

Legislative History for Connecticut Act

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|---------------|---|---------------------------------|
| Act Number: | 08-178 | 2008 |
| Bill Number: | 5159 | |
| Senate Pages: | 5416, 5424-5425 | 3 |
| House Pages: | No Discussion 4970-4995 | 35 |
| Committee: | Insurance: 665-666, 670-681, 810-813, 975-985, 1054-1055, 1066 1066--1073 | 39 |
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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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S-574

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2008

JUNE
SPECIAL
SESSIONS

VOL. 51
PART 18
5353-5643

005416

jlm

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Senate

May 7, 2008

SEN. LOONEY:

Thank you, Mr. President. Moving to Calendar Page 10, Calendar 534, House Bill 5159. Would move to place that item on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. LOONEY:

Yes, thank you, Mr. President. Moving to Calendar, also continuing on Calendar Page 10, Calendar 539, House Bill 5048. Mr. President, move to place that item on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. LOONEY:

Thank you, Mr. President. Mr. President, moving to Calendar Page 11, Calendar 546, House Bill 5800, 5800, move to place that item on the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

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Senate

May 7, 2008

Calendar Page 10, Calendar 534, Substitute for House Bill 5159.

Calendar 539, House Bill 5048.

Calendar Page 11, Calendar 546, Substitute for House Bill 5800.

Calendar 547, Substitute for House Bill 5734.

Calendar Page 12, Calendar 553, Substitute for House Bill 5874.

Calendar 555, Substitute for House Bill 5853.

Mr. President, I hope that was all of the items placed on the second Consent Calendar.

THE CHAIR:

The machine will be open.

THE CLERK:

One more item, Mr. President. Calendar Page 3, Calendar 433, Substitute for House Bill 5825.

Mr. President, that completes those items previously placed on the second Consent Calendar.

THE CHAIR:

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Senate

May 7, 2008

The machine is open.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

An immediate roll call has been ordered on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Senators voted? If all Senators have voted, the machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 2.

Total number voting, 36; those necessary for adoption, 19. Those voting "yea", 36; those voting "nay", 0. Those absent and not voting, 0.

THE CHAIR:

Consent 2 passes. Senator Looney.

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

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2008

VOL. 51
PART 15
4765-5096

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May 2, 2008

(APPLAUSE)

Will the Clerk please call Calendar Number 105.

CLERK:

On Page 21, Calendar Number 105, Substitute for
House Bill Number 5159, AN ACT MODERNIZING INSURANCE
DEPARTMENT FINES AND MAKING MINOR TECHNICAL REVISIONS
TO THE INSURANCE STATUTES, Favorable Report by the
Committee on the Judiciary.

ACTING SPEAKER FAHRBACH:

Representative O'Connor.

REP. O'CONNOR: (35th)

Thank you, Madam Speaker. Congratulations on
your retirement, you've served your towns of Windsor,
East Granby, and Suffield with distinction. I move
acceptance of the Joint Committee's Favorable Report
and passage of the bill.

ACTING SPEAKER FAHRBACH:

The question is on acceptance and passage. Will
you remark further?

REP. O'CONNOR: (35th)

Thank you, Madam Speaker. This bill increases
the fines the Insurance Commissioner may assess

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against insurance companies, related companies, and people for violating Connecticut's insurance laws, including those related to utilization review, unauthorized insurers, producer and company licensing, unfair and prohibited practices, and fraud.

The Clerk is also in possession of LCO Number 5648. I ask that he call it, and I ask leave to summarize.

ACTING SPEAKER FAHRBACH:

Will the Clerk please call LCO Number 5648, which will be designated House Amendment Schedule "A".

CLERK:

LCO Number 5648, House "A", offered by Representative O'Connor and Senator Crisco.

ACTING SPEAKER FAHRBACH:

The Representative seeks leave of the Chamber to summarize the amendment, is there objection to summarization? Is there objection? Hearing none, Representative O'Connor, you may proceed.

REP. O'CONNOR: (35th)

Thank you, Madam Speaker. What this amendment does is add two other fines to the underlying bill,

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and they relate to medical discount plans, we're increasing the fine for the violation from \$10,000 to \$15,000, and for an individual who violates the provisions of the state statute from \$2,000 to \$3,000. I move adoption.

ACTING SPEAKER FAHRBACH:

The question before the Chamber is on adoption of House Amendment Schedule "A". Will you remark on the amendment? Representative Cafero.

REP. CAFERO: (142nd)

Thank you, Madam Speaker. Madam Speaker, for purposes of commenting on the amendment, and first I'd like to say it is a pleasure and a thrill to see you up there.

It has been my pleasure to serve with you for 16 of your 28 years, and as you know, upon the passing of our dear friend Dick Belden you became the Dean of our caucus.

When I arrived here 16 years ago, my office was fortunately placed across from yours, and you guided me in those early days and continue to guide me in

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these latter days as I've assumed the privilege of leading this caucus.

You are terrific. Your constituency work is second to none, and that's why you return every year with the support of your communities that you serve. You have served your caucus so well, there is not much that gets by you.

You've been liaison with staff, and leadership, you've been a great Republican Whip and a dear friend, and we wish you all the best in the world and love you dearly, and enjoy your husband, your family, and your beautiful nine grandchildren, so God bless you.

With that, I just want to say it's a great Amendment, it should pass. Thank you, Madam Speaker.

ACTING SPEAKER FAHRBACH:

Thank you. Will you remark further?

Representative Caron.

REP. CARON: (44th)

Thank you, Madam Speaker. Madam Speaker, I concur with the Republican Leader. This is an excellent Amendment. I especially like that some of the fines are going up.

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And Madam Speaker, let me also say that it has been my privilege to serve with you for the past 18 of your many years here.

It seems almost like yesterday. And I just wanted to say that you and I worked very closely together last year on a number of caucus items.

It was a challenge at times, but it certainly was a privilege and a pleasure on my part to work with you, because you have brought so much passion to the process.

You believe in things. You want to make this place better, you want to make the State of Connecticut better.

You work on behalf of your constituents, you work on behalf of the Members of your caucus, and in fact all the Members of this Chamber, and it has been my absolute pleasure to consider you a mentor of mine, and I hope you come back to visit us many times.

Bring all the grandkids, and all succeeding grandkids as well, so we get to see you again, as well as them. Thank you, Madam Speaker.

ACTING SPEAKER FAHRBACH:

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Thank you, Representative Caron. Representative Ruwet.

REP. RUWET: (65th)

Thank you, Madam Speaker. It is with privilege that I stand up not only for myself, of your 6 years of 28, but really for my father, because I know that he would be upset if I didn't stand up and also thank you for sort of keeping me under your wing.

But also you were there for his 90th birthday party and my parent's 65th wedding anniversary, and I will never forget that, and I will never forget your leadership, your mentoring, and certainly your good Republican ideals. And I have no comment, I think it's a great amendment, so thank you, Madam Speaker.

ACTING SPEAKER FAHRBACH:

Thank you, Representative Ruwet. Representative Boucher.

REP. BOUCHER: (143rd)

Thank you, Madam Speaker. Madam Speaker, I also rise to sing your praises, but also to let people know that you have also a hidden talent of being humorous in our caucus that very many people may not be aware,

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and kept the levity and the fun in much of what we did.

But also, as one of your many, many young freshmen that you guided through the process, you've been a mentor to many of us, and the wisdom that you have brought through this process has been amazing, and I respect you greatly.

You'll be sorely missed, I can tell you that, and it has been really a privilege and an honor to be a part of the Republican caucus that you have been in. I can't tell you how much we admire you, we respect you, and we'll miss you, but hopefully still be forever friends.

Thank you so much for that friendship, and thank you for your services, and I also support the amendment, and wish that it would pass. Thank you.

ACTING SPEAKER FAHRBACH:

Thank you, Representative Boucher.

Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

Hello, Madam Speaker.

ACTING SPEAKER FAHRBACH:

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Hello, Representative Kirkley-Bey.

REP. KIRKLEY-BEY: (5th)

You look very lovely up there, but then you always look lovely. I'd just like to say, Ruth, it's been a pleasure.

We've had our little conversations about little things as you walk by, but I think what I'll remember most about you is your beautiful smile, and you're just a pleasant all around person all the time, and you have helped me with some things.

You know, when I started here I was a little bit of a mad hatter. I think I've calmed down a little bit, and you helped me to get through that. But most of all I wish you good health, happiness, and ten grandchildren. Thank you.

ACTING SPEAKER FAHRBACH:

Thank you. Representative Sayers.

REP. SAYERS: (60th)

Thank you, Madam Speaker. It's been my pleasure to serve with you as we serve the Town of Windsor. I have to tell you, when we were first redistricting and

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I acquired Windsor and I started knocking doors, many of the areas were part of your old district.

And as I told people, they said well Ruth Fahrback is our Representative. I said well, redistricting occurred, and she no longer has this area of the town. Well, they wouldn't believe it. They found it very hard to believe, and forever and ever you will always be their Representative. So thank you for all you do.

ACTING SPEAKER FAHRBACH:

Thank you, Representative Sayers. Representative Ferrari.

REP. FERRARI: (62nd)

Thank you, Madam Speaker. 28 years ago I was kind of a new Town Chairman in East Granby, and Ruth had given me a little bit of a lesson on how the Legislature works.

And I always thought then that boy, these people must be really smart up there, because Ruth Fahrback is representing her district, she knows everything that's going on. And she's always been there for me

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as a mentor. Her candy dish over here, I'm always into her candy dish.

And a number of years later when I decided to run and I finally won and I got up here, I find out she's the smartest one up here.

