the issues that this legislation specifically identifies.

Several other states introduced similar legislation earlier this year in attempts to bring insurance carriers to the table to participate in creating a dialogue regarding what, if any, role insurance carriers should play in the recovery of our economy. As the federal government established plans to aid businesses across the country, small businesses were not included. Certainly, the expanded loan programs offered generous terms, but many restaurants and bars, for example, found these SBA programs unhelpful, as they often mandated staff be retained, despite the fact that the businesses could not legitimately reopen. Even now with businesses opening up, there are

significant challenges as social distancing mandates have limited the ability for businesses to fully restore operations and cash flow. Business owners turned to their insurance carriers for help based on their understanding that the premiums they had paid included business interruption coverage for situations such as COVID-19 and the resulting state mandated closures, only to find their claims rejected.

HB 589 proposes to address that issue by mandating insurance coverage for business interruption claims. Cognizant of the concerns regarding the feasibility of retroactively defining private contracts, we are nevertheless confident that the bill would clarify a large portion of ambiguous business interruption policies without significant legal objection. Rep. Rogers and I are open to discussing, revising and improving the bill to reduce any likelihood of legal challenges. Nevertheless, we share a strong opinion that any policy discussion this legislation provokes is warranted, especially given the fact that so many small businesses across our state are finding themselves closing forever. The inability of those businesses to reopen due to the pandemic, together with the loss of the jobs, creates financial hardship for far too many. As Ohio attempts to recover from its unemployment crisis, we must explore what steps we can take as a state that might assist faltering businesses while trying to stem further business closures and jobs losses. This is one opportunity to do so.

As my colleague has mentioned, several states have recently introduced similar legislation to address the issue of business interruption insurance for losses attributable to the global pandemic. Indeed, nearly twenty distinct pieces of legislation have been introduced in the states of Louisiana, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania and South Carolina.<sup>1</sup> While Ohio's legislation aligns most closely with what was introduced in New Jersey, these other proposals speak to the fact that a growing number of state legislatures are seeking means by which the insurance industry may share in the solution to the economic blows being dealt to business owners from COVID-19 and COVID-19 mandated closures.

It is important to note also that lawsuits have been filed by businesses challenging the denials of their business interruption coverage claims. Restaurants in several states have sued their insurance carriers, claiming in some instances that their "all-risk" coverage should provide a basis for their claim, that clauses in policies including losses in the event of closures by order of civil authority should grant coverage or that by not including a specific exclusion for a bacteriological or viral pandemic, there should be a legitimate basis for a business interruption insurance

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<sup>1</sup> Norton Rose Fulbright: "US: Guide to federal and state COVID-19 era legislative proposals on commercial insurance coverage". April 2020. <https://www.nortonrosefulbright.com/en/knowledge/publications/c1f4ba93/us-a-state-by-state-federal-guide-to-covid-19#New%20Jersey>

claim. House Bill 589 and other related legislation are valuable because they grant clarity in these types of situations where an insurance policy is not entirely clear on the question of whether or not COVID-19 and related types closures qualify for business interruption insurance.

Back in March, prior to when most of the States began their Stay at Home Orders, the American Property Casualty Insurance Association (APCIA) in a press release stated that insurers had a reserve in excess of \$822 billion in the United States alone.<sup>2</sup> However, this trade association for business insurers also indicated that only a portion of those reserves was from policies with more expansive coverage, such as the ones that some restaurants have filed lawsuits over. We understand and appreciate the solvency issues that legislation such as House Bill 589 might place on the insurance industry to provide businesses with a clear path to making their business interruption insurance claims, but as mentioned earlier, we are willing to work with the industry and you to address those concerns. This committee is an ideal body to examine the validity of the insurance industry's claims that providing this type of coverage is untenable.

Chairman Brinkman, Vice-chair Antani, Ranking Member Boggs and members of the House Insurance Committee, we appreciate your consideration of House Bill 589 and respectfully ask you for your support of this legislation. All of us share the desire to ensure and support the continued wellbeing of Ohio's small and medium sized businesses. This bill creates an opportunity to begin a dialogue that may ultimately provide a productive solution helping them to weather these uncertain economic times. We welcome any questions you might have at this time.

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<sup>2</sup> American Property Casualty Insurance Association: "Property Casualty Insurers Are Well-Prepared to Assist Consumers During Catastrophes". March 13, 2020.

<http://www.pciaa.net/pciwebsite/Cms/Content/ViewPage?sitepageid=59410>