So I don't feel alone anymore, but I will miss your sharp wit sometimes, and I will miss your probing questions sometimes, and I will also miss your good friendship, and hopefully we won't have to be strangers. Thank you, Madam Speaker.

Oh, by the way, I did have a question, if I might propose to the proponent.

ACTING SPEAKER FAHRBACH:

Proceed.

REP. FERRARI: (62nd)

Representative O'Connor. On question 34, 35, it says shall pay claims not later than 45 days after receipt. Is that calendar days or business days, Sir?

REP. O'CONNOR: (35th)

Through you, Madam Speaker, unfortunately I did not hear your question. Could you please rephrase.

ACTING SPEAKER FAHRBACH:

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Representative Ferrari.

REP. FERRARI: (62nd)

On Lines 34 and 35, we explain how we shall pay claims not later than 45 days after the receipt by the insurer of the claimants proof. Is that calendar days or business days, Sir?

ACTING SPEAKER FAHRBACH:

Representative O'Connor.

REP. O'CONNOR: (35th)

Through you, Madam Speaker, that is calendar days.

REP. FERRARI: (62nd)

Thank you, Representative O'Connor, thank you, Madam Speaker.

ACTING SPEAKER FAHRBACH:

Will you remark further? Representative D'Amelio.

REP. D'AMELIO: (71st)

Thank you, Madam Speaker. I too, Madam Speaker, would like to thank you for all the contributions that you have made, especially to this side of the aisle.

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I recall when I first came in, I came in in a special election, and it was very difficult because we were in the short session, and things were already in full gear.

And you literally took my by the hand and showed me the process, you've always checked in to make sure that I was okay and that things were going very smoothly. You even came down to the great City of Waterbury to visit and have a good lunch.

And I truly appreciate your friendship, and I wish you all the best of luck, and I'm not surprised that you were here for 28 years, because the work that you do for your constituency is second to none.

And with that, Madam Speaker, I do rise in support of this amendment and the underlying bill. It is a department Bill that has the full support of the Commissioner, and I urge adoption. Thank you, Madam Speaker.

ACTING SPEAKER FAHRBACH:

Thank you, Representative D'Amelio, and the broccoli rabe at Pisano's is wonderful.

Representative Wasserman.

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REP. WASSERMAN: (106th)

Thank you, Madam Speaker. It is sad that you're leaving here, but I'm happy for you, and I look forward to seeing you sometimes. We have so little time together now.

I look back to the many years that we spent together on Public Health, and how many things we have shared, and I appreciate every one of those times that we've had together, but especially that you were a very dear friend.

And if I, Madam Speaker, were to sign a yearbook, I would say friend and steadfast. And thank you again, and of course I do rise in support of the amendment. Thank you.

ACTING SPEAKER FAHRBACH:

Thank you, Representative Wasserman.

Representative Gibbons.

REP. GIBBONS: (150th)

Thank you, Madam Speaker. It is a delight to see you up there, but I have to echo the words of Representative Wasserman that we're sad to have you go.

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You've been a steadfast Member of this caucus, not only the caucus have you been a Dean, but you've been a Dean of our entire row.

You keep us plied with candy to make sure that we have the energy to keep going, you ensure that our buttons are pressed, either red or green, you try to keep Representative Miller in line, because he's the sole male at the other end of the row, which sometimes is a little bit difficult.

You know where the skeletons are, both in the caucus and in this Chamber. You know how to get bills passed, and when we should perhaps hold them up a little bit.

You've been a true mentor, a good friend, we're going to miss you. I love seeing you up there, but I wish we could see you next to us for the next couple of sessions, but I do understand that at some point it's time to go. We wish you all the well. Thank you.

ACTING SPEAKER FAHRBACH:

Thank you, Representative Gibbons. Did you have something to say on the amendment?

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REP. GIBBONS: (150th)

It's just fine, thank you, Madam Speaker.

ACTING SPEAKER FAHRBACH:

Thank you, Representative Gibbons.

Representative Powers.

REP. POWERS: (151st)

Thank you, Madam Speaker. I rise in support of the amendment before us, and also to thank you for all your wisdom and your wicked sense of humor, which has tided myself and many Members of our caucus over some rough spots for all of us.

And you really have been the conscience of our caucus. And when you have told someone they've done a good job, they wear it like a badge of honor. Thank you so very, very much for all your service. Thank you, Madam Speaker.

ACTING SPEAKER FAHRBACH:

Thank you, Representative Powers. Representative Dillon.

REP. DILLON: (92nd)

Thank you, Madam Speaker. On the bill, and some comments.

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ACTING SPEAKER FAHRBACH:

Proceed, please.

REP. DILLON: (92nd)

Thank you, Madam Speaker. I can't believe I'm saying this, it was another century. But when we first met, you were in the majority.

ACTING SPEAKER FAHRBACH:

I remember those days. They were a long time ago.

REP. DILLON: (92nd)

And I think sometimes you get the measure of people in how they treat people when they think they're holding all the cards, and I'm sorry that Dolly Powers said wicked first, because not only were you very kind and process oriented, you also did have a wicked sense of humor.

And were always very level headed and process oriented and fair when we were working on budget together. So I want to thank you for that, and urge the Chamber to adopt this. Thank you.

ACTING SPEAKER FAHRBACH:

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Thank you, Representative Dillon. Representative Perillo.

REP. PERILLO: (113th)

Madam Speaker, thank you. I believe the amendment is absolutely wonderful, just as has been my time with you. I think that whenever a new legislator comes here they need to be in the right place at the right time to learn the tricks of the trade, to learn the way things work.

And the leader of our caucus was smart enough to put me in an office right next to you, and your guidance and your wisdom and your leadership have been of great value to me, and have really helped me get off on the right foot here, and I thank you for all you have done for me, and I'm going to miss you very much.

ACTING SPEAKER FAHRBACH:

Thank you, Representative Perillo.
Representative Carson.

REP. CARSON: (108th)

Thank you, Madam Speaker. I rise certainly in support of the amendment, and I rise also to tell you

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first and foremost that I value your friendship, that I thank you, so many more have said it, but I do need to say it, I value all you have done for me in the nine plus years that I've been here.

I remember the one night in my freshman term, probably a month or so here, and you walked into my office, it was very late at night and I was sitting there with a stack of mail, I don't know if you remember this.

But I just didn't know what was important, what I needed to address first. You took the stack and you just started chucking most of it, and you left me with this nice little pile and said here's what you've got to do next. I'll never ever forget that.

I'll also never forget that when I first became Ranking Member on Public Health how much you helped.

No one probably realizes that you would come up here and meet me an hour before we had to meet for any other reason and just sit down with me every time we needed to go over a bill, explain to me your experiences in the past with some of the issues, and give me your guidance.

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I will never ever forget that. We will really miss you on the Public Health Committee, we'll miss you in these halls, we'll miss you in this Chamber, we'll miss you in our caucus room.

And I would say more things that are nice, but I really got ticked off to hear that you've been to Waterbury to visit Representative D'Amelio, and you've never come to my hometown.

So maybe you'll have time to visit me in New Fairfield since you'll no longer be serving in office. I'll look forward to that, and thank you so much, Madam Speaker.

ACTING SPEAKER FAHRBACH:

Thank you very much, Representative Carson.
Representative McMahon.

REP. MCMAHON: (15th)

Thank you very much, Madam Speaker, you look wonderful up there. I rise in support of the amendment before us, and I also have some remarks.

Perhaps I have known you longer than anyone else in the Chamber. As a young teacher, and I think it was one of my first or second years, you were a

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volunteer in a little room off my room, where you'd have to go through all the time.

You were a wonderful volunteer, you were very faithfully there, you helped the children at that time, as you continue to help your community all these years.

I've known your children and your grandchildren, and I know that you look forward to continuing helping with your family. So from the community of Windsor, we thank you for all your dedicated service and wish you luck.

ACTING SPEAKER FAHRBACH:

Thank you, Representative McMahon.

Representative Floren.

REP. FLOREN: (149th)

Thank you, Madam Speaker. I rise to support the amendment, whatever it was, but really I'm rising because for eight years you've had this little barnacle attached to you.

I sat next to you at Appropriations and I got as close as could, because you always knew what was going on, and you were always so willing to share and to

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help, and now I've had the really wonderful privilege of being your seat mate for the last two years.

And you've taught me so much about the Legislature and about the lore, and the rules, and the regulation, and the love. And what I love the most about you, you not only have a wonderful head for everything that goes on in this place, but you have the heart for it too. So thank you.

ACTING SPEAKER FAHRBACH:

Thank you, Representative Floren. Representative Ryan of the 139th.

REP. RYAN: (139th)

You didn't expect somebody on this side, did you? Representative Fahrbach, I have to really stand up and disagree with what I've heard people say tonight about this amendment, because I think it's a drastic increase to the business population of our community, and I have a lot of concerns about that.

But I do have to agree with what I've heard your colleagues say about you. I know for the last 16 years we've served on the Public Health Committee

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together, and when I first came in there were three blond heads on the other side of the table.

You, Representative Winkler, and Representative Gile, and I've got to say that's changed. There's only one of you there now, well something else has changed too, you're right.

But we've always had a great deal of insight into any of the bills we had in front of us, in front of Public Health, and even though you were from the other side of the aisle, we did always appreciate your input and your insight into many of the healthcare issues that came before us.

You kind of caught things that the rest of us might not catch, and we always appreciated that.

And I'm hearing a lot of people on this side of the aisle adding their comments about your career here and the fact that you've contributed a lot, and they may not be able to get up and say that, but we are going to miss you from whichever side of the aisle you're coming, hopefully we'll see you again in the future. Take care.

ACTING SPEAKER FAHRBACH:

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Thank you, Representative Ryan. My hair used to be blond. Representative Morin.

REP. MORIN: (28th)

Thank you, Madam Speaker, on the amendment.

ACTING SPEAKER FAHRBACH:

Proceed, please.

REP. MORIN: (28th)

It is a terrific amendment. I know a little bit about you. I've only had the privilege of serving with you for a short time, however to those in the Chamber, and Madam Speaker, you may not remember.

But the first time we met was probably 10 or 11 years ago, and I was a DOT employee, and you were advocating for a constituent, and you were not very happy with the decision that ultimately I and my office had given.

And so for all the kind words, which I agree with, because you're an extremely nice person and a good person to work with, I will say that I didn't think at that time that you were so nice, because you were being very, very diligent.

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And now that I sit in the same Chamber that you sit in, I truly understand what it was that you were doing. And I guess the nicest compliment I could give you is that you were fighting for your constituent, and for that I have a tremendous amount of respect, and I want to wish you the best. Thank you.

ACTING SPEAKER FAHRBACH:

Thank you, Representative Morin. Representative Donovan.

REP. DONOVAN: (84th)

Thank you, Madam Speaker. Madam Speaker, I speak in support of the amendment before us, and also thank you, Madam Speaker, for your many years of service, years of pleasure serving with you on the Public Health Committee, and I always valued your input.

And also, as people have said, your friendliness throughout the years, always a warm smile, and throwing candy at people whenever they needed it. So Madam Speaker, it's great to see you up there, and have all the best wishes. Thank you.

ACTING SPEAKER FAHRBACH:

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Thank you Representative Donovan. Will you remark further? Will you remark further on the amendment before us? If not, let me try your minds. All those in favor, signify by saying Aye.

REPRESENTATIVES:

Aye.

ACTING SPEAKER FAHRBACH:

All those opposed, Nay. The Ayes have it, the amendment is adopted. Will you remark further on the bill that is before us? Will you remark further on the bill as amended? If not, staff and guests please come to the Well of the House, the machine will be opened.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is taking a Roll Call Vote. Members to the Chamber, please.

ACTING SPEAKER FAHRBACH:

Have all the Members voted? Have all the Members voted? Will the Members please check the board to determine if your vote is properly cast. If all the Members have voted the machine will be locked, and the

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Clerk will take the tally. The Clerk will please announce the tally.

CLERK:

House Bill Number 5159, as amended by House Amendment Schedule "A".

| | |
|-----------------------------|-----|
| Total Number Voting | 135 |
| Necessary for Passage | 68 |
| Those voting Yea | 135 |
| Those voting Nay | 0 |
| Those absent and not voting | 16 |

ACTING SPEAKER FAHRBACH:

The bill as amended has passed.

(APPLAUSE)

Thank you all. Thank you very much. I would like to just take a point of personal privilege while I'm up here at the dais.

In all the years that I've spent up here, you know how difficult it is on family at home, and I have the pleasure of having my husband with me here tonight.

And I would like to say thank you to him for putting up with the long hours, the cold meals, the

JOINT
STANDING
COMMITTEE
HEARINGS

INSURANCE
AND
REAL ESTATE
PART 2
338-686

2008

000665

kms INSURANCE AND REAL ESTATE February 28, 2008
11:00 a.m.

PRESIDING CHAIRMAN: Representative O'Connor

COMMITTEE MEMBERS PRESENT:

SENATORS: Crisco, Hartley, Caligiuri

REPRESENTATIVES: Clemons, Witkos, Altobello,
Frey, Harkins, Schofield,
D'Amelio, Geragosian,
Megna, Roldan

COMMISSIONER TOM SULLIVAN: --we look forward to working with you during the remainder of this Legislative session. I'll start first with Raised House Bill 5159, which is needed to update the statutory fines and penalties imposed by the department.

HB 5159, 5158
SB168 HB5154

Some of these fines have not been updated since 1902. And most recent was updated in 1992. These statutory fines and penalties are imposed when a regulated individual or entity has violated the law enforced by the department under Title 38a.

All fines and penalties imposed by the department are deposited into the state's general fund. And in 2007, the total amount of fines and penalties, received by the state totaled \$1.1 million.

The department determined the amount of findings by adjusting for inflation using the

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kms INSURANCE AND REAL ESTATE February 28, 2008

United States Bureau of Labor Statistics
Consumer Price Index.

A chart is attached to our written testimony which lists each fine. The date it was last revised. The current penalty or fine, and the amount it would be raised based on our site CPI recommended change.

We hope the Committee agrees that it's long overdue that we increase these fines and penalties to reflect the economic changes that have occurred over the years and further incent lawful behavior by our stakeholders.

The next bill I would like to address is Raised House Bill 5158, which makes a variety of technical changes to the insurance statutes. Again, our written testimony outlines each provision.

But I would like to call your attention to three specific changes in our technical revisions bill. I'll point to first Sections 8 and 9, which attempt to correct language regarding the extension of benefits to children up to age 26.

Last year the General Assembly extended this coverage to age 26, but added a residency requirement. That actually took protections away that were previously in place.

An attempt was made to correct this unattended consequence, but the current language is still inadequate. The department is proposing modifying the language to retain the

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following the major catastrophe, in which the Governor has declared a State of Emergency.

The Insurance Department believes that consumers affected by extensive and devastating damage to their homes, such as following a major hurricane, would benefit from having an option to use such a mechanism.

Mediation would be voluntary for the insured claimants but mandatory for the insurers. It would require that the amount in dispute be at least \$500 or more.

It is important to note that if an insurer chooses not to participate in this program or the parties are unsuccessful in reaching a settlement on the claim, the insured will continue to have all rights to attempt to resolve the claim.

This includes the right to utilize the appraisal process that is set forth in the policy. The right to pursue litigation or any other dispute resolution procedure available under Connecticut law.

Regulations would first need to be adopted to implement this mediation program. In closing, I would like to thank you for the opportunity to appear before you. Once again, thank you for raising the department's bill. And I'd be happy to take any questions.

REP. O'CONNOR: Thank you, Commissioner. I have a couple of questions. I just want to start off

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with. How much does the department collect currently in fines?

COMM. TOM SULLIVAN: Last year, 2007, we had \$1.1 million. And we will be providing with you a break down of, you know, where we achieved the revenue, separately, in a separate document. Correct?

REP. O'CONNOR: And the other question I have is a follow up to that. If this law were to pass, what would the increase revenue be projected to be, based on the '07 numbers?

COMM. TOM SULLIVAN: You know, I'm going to answer your question with a question. That depends on the malfeasance of those people that we fine.

REP. O'CONNOR: I mean, is it based under the fines you had last year. Let's say, for instance, it was a \$10,000 fine and this you were increasing it to \$20,000.

COMM. TOM SULLIVAN: You know, what we may be able to, Representative, is take last year's fine activity and overlay it with what I've proposed.

And I can give you a number. I may be able to do that. My reluctance around that is we don't have real granular data on the breakdown of our fine activity, largely, from what we operate under from a system's environment.

So I do have a little bit of reluctance. We'll give that a swag to see if we can get you that kind of information.

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REP. O'CONNOR: Okay. That pegs a different question as to why you don't have the data?

COMM. TOM SULLIVAN: Well, we do a good job of collecting revenue. All right. We just don't do good job of finding out what all that revenue means and where it all comes from.

REP. O'CONNOR: I guess that's it--

COMM. TOM SULLIVAN: It'll be a manual undertaking by my office. I could do it.

REP. O'CONNOR: Do you have. I guess, from the Committee's perspective, if there starts to be trend within a certain area, like you talked about the extended warranties.

You must have seen a trend. I mean, do you have data that you could pull and say this is being abused? Yeah, this fine might not be strong enough to persuade people from breaking the law.

COMM. TOM SULLIVAN: It's a fair point. I will tell you for us to be able to do what I just proposed, you know, I'll have to look at a lot of, what I'll call, onesies and twosies.

You know, how we got to that \$1.1 million is not uncommon for us to fine a licensee \$1,000 for, you know, one very discrete violation of law.

So, you know, I have to bring together all of that data and there's probably some better

ways. And I have to look at what we do from an accounting perspective back at the ranch and see if there's an opportunity for us to have a better and tighter reporting. And I'll let you know what that might look like if I--

REP. O'CONNOR: Okay. I pegs the question. Do you have the capability to know if a certain insurer or entity has more than one fine? I mean, is there a place to say to that XYZ insurance company has five fines in the last ten years?

COMM. TOM SULLIVAN: Right. Two answers to that question. When we conduct our market conduct activities, where the lion share of fine activity comes from, we look at trends, and we alert our colleagues.

Market conduct and consumer affairs are in the same division. Oftentimes, consumer affairs are the first tip off to some behavior in an insurer that we need to look deeper at, which will necessitate us sending market conduct examiners to ensure.

So there is a good spirit of cooperation amongst those two operations within the department. And we do monitor activity. And also a second point.

We, as part of market conduct activities, if we see a trend in a specific insurer or a wider trend, then we go out and look for that on future exams.

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And as part of our agreement with the licensee, we'll require corrective action plans to be put in place so that activity doesn't occur again.

REP. O'CONNOR: Thank you. And then just one question on House Bill 5158, I believe, it was Section 14, with the mini-med plans.

Can you go into a little bit more detail, because I understand that there might be some confusion with people expecting us to basically overturn the law that we passed last year with the mini-med health benefit plans. Do you kind of desecrate some of that fear? Because I understand your point for the group--

COMM. TOM SULLIVAN: If I may? Can I call up Mary Ellen Breault, who heads up my--

REP. O'CONNOR: Sure. Mary Ellen, if you could just read your name into the record please?

MARY ELLEN BREAULT: Mary Ellen Breault. I'm the Director of Life and Health Division of the Department.

Basically, the concern with the limitations on the per-service type of benefit, technically, most plans have certain types of cautionary. They have what we call inside limits. So even-

REP. O'CONNOR: Could you give an example?

MARY ELLEN BREAULT: An example could be potentially on a service, like physical therapy. They may have a dollar amount limit for a year or

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possibly a limitation on a per-visit type of basis.

But even very comprehensive plans have those types limits. And so to label even very comprehensive plans, even something comparable to the state employee's plan, that could have potentially some inside limits on, you know, a given service or two.

That could be just problematic in really getting at the correct of the true mini-med plans. That virtually all plans could end up having that disclosure being required on the plan.

REP. O'CONNOR: All right. Thank you. Are there any further questions? Chairman Crisco.

SEN. CRISCO: Thank you, Mr. Chairman. Commissioner, if there's anyway that we can help in upgrading your systems, then we would like to work with you, you know, to get the data that we all need. [inaudible].

REP. O'CONNOR: Thank you, Mr. Chairman. Representative Schofield.

REP. SCHOFIELD: Thank you, Mr. Chairman. Just a question about the fines, which in scanning through them certainly some of them are extremely old. From the 1950's and look like they're due for an update.

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You've just rolled them forward with CPI. Have you actually done any comparisons with other states to see if ours are low or high relative

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to what other states use as fines for similar violations?

COMM. TOM SULLIVAN: Great question. I have. Not I, we. Because you pass the laws. I enforce them. Right? Connecticut's been criticized by some in the media because our fines have been deemed to be.

Our fines and penalties are low comparatively speaking to other states. And I'm sure our friends in the insurance community would like them to stay where they are.

I think they need to be brought up to be a little bit more contemporary. I'm not a pioneer in this. Although, I was out with [inaudible] before, my colleague's superintendent.

And then Oliver, in New York, came out with his. But he's doing the very same thing in New York State, because, similarly, their fines and penalties haven't been updated in 10, 20, or in, some of our cases, 100 years.

So it's really just a modernization effort to get us up to where we need to be. The first part of your question is, where we from a relative perspective. I haven't studied it, specifically.

But if I believe what people are telling me, we're supposedly on the low side. You know, when you have states like California and some of the more aggressive states, they're fine and

penalty thresholds are much higher than Connecticut.

REP. SCHOFIELD: Well, I'm curious. I would assume that we would be on the low side, given we haven't updated these in decades. But I want to make sure we're somewhat within a reasonable ballpark of other states once we do this CPI update.

And so it would make sense to me to look at once we go through this update will we then still be low or will we be high or I'm sure, in some cases, we'll be a little of both.

REP. SCHOFIELD: Yeah, and I think that would be that answer. It'll probably be a little bit of both, but I would. I'm speculating here. Speculate that we're still probably in the mid to lower range. There are some other states which are much more aggressive. From a fine and penalty perspective than Connecticut.

MARY ELLEN BREault: Because, I would just encourage you to take a look at more than just CPI as a way of adjusting these. And it would be nice to get them in a reasonable range, and then index them so that you don't have to come back every couple years--

REP. SCHOFIELD: That's a fair point.

MARY ELLEN BREault: --to do this. And I didn't see that in the bill. So that might be something we want to look at.

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COMM. TOM SULLIVAN: Well, take that back. That's a great discussion.

MARY ELLEN BREault: Thank you.

REP. O'CONNOR: Thank you, Representative.
Representative Geragosian.

REP. GERAGOSIAN: Thank you. Commissioner, and I assume that the reasons for these fines are either punitive or discourage bad behavior in some form of that. Would I be correct?

COMM. TOM SULLIVAN: That's what there for. Right? Now, whether or not they have the effect of that, you know, one could question. Let me tell you what we're doing.

And as you know. And I've spoken to you previously on, Representative, and made public this. We're actually publicizing what we're doing from a fine perspective, and what we do with our market conduct activities.

Frankly, I would submit to you that that has more of a sentinel affect than the fine itself. Because nobody wants to be pardon me in the headlines. Right?

So we're trying to be as absolute transparent as we possibly can in terms of how we regulate. I do not want my office door to be a barrier for information that should be out there in a public domain.

And, consequently, we are releasing and putting on our website all of our market conduct

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activity going forward. So I think that has, frankly, more power than the fine itself.

REP. GERAGOSIAN: I mean, because it begs the questions that a multi-billion dollar industry received a million or so in fines last year, is it like a fly on a elephant's back kind of analogy?

COMM. TOM SULLIVAN: Yes, the local paper here, *Hartford Courant*, had in an editorial, I think, categorized a slap on the hand or something to that effect.

So let me say this. I am not a [inaudible]. I believe that I, as a regulator, have to look at the full perspective of everything that placed before me.

I don't report for one second that I would use this modernization of fines as a vehicle to, you know, exact some pain on industry. That's not the way we operate. We look at the facts of the offense.

We look at what it gives rise to from the impact, and then we use the fine as a measure to correct what is behavior that needs to be corrected. And so I will not abuse my authority. I guess, is my assurance to you.

REP. GERAGOSIAN: All right. I want you to do what you think issued fines as need be. Now, I'm a Member of the Judiciary Committee too. And we've spent a lot on the criminal side talking about persistent offender statutes.

And, you know, if you have a company, for instance, you see this taking \$20 to \$40 or \$100, \$5,000 fines, because it's not affecting their position in the market place.

Might that be some kind of tool that you'd want to use to be able to up the levies. Up the damage. Double the damage. Triple the damage or some other.

If you see, you know, a pattern of bad behavior in one or two companies in certain areas. I mean, an extra hammer, shall we say.

COMM. TOM SULLIVAN: I don't have that authority. I have to have that authority in statute. Right? And so again, I would say. You have to look at the whole mosaic of what we do from a regulatory perspective.

Fines and penalties are just one lever that we have. So, you know, what we do from an ongoing examination perspective is another lever. What the National Association of Insurance Commissioners is doing at a national level with the multi-state efforts that we've undertaken, which the State of Connecticut has participated in.

In a case and I sight United Health Care. We as a body of state regulators had an historic settlement, because what we saw with United stretched, you know, across state boundaries.

The same offenses were occurring in more than one state. Had a significant impact to more than one consumer. In more than one state.

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And so consequently 38 or so states endorsed or signed onto that multi-state examination, which, you know, had, significant, fines in the millions of dollars.

But more importantly has as another lever a very strict ongoing monitoring as part of that examination. And we are holding United Health Care to reform.

You know, back to your earlier point. They have to reform their business practices and satisfy not only me, but 38 other state regulators. That they, in fact, have cleaned up, what was, their malfeasance.

REP. GERAGOSIAN: And, lastly, do you or the department have the ability to waive or set aside or lower our fines that are levied?

COMM. TOM SULLIVAN: Yeah, we have, you know, discretion, for the most part, up to the ceiling. There's not really a floor.

REP. GERAGOSIAN: You don't have the power to waive fines.

COMM. TOM SULLIVAN: Well, sure. Yes.

REP. GERAGOSIAN: Thank you, Mr. Chairman.

REP. O'CONNOR: Thank you, Representative. Thank you very much for your testimony. Next speaker is Representative Al Adinolfi.

REP. ADINOLFI: Let me make sure I have the right one. Senator Crisco, Representative O'Connor,

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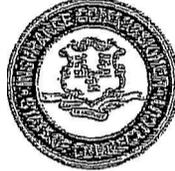
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State of Connecticut

THOMAS R. SULLIVAN
INSURANCE COMMISSIONER

P. O. BOX 816
HARTFORD, CT 06142-0816



Hartford

December 27, 2007

SB168, HB5159, 5158, 5154

Senator Joseph Crisco, Co-Chairman, Insurance and Real Estate Committee
Representative Brian O'Connor, Co-Chairman, Insurance and Real Estate Committee
Insurance and Real Estate Committee
Room 2800, Legislative Office Building
Hartford, CT 06106

Dear Senator Crisco and Representative O'Connor:

I am pleased to provide you with the Connecticut Insurance Department's study of the captive insurance industry. The enclosed report assesses the viability of the formation of a captive insurance industry in Connecticut and what factors are necessary to make it a reality.

As noted in my August 10, 2007 letter to you, this report has been completed by year-end which should provide adequate time for review and consideration of any legislative initiatives for introduction in 2008.

I appreciate this opportunity to work with you on this initiative and am available to answer any questions you may have on the enclosed document.

Sincerely—

A handwritten signature in black ink, appearing to read "Thomas R. Sullivan".

Thomas R. Sullivan
Insurance Commissioner

Cc: Representative Kevin Witkos, Ranking Member
Members of the Insurance and Real Estate Committee
Janet Kaminski, Office of Legislative Research
Karen Tishy, Legislative Commissioner's Office
Marcy Picano, Office of Fiscal Analysis

Enclosure

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The Captive Insurance Industry

A study by the
Connecticut Insurance Department

To the
Insurance and Real Estate Committee

December 27, 2007

INTRODUCTION

Prior to the 1980's, businesses and associations transferred risk by purchasing insurance through an insurance company or by self-insuring against potential losses. The cyclical nature of the insurance industry creates soft market periods (where rates are relatively stable or decreasing and coverage is readily available) and hard market periods (where rates increase and less coverage is available). During the 1980's, there were dramatic increases in commercial liability insurance rates and reductions in coverage availability for some industries. This led Congress to enact the federal Product Liability Risk Retention Act of 1981.¹

This act permitted companies and associations to develop alternative risk-transferring mechanisms, such as captive insurance companies and risk retention groups, which combine elements of traditional risk transfer, i.e. transferring the risk to an insurance company through the purchasing of an insurance policy, with risk retention or "self insurance."² Initially, the legislation focused on the areas of products and completed operations liability, but was expanded in 1986 to include all commercial lines of insurance with the exception of workers' compensation insurance.³

In other words, alternative markets were created in response to businesses and associations that were not finding coverage at all or at a price they could afford in a hard commercial insurance market. Rather than putting companies in the position of having to completely self-insure or go without adequate coverage, Congress authorized the creation of these alternative market mechanisms to fill this need where traditional commercial insurance coverage was lacking.

Since the passage of the federal law, the number of captives has increased by 94.7% from 2,535 in 1989 to 4,936 in 2006.⁴ Clearly, the Product Liability Risk Retention Act of 1981 spurred the beginning of a new industry, upon which a handful of states have capitalized. In addition, the domestic captive market has grown since the passage of the Sarbanes-Oxley legislation in the post-Enron era when corporations became subject to the political implications of moving their businesses off-shore.⁵

In recent years, many policy makers and others have discussed whether Connecticut can join the ranks of the other states that have benefited from the existence of a thriving captive insurance marketplace. In short, the answer is yes if we maintain an ongoing commitment to this industry that parallels that which exists in other states.

Throughout the course of this study, the Insurance Department will provide the following information in an effort to aid policymakers in determining whether to pursue legislation authorizing Connecticut to license captive insurance companies:

- An overview of the captive marketplace;
- An overview of other alternative market mechanisms;
- What is needed in Connecticut to make it an attractive place for a captive domicile;
- Obstacles to creating a successful captive marketplace; and conclusions and recommendations for future action.

OVERVIEW OF THE CAPTIVE MARKETPLACE

Captive insurers are "a special type of insurance company set up by a parent company, trade association or group of companies to insure the risks of its owner or owners."⁶ They are sometimes established to insure more than one entity. For example, an association, group of companies or even a group of professionals (doctors, lawyers and accountants) have formed captives when traditional insurance products are not viable options for them.⁷ Incidentally, when Connecticut doctors first began seeing the effects of a hard market on their practices, the value that captives can bring to the public was brought to the forefront, as many Connecticut doctors sought alternative market coverage when traditional insurers stopped writing medical malpractice policies.

There are several different types of captive insurers. They are as follows⁸:

- "Association Captives" underwrite risks of members of an industry or trade association;
- "Rent-A-Captives" provide access to – or "rent" – the captive's capital without the user needing to capitalize its own captive. The user pays a fee and must provide collateral but is not required to incur the costs associated with establishing its own captive;
- "Special Purpose Vehicles for Risk Securitization" allows a reinsurance company that issue reinsurance contracts to their parent and cedes the risk to the capital markets by issuing bonds.
- "Pure Captives" insurers only the risk of the owner or the owner's subsidiaries.

Between 1989 and 2006, the number of captive domiciles has increased by 94.7% worldwide.⁹ The following chart demonstrates the growth of the captive industry as a whole.¹⁰

| Year | Number of Captives |
|------|--------------------|
| 1989 | 2,535 |
| 1992 | 2,896 |
| 1995 | 3,199 |
| 1997 | 3,286 |
| 1998 | 3,418 |
| 2005 | 4,882 |
| 2006 | 4,936 |

While the numbers above reflect the growth of the industry worldwide, the number of captives based in the United States in 2006 grew significantly due to a 50% growth in the captive markets of Nevada, Arizona and Utah.¹¹ This makes the United States the largest captive domicile in 2006 with 1,251 licensed captives followed by Bermuda with 989 domiciled captives.¹²

The growth of the industry can be attributed to a number of factors. For one, there have been a number of federal taxation rulings that have favored captive markets. Also, the hardening commercial lines market (which began in 2000 and culminated with the September 11, 2001 terrorist attacks) lead to a movement by some groups such as schools and real estate firms, to call

for the expansion of the Risk Retention Act to include commercial property, surety and commercial automobile lines of coverage. In addition, the Terrorism and Risk Insurance Act of 2002 requires captive companies to offer terrorism insurance to their policyholders. According to the Insurance Information Institute, this has led to an increase in the number of captive formations among companies seeking the protection of the federal backstop and to mitigate their potential terrorism losses.¹³

In the United States, nineteen jurisdictions have enacted legislation permitting the licensure of captive insurance companies.¹⁴ Vermont leads all other states in the number of domiciled captives. At last count Vermont is home to 791 captives.¹⁵ While the states of Rhode Island and Maine have passed legislation authorizing the issuance of captive licenses, there have not been any licenses issued in these states.¹⁶

The following chart illustrates the captive marketplace in other states.¹⁷

| Rank | State | Number licensed in 2006 | Number licensed in 2005 |
|------|-----------------|-------------------------|-------------------------|
| 1 | Vermont | 791* | 717* |
| 2 | Hawaii | 160 | 158 |
| 3 | South Carolina | 146 | 122 |
| 4 | Nevada | 97 | 58 |
| 5 | Arizona | 74 | 53 |
| 6 | Washington D.C. | 70 | 59 |
| 7 | New York | 39 | 33 |
| 8 | Utah | 30 | 15 |
| 9 | Montana | 21 | 13 |
| 10 | Georgia | 17 | 15 |
| 11 | Kentucky | 10 | 6 |
| 12 | Colorado | 8 | 9 |
| 13 | Delaware | 6 | 5 |
| 14 | Illinois | 3 | 3 |
| 15 | Tennessee | 3 | 3 |
| 16 | Arkansas | 1 | 1 |
| 17 | Kansas | 1 | 1 |
| 18 | Oklahoma | 1 | 1 |
| 19 | South Dakota | 1 | 1 |
| 20 | Maine | 0 | 0 |
| 21 | Rhode Island | 0 | 0 |
| | United States | 1,251 | |

*Vermont Captive Insurance Division Web-Site

States committed to creating an atmosphere attractive to captive insurers stand to reap many benefits. First, "captive domiciles help to build the private sector and tax base by attracting high-paying jobs."¹⁸ Second, "domiciles boost tourism through conventions, required in-state meetings and elevating interest in the state."¹⁹ Third, "small states benefit most in that captive growth provides a proportionately greater impact."²⁰

To illustrate, in 2005 the captive industry in Vermont generated \$20 million to the state's general fund through its captive premium tax.²¹ In addition, the industry supports approximately 1,400 jobs – most of which are high-paying. This is not including the lawyers, bankers, accountants, actuaries and other professionals needed to support this industry.²² Finally, the Vermont Captive Association's Annual meeting is attended by an estimated 1,200 people. This benefits the hotels, restaurants and tourism in general.²³ In addition, it generates added sales tax to the state.²⁴

Vermont's success is largely attributed to two related factors: the length of time its enabling legislation has been on the books and the level of commitment to the industry that policymakers have devoted to it. To illustrate an example of a more recent entrant to the captive insurance market, consider Arizona, which passed its enabling legislation in 2002. By 2005, it had 51 captives domiciled there.²⁵ Arizona officials largely attribute its quick success to the fact that they do not have a premium tax, "fair capitalization requirements,"²⁶ and licenses can be issued in as short as 10 days.²⁷

There are several factors that lead companies and associations to consider domiciling their captive in a particular state. At the Vermont Captive Insurance Association's Annual Meeting in August of this year, two of these factors were often repeated as being the most important to potential captive insurers. First, there must be a strong and sound regulatory environment. Second, it must be easy to get to and from the state. Other factors that are often mentioned include "soft factors" such as: world-class golfing facilities, professional sports teams and other tourist attractions.²⁸

HOW DO CAPTIVES AFFECT THE TRADITIONAL INSURANCE MARKETPLACE?

The Department has not undertaken a detailed analysis of the insurance industry's position as it relates to the state's investment in the captive marketplace. However, there are a number of insurance companies and reinsurance companies who have formed captives of their own in other states. This suggests that in some instances traditional insurers acknowledge the value captives bring to the marketplace.

CAPTIVES IN CONNECTICUT

There is one thing that Connecticut needs to make captives a reality in Connecticut: an ongoing commitment to this growing industry. As with any industry a state wishes to grow, the captive insurance industry requires a unified vision for growth and support by policy makers, economic development officials (at the state and local level) and regulators. Vermont Governor Jim Douglas attributes his state's success in the captive industry to its ability to be "flexible, creative, and innovative."²⁹

First and foremost, for Connecticut to grow a competitive captive industry, policymakers would have to determine that this is an industry worthy of investment. At the outset, sound enabling legislation would have to be passed into law and signed by the Governor. Characteristics of a successful statutory framework include: favorable tax treatment³⁰, fair capitalization

requirements³¹, short licensing times³², a sound regulatory environment and the ability to transfer risks to the capital markets³³, among others.

States often differ in how they chose to draft their enabling legislation. These differences can have far reaching impacts in terms of the quality and quantity of the captives who domicile there. In South Carolina, for example, officials have drafted their legislation under the theory that it is quality, not quantity, which matters.³⁴ Even so, as of 2006, South Carolina has issued 146 licenses and ranks third – behind Vermont and Hawaii – in the number of captives domiciled there. As a result, it has quickly become an attractive domicile state for many captive insurers.

Washington, D.C. has taken a different approach to recruit captives to its district. Since licensing its first captive in 2001,³⁵ there have been 70 licenses issued as of 2006.³⁶ In 2004, Washington D.C. changed its enabling legislation to give it more flexibility in terms of the types of captives that can domesticate there.³⁷ While this approach differentiates the district from other states, it runs the risk of sacrificing quality for quantity. Only time will tell whether this approach will benefit the district's market positively.

Vermont's legislation is often considered to be the "gold standard." It is generally amended each year to make sure Vermont retains its competitive position in light of its rival states. For example, Vermont has recently made several changes to its tax code to make it more attractive to captives.³⁸ In addition, Vermont has made some technical changes that allow captives to transfer certain risks to the capital markets, which has been a growing trend since the September 11, 2001 attacks and the devastating hurricane seasons of 2004 and 2005.³⁹ It is also worth noting that Vermont's continual legislative action demonstrates its commitment to that industry.

Recently, Insurance Department representatives attended the annual meeting of the Vermont Captive Insurance Association where approximately 1,200 representatives of the captive industry, insurance industry, business community, lawyers, accountants, actuaries and regulators gathered. When a representative of the captive industry was asked what factors captives consider when determining where to domicile, the answer was clear: a sound regulatory environment and location. Interestingly, the value of the location was not limited to factors such as weather and entertainment. It was said that the value of the location is in ones ability to enter and exit the state with relative ease.

The Department submits that Connecticut has both of these factors. As the Insurance Capital of the World, Connecticut is home to 119 domestic insurers which produce \$186 billion in written premium each year, ranking it second only to New York. As a result of Connecticut's thriving industry and sophisticated marketplace, the staff at our Insurance Department is among the most educated in the country. Knowledge obtained both through their work in the industry and through their role as regulators can contribute to Connecticut's success in the captive marketplace. Further, there is a wealth of collateral talent, not necessarily employed directly by the industry, but which further support the commerce of insurance in our state. Professionals such as actuaries, attorneys, accountants, and consultants/brokers can be found here in Connecticut. These support professionals are necessary for interested parties undergoing due diligence and ultimately, the formation of a captive. Indeed, it was noteworthy at the Vermont

Captive Forum that a preponderance of Connecticut license plates could be found in the convention center parking lot.

In addition, as Connecticut's economic development and transportation officials will confirm, Connecticut is an easy destination to access. Bradley International Airport served 6,907,042 passengers in 2006 and 7.4 million passengers in 2005.⁴⁰ Currently, Bradley serves "40 destinations nationwide with 250 daily flights."⁴¹ Further, Connecticut's proximity to New York and Boston make it even easier to navigate, with countless direct flights from these cities into Hartford on a daily basis.

It has been noted that small states tend to benefit most by maintaining an active captive industry.⁴² Vermont's captive industry generated \$20 million in 2005⁴³ through its premium tax equating to 2%-3% of Vermont's general fund budget.⁴⁴ In addition, Vermont's captive industry has added 1,400 jobs to its economy, as well as added \$1 billion to Vermont's financial services industry. Larger states with a captive industry comparable to Vermont's would not experience as large a net effect to their state budgets, jobs growth and banking and financial services industries.

Notwithstanding all of the positive attributes Connecticut has to offer the captive industry, there are some obstacles that are worth noting.

Some may question whether Connecticut is too close to Vermont to make it a viable state of domicile. While there may be some merit to this observation, the Department does not believe that Connecticut's proximity to Vermont alone will be a formidable obstacle to growing the captive industry if we are committed to providing favorable enabling legislation and sufficient regulatory resources. This is particularly true when one considers the ease of traveling to and from Connecticut, as opposed to traveling to Burlington or Montpelier, Vermont.

Another obstacle with which policymakers must grapple is the amount of resources required to adequately regulate this industry. While this industry cannot and should not be regulated by staff who are not intimately familiar with the operations of captive markets (as opposed to traditional insurers), states have not had to make substantial investments in the regulation of this industry. For example, in 2005, Vermont, which at the time was home to 717 licensed captives, had approximately 26 people dedicated to captive regulation, all of whom are paid for by the captive industry through examination fees.⁴⁵ South Carolina uses a combination of consultants, contract workers and 11 full time staffers dedicated to captive regulation.⁴⁶ As of 2005, Washington DC had 4 staff members dedicated to regulating its 59 captives; however, regulators there recognize this is not sufficient and have been requesting additional staff.⁴⁷

Some may argue that with 19 jurisdictions already licensing captives, Connecticut has missed its opportunity to gain any measurable successes with this industry. The Department submits that this is not the case. Of those 19 jurisdictions that regulate this industry, there are only a handful of states that are competitive in this industry: Vermont, Hawaii, South Carolina, Nevada and Arizona - of which only one is a Northeastern state. The others have not attracted the number of captives to make them true competitors because, in part, their laws are not drafted in a way that makes them competitive with other captive domiciles. In addition, the alternative markets (captives included) continue to grow in number, as noted previously. What is particularly

noteworthy is this growth is occurring during a significant soft-cycle in the commercial property casualty marketplace. Traditionally, one would not expect exponential growth in the captive marketplace during a soft market, as the traditional insurance marketplace is readily offering commercial insurance at highly competitive terms. In the past, captives and other alternative markets experienced growth during hard-cycle times, when terms are not as favorable and coverage is not readily available. This leads the Department to conclude that when, not if, the market turns from a soft market to a hard market, we can expect the use of captives and other alternative markets to continue to grow.

It can also be argued that Connecticut lacks many of the "soft" features that make it an attractive state for companies to domesticate. While it is true that Connecticut will never have the tropical weather that brings captives to Hawaii, the fact that Vermont continues to be the leader in this field, despite its lack of "soft" features, weighs in Connecticut's favor. In addition to the benefits of its geographical location, sophisticated workforce and strong regulatory environment, Connecticut is home to two major gaming facilities, beaches, golf courses, spas and a brand new convention center, just to name a few.

CONCLUSION AND RECOMMENDATIONS

To summarize, the Department believes that Connecticut can be a true competitor in the captive industry over time if the state demonstrates an appropriate level of commitment. The state must be committed to passing meaningful enabling legislation and revisiting its laws annually to make sure that it is on the cutting edge of this market. This level of commitment is demonstrated by Vermont and South Carolina and they have been well served by it.

In addition, the state must be patient and understand that the benefits of a growing captive marketplace may not be seen for several years after passing the legislation. It has taken Vermont twenty years and South Carolina seven years to become leaders in this field.

The state also has to be mindful of the importance of establishing attractive tax and economic policies to make Connecticut an attractive domicile. As Governor Douglas stated, states have to be "flexible, creative, and innovative"⁴⁸ in drafting their policies to attract captive insurers.

Finally, regulators need appropriate resources to regulating this industry; otherwise Connecticut runs the risk of creating an industry over which there is no meaningful oversight.

While the Insurance Department will ultimately regulate the captive industry, the Department stresses the importance of the economic development community to making Connecticut a true competitor in captive insurance. Therefore, the Department encourages policymakers to rely on the expertise of their economic development officials in making Connecticut an attractive domicile for the captive insurance market.

If all of these factors are present, it is the Department's belief that Connecticut can create and maintain a competitive captive industry.

ENDNOTES

- ¹ Insurance Information Institute, *Captives & Other Risk-Financing Options* (April 2007).
² Id.
³ Id.
⁴ Id.
⁵ David Dankwa, *Amid Vermont's Green Serenity, Captive Insurance Market Booms*, Best's Insurance News (August 13, 2007).
⁶ Insurance Information Institute, *Captives & Other Risk-Financing Options* (April 2007).
⁷ Id.
⁸ Ron Panko, *Capitalizing on Captives*, Best's Review, (July 2005) citing South Carolina Department of Insurance, Vermont Department of Insurance, Illinois Captive & Alternative Risk Funding Insurance Association.
⁹ Insurance Information Institute, *Captives & Other Risk Financing Options* (April 2007).
¹⁰ Id.
¹¹ Id.
¹² Id.
¹³ Id.
¹⁴ Kentucky and Colorado, while authorized to license captives, did not enact legislation to license captive insurance companies.
¹⁵ http://www.bishca.state.vt.us/CapInsDiv/datacharts/C3_total_captives_licensed.pdf
¹⁶ Insurance Information Institute, *Captives & Other Risk-Financing Options* (April 2007) citing *Business Insurance*, March 12, 2007.
¹⁷ Id.
¹⁸ Ron Panko, *Capitalizing on Captives*, Best's Review (July 2005).
¹⁹ Id.
²⁰ Id.
²¹ Id.
²² Id.
²³ Id.
²⁴ Id.
²⁵ Id.
²⁶ Id.
²⁷ Id.
²⁸ Id.
²⁹ David Dankwa, *Vermont's Economy Feeds on Lucrative Captive Business*, Best's Insurance News, August 7, 2007.
³⁰ Ron Panko, *Capitalizing on Captives*, Best's Review (July 2005).
³¹ Id.
³² Id.
³³ David Dankwa, *Vermont's Economy Feeds on Lucrative Captive Business*, Best's Insurance News, August 7, 2007.
³⁴ Ron Panko, *Capitalizing on Captives*, Best's Review (July 2005).
³⁵ Id.
³⁶ Insurance Information Institute, *Captives & Other Risk-Financing Options* (April 2007).
³⁷ Ron Panko, *Capitalizing on Captives*, Best's Review (July 2005).
³⁸ David Dankwa, *Vermont's Economy Feeds on Lucrative Captive Business*, Best's Insurance News, August 7, 2007.
³⁹ Id.
⁴⁰ Annual Report, Bradley International Airport (2006).
⁴¹ Id.
⁴² Ron Panko, *Capitalizing on Captives*, Best's Review (July 2005).
⁴³ <http://www.vcia.com/industryresources/frequentlyaskedquestions/>
⁴⁴ Ron Panko, *Capitalizing on Captives*, Best's Review (July 2005).
⁴⁵ Id.
⁴⁶ Id.

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⁴⁷ Id.
⁴⁸ David Dankwa, *Vermont's Economy Feeds on Lucrative Captive Business*, Best's Insurance News, August 7, 2007.

JOINT
STANDING
COMMITTEE
HEARINGS

INSURANCE
AND
REAL ESTATE
PART 4
1022-1372

2008

Statement

Insurance Association of Connecticut

Insurance and Real Estate Committee

February 28, 2008

HB 5159, An Act Modernizing Insurance Department Fines and Making Minor Technical Revisions To The Insurance Statutes

The Insurance Association of Connecticut (IAC) opposes HB 5159, An Act Modernizing Insurance Department Fines and Making Minor Technical Revisions To The Insurance Statutes.

HB 5159 would increase all fines in the insurance statutes (Title 38a) by factors of up to twenty times the current amount or more, putting them at extraordinary levels in many cases.

HB 5159, while markedly increasing fine amounts, makes no distinction between willful and non-willful violations. The Insurance Department has historically used a multiplier when assessing existing fines and penalties (for example, multiply by number of transactions or violations), yet HB 5159 sets no new aggregate limits for these fines, despite the appreciably higher new individual amounts. Some fines are written in mandatory amounts, with no authority given the Commissioner to waive the penalty when circumstances merit.

Section 1 increases the general penalty, for a violation of any provision in Title 38a that does not have a specific penalty attached to it, from \$7500 to \$15,000. We understand that this general fine is extremely high in comparison to other states.

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By not distinguishing between willful and non-willful violations, by not putting caps on aggregate fines, and by exponentially increasing fine amounts, HB 5157 sets fining authorizes at levels that could be unreasonably punitive.

001066

**INDEPENDENT
INSURANCE AGENTS OF
CONNECTICUT, INC.**

30 Jordan Lane, Wethersfield, CT 06109
(860) 563-1950 (800) 842-2208
FAX (860) 257-9981



Warren C. Ruppard
President

February 28, 2008

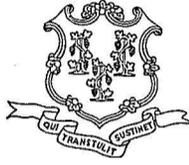
**Testimony of the Independent Insurance Agents of Connecticut
to the Insurance and Real Estate Committee
On House Bill 5159.
An Act Modernizing Insurance Department Fines and Making Minor Technical
Revisions to the Insurance Statutes**

Senator Crisco, Representative O'Connor and members of the committee, my name is Warren Ruppard and I am the President of the Independent Insurance Agents of Connecticut. The Independent Insurance Agents of Connecticut (IIAC) is a trade association representing more than 450 member agencies and their 3500-plus employees throughout the state. I come to you today to share our concerns with House Bill 5159.

HB-5159 would impose significant increases in the fines for violations of the insurance statutes. While IIAC supports a code of conduct and we as an industry operate to a strong code of ethics, we are concerned that the fines as proposed when used with the other penalties in the statutes may be too severe. In addition, we are concerned that the increase in fines may be viewed by insurance companies as a deterrent to entering Connecticut as a new company.

IIAC recognizes the need to continue to look at sources of revenue for the state. We ask that in this search, consideration be given to balancing the need to generate revenue with not being overly punitive on an industry.

We appreciate the opportunity to comment on this issue.



STATE OF CONNECTICUT
INSURANCE DEPARTMENT

**Testimony of the Connecticut Insurance Department
before
the Insurance and Real Estate Committee**

Thursday, February 28, 2008

Raised Bill 5159 -- Act Modernizing Insurance Department Fines and Making Technical Revisions to the Insurance Statutes

Raised Bill 5159 -- Act Modernizing Insurance Department Fines and Making Technical Revisions to the Insurance Statutes has been raised at the request of the Connecticut Insurance Department. The Department thanks Co-Chairman Crisco and Co-Chairman O'Connor for raising this bill on behalf of the Insurance Department.

Raised Bill 5159 is needed to update and harmonize the statutory fines and penalties intended by the legislature so that they may serve the public interest in effective punishment and in deterring future unlawful conduct.

As the Committee is aware, the Department administers and enforces the provisions of Title 38a of the General Statutes and seeks to encourage compliance by its regulated individuals and entities with the applicable statutes. However, when a regulated individual or entity has violated the law enforced by the Department, the regulated individual or entity may be subject to the imposition of an administrative fine as specified by statute. All fines and penalties imposed by the Department are deposited into the state's General Fund. In 2007, the total amount of fines and penalties totaled \$1.1 million.

Raised Bill No. 5159 adjusts for inflation the fines authorized by the insurance statutes for various violations of law using the U.S. Bureau of Labor Statistics Consumer Price Index.

The fines authorized in the insurance statutes have decreased overtime due to the effects of inflation. As noted in the spreadsheet attached to my written testimony, some fines have not changed in amount during the last 100 years.

We hope you support these recommendations to modernize the fines and penalties imposed by the Connecticut Insurance Department.

Raised Bill No. 5159

An Act Modernizing Insurance Department Fines and Making Technical Revisions to the Insurance Statutes.
 Purpose: To update the fines levied by the Insurance Commissioner to reflect inflationary increases and make minor technical revisions to the insurance statutes.

| Raised Bill | CGS Section Reference | Description | Date Penalty Enacted or Last Revised | Penalty or Fine | 2007 National Consumer Price Index | Suggested Change in Penalty or Fine |
|-------------|-----------------------|--|--------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| Sec. 1 | 38a-2 | General Penalty - Violation of any provision of Title 38a when no other penalty provided | 1983 | Not more than \$7,500 | \$15,685 | \$15,000 |
| Sec. 2 | 38a-41(c) | In addition to or in lieu of suspending, revoking an insurance company license for cause | 1967 | Not more than \$10,000 | \$62,365 | \$50,000 |
| Sec. 3 | 38a-48(h) | Assessment of payments by domestic insurers - if any assessment is not paid when due | 1984 | \$10 plus 6% per annum | \$20 | \$25 |
| Sec. 4 | 38a-53 | Annual and quarterly financial reports of insurers and health care centers - Late filing fee | 1988 | \$100 per day for each day overdue | \$176 | \$175 |
| Sec. 5 | 38a-90(fa) | Violation of the Managing General Agents Act - in addition to revocation or suspension of the person's license | 1991 | \$10,000 per violation | \$15,294 | \$15,000 |
| Sec. 6 | 38a-140(c) | Insurance Holding Company Act - any insurer that willfully violates the Act | 1992 | Not more than \$10,000 | \$37,117 | \$50,000 |
| Sec. 6 | 38a-140(c) | Insurance Holding Company Act - willful violation of Act by an individual, and/or 2 yrs in prison if fraud perpetrated upon Commissioner. | 1969 | Not more than \$3,000 | \$17,027 | \$15,000 |
| Sec. 6 | 38a-140(c) | Insurance Holding Company Act - and officer, director or employee who willfully and knowingly makes any false statement or report with intent to deceive Commissioner. | 1992 | 5 yrs. in prison, not more \$10,000 | \$37,117 | \$50,000 |
| Sec. 6 | 38a-140(e) | Insurance Holding Company Act - Any insurance company failing, w/o just cause, to file any registration statement required by 38a-135 | 1992 | \$100 per day; max. of \$10,000 | \$149 \$14,847 | \$150 \$15,000 |
| Sec. 6 | 38a-140(f) | Ins. Holding Co. Act - Any director/officer, willfully violates, assents to engages in transactions/investments not properly reported or permitted. | 1992 | \$5,000 per violation | \$7,423 | \$7,500 |
| Sec. 7 | 38a-164(b) | Insurance Premium Finance Companies - In addition to or in lieu of suspension or revocation of license, Commr. may impose a fine | 1971 | Not to exceed \$1,000 | \$5,143 | \$5,000 |
| Sec. 8 | 38a-226(b)(2) | Utilization Review - Violation of UR law, (in addition to suspension or revocation if it knew or should have know of violation - 6 mo. period) | 1988 | \$1,000/\$10,000 (\$5,000/\$50,000) | \$1,761/\$17,608 (\$8,804/\$88,039) | \$1,500/\$15,000 (\$7,500/\$75,000) |
| Sec. 8 | 38a-226(b)(4) | Utilization Review - Violation of cease and desist order of Commr. - a fine or suspension or revocation of license | 1988 | Not more than \$50,000 | \$88,038 | \$75,000 |
| Sec. 9 | 38a-226c | Utilization Rev. - Any provider, enrollee or agent providing fraudulent or misleading info. to a UR company - value of services, or fine | 1988 | \$5,000 | \$8,804 | \$7,500 |
| Sec. 10 | 38a-277(c) | Unauthorized Insurers Act - Premium tax - If insured fails to timely pay tax, penalty of 10% of tax or \$50 if greater plus 1% interest per mo. | 1989 | \$50 | \$84 | \$75 |
| Sec. 11 | 38a-278(a) | Unauthorized Insurers Act - Any unauthorized insurer doing any act of an insurance business set forth in section 38a-271 | 1969 | Not more than \$10,000 | \$56,757 | \$50,000 |

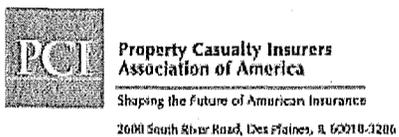
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|---------|------------|--|------|--------------------------------------|-------------------------------------|---------------------|
| Sec. 11 | 38a-278(b) | Unauthorized Insurers Act - Any person or insurer violating the Act shall be fined \$500 for first offense and \$500 for each month continues | 1969 | \$100 | \$2,838 | \$2,500 |
| Sec. 12 | 38a-287 | Defrauding life or accident insurance companies - if the sum obtained or attempted is \$100 or more - imprisoned not more than 10 years; if the sum is less than \$100, \$500 fine and/or imprisonment up to 1 yr. | 1902 | \$100 \$500 | (CPI from 1913) \$10,520 | \$2,000 \$10,000 |
| Sec. 13 | 38a-306 | Standard Form of Fire Insurance Policy - Each agent who makes, issues or delivers a policy of fire other than the standard form of fire ins policy or failure to provide timely notice of cancellation or discontinuation of group life coverage [Ct. § 38a-537] | 1893 | Not more than \$200 | (CPI from 1913) \$4,208 | \$1,000 |
| Sec. 14 | 38a-456 | Burial Contracts - Any person who violates any provision of section 38a-464 shall be fined and/or imprisoned not more than one year | 1990 | Not more than \$1,000 | \$1,586 | \$2,000 |
| Sec. 15 | 38a-464 | Individual Health Insurance - delivering any policy in violation of sections 38a-481 to 38a-488. | 1913 | Not more than \$500 Per offense | \$6,852 \$10,520 | \$6,000 \$10,000 |
| Sec. 16 | 38a-506 | Group Health Insurance - Failure by any individual or entity to furnish notice of cancellation or discontinuance of insurance to the insured | 1982 | Not more than \$1,000 | \$2,159 | \$2,000 |
| Sec. 17 | 38a-537(a) | Group Health Insurance -- delivering any policy in violation of sections 38a-512 to 38a-533, 38a-537 to 38a-542, and 38a-545 | 1990 | Not more than \$500 per offense | \$797 | \$1,000 |
| Sec. 18 | 38a-548 | Consumer Dental Plans - Any dental plan organization that violates or fails to comply with sections 38a-577 to 38a-590 | 1988 | Not more than \$1,000 per offense | \$1,761 | \$1,500 |
| Sec. 19 | 38a-588 | Fraternal Benefit Societies - Any person who makes a false/misleading stmt concerning fraternal contract benefits, etc.; fine and/or imprisonment | 1902 | Minimum \$100 Maximum \$500 | (CPI from 1913) \$2,104/\$10,520 | \$2,000 \$10,000 |
| Sec. 20 | 38a-622 | Fraternal Benefit Societies - Any person who makes a false/fraudulent statement on application for membership; fine and/or imprisonment | 1902 | Minimum \$100 Maximum \$500 | (CPI from 1913) \$2,104/\$10,520 | \$2,000 \$10,000 |
| Sec. 21 | 38a-626 | Fraternal Benefit Societies - Any person who solicits membership for or assists in procuring membership in unlicensed fraternal benefit society | 1902 | Minimum \$50 Maximum \$200 | (CPI from 1913) \$1,052/\$4,208 | \$1,000 \$4,000 |
| Sec. 21 | 38a-626 | Fraternal Benefit Societies - Willful violation, neglect, refusal to comply with fraternal benefit society statutes when no other penalty exists | 1902 | Not more than \$200 | (CPI from 1913) \$4,208 | \$4,000 |
| Sec. 22 | 38a-658 | Credit Life, Accident and Health Insurance - Any person, firm or organ. violating sections 38a-645 to 38a-658; fine and/or up to 2 yrs in prison | 1959 | Not more than \$250 | \$1,790 | \$1,500 |
| Sec. 23 | 38a-680 | Personal & Commercial Risk Ins. Rating Practices - Failure to comply with final order of Comm. \$1,000; if willful: \$10,000 and/or 1 yr prison | 1982 | Not more than \$1,000 / \$10,000 | \$2,159 \$21,585 | \$2,000 \$20,000 |
| Sec. 24 | 38a-703 | Soliciting business for unlicensed insurance company - any person who aids in such solicitation; fine and/or imprisonment up to six months | 1902 | Not more than \$100 | (CPI from 1913) \$2,104 | \$2,000 |
| Sec. 25 | 38a-704 | Insurance Producers and Agents - Penalty for acting as insurance producer without a license; fine and/or imprisonment up to three months | 1902 | Not more than \$500 | (CPI from 1913) \$10,520 | \$10,000 |
| Sec. 26 | 38a-713 | Signing or countersigning insurance policies in blank by insurance producer - fine and license revoked by the Commissioner | 1945 | Not more than \$100 | \$1,157 | \$1,000 |
| Sec. 27 | 38a-725 | Public Adjusters - Acting as a public adjuster w/o license; fine and/or imprisoned not more than three months (Firm sec. 38-71.) | 1902 | Not more than \$500 | (CPI from 1913) \$10,520 | \$10,000 |
| Sec. 28 | 38a-733 | Certified Insurance Consultants - Violation of any provision in section 38a-733; fine not less than \$50 nor more than \$500 | 1969 | \$50 minimum \$500 maximum | \$284 \$2,838 | \$250 \$2,500 |

| | | | | | | |
|---------|------------|---|------|---------------------------------------|--------------------------------------|---------------------------|
| Sec. 29 | 38a-734 | Certified Insurance Consultants - Penalty for receiving a commission paid by any insurer or producer: fine and/or 1 mo. to 3 months in prison. | 1969 | \$50 minimum \$500 maximum | \$284 \$2,838 | \$250 \$2,500 |
| Sec. 30 | 38a-735 | Certified Insurance Consultants - Penalty for acting as certified insurance consultant without a license: fine and/or up to 6 mo. prison. | 1969 | \$50 minimum \$500 maximum | \$284 \$2,838 | \$250 \$2,500 |
| Sec. 31 | 38a-764(b) | Fraternal Agents - Penalty for acting as a unlicensed fraternal agent (Note statute reclassified in 1991 using text of former section 38-234) | 1957 | Not more than \$100 | \$741 | \$10,000 Cf. § 38a-704 |
| Sec. 32 | 38a-772 | Licensing - In General - Willfully misrepresenting any fact in any application or doc. filed with Ins. Dept: fine and/or prison up to 6 mo. | 1949 | Not more than \$500 | \$4,376 | \$4,000 |
| Sec. 33 | 38a-773 | Licensing - In General - Any person impersonating another person in taking any Ins. Dept. license examination: fine and/or prison up to 6 mo. | 1949 | Not more than \$500 | \$4,376 | \$4,000 |
| Sec. 34 | 38a-774(a) | Licensing - In General - For cause, Commr. may suspend or revoke license and/or impose a fine not to exceed \$1,000 | 1967 | \$1,000 | \$6,237 | \$5,000 |
| Sec. 35 | 38a-777 | Surplus Lines Broker - Failure to make and file affidavit required by SL law or willfully makes false affidavit: fine and/or imprisoned up to 6 mo | 1953 | Not more than \$500 | \$3,901 | \$4,000 |
| Sec. 36 | 38a-786(c) | Certified Insurance Consultants - Failure to furnish Commr. requested information on business methods, etc. within 10 days of request: fine | 1969 | \$50 minimum \$500 maximum | \$284 \$2,838 | \$250 \$2,500 |
| Sec. 37 | 38a-790(b) | Motor Vehicle Physical Damage Appraisers - Any person who violates section 38a-790 shall be fined and/or imprisoned not more than 1 year. | 1967 | Not more than \$500 | \$3,118 | \$2,500 |
| Sec. 38 | 38a-792(c) | Casualty Claim Adjusters - Any person who violates section 38a-792 shall be fined and/or imprisoned not more than 1 year | 1947 | Not more than \$200 | \$1,868 | \$2,000 |
| Sec. 39 | 38a-817(b) | Unfair and Prohibited Practices - Any person violating sections 38a-815, 38a-816: fine, suspension/revocation, and/or restitution | 1973 | \$1,000 max/act \$10,000 max. | \$4,691 46,914 | \$5,000 \$50,000 |
| Sec. 39 | 38a-817(b) | Unfair and Prohibited Practices - Any person knowingly violating sec. 38a-815, 38a-816: fine, suspension/revocation, and/or restitution | 1973 | \$5,000 max/act \$50,000 max | \$23,457 \$234,571 | \$25,000 \$250,000 |
| Sec. 39 | 38a-817(e) | Unfair and Prohibited Practices - Any person violating a cease and desist order of Commissioner: fine or license suspension or revocation. | 1973 | Not more than \$10,000 per violation. | \$46,914 | \$50,000 |
| Sec. 40 | 38a-826 | Unfair and Prohibited Practices - Any misrepresentation inducing surrender of policy to replace it with another: fine and/or 30 days prison | 1929 | \$500 | \$6,091 | \$5,000 |
| Sec. 41 | 38a-830 | Unfair and Prohibited Practices - Violation of sections 38a-828 or 38a-829: fine \$500 for first offense, \$1,000 for each additional offense. | 1902 | \$500 \$1,000 | (CPI from 1913) \$10,520/\$21,040 | \$10,000/\$20,000 |
| Sec. 42 | 38a-843(2) | Conn. Ins. Guaranty Assoc. - Failure to pay assessment - license susp/revoc. or fine: max. 5% of assessment - min. \$100 per month. | 1971 | \$100 | \$514 | \$500 |
| Sec. 43 | 38a-868(b) | Conn. L & H Ins. Guaranty Assoc. - Failure to pay assessment - license susp/revoc. or fine: max. 5% of assessment - min. \$100 per month. | 1972 | \$100 | \$498 | \$500 |
| Sec. 44 | 38a-885 | Brokered Transactions Guaranty Fund - Penalty for false or untrue claim: fine. | 1989 | Not less than \$200 | \$334 | \$300 |
| Sec. 45 | 38a-886 | Brokered Transactions Guaranty Fund - Penalty to be imposed by Court among other things, for violation. | 1989 | Not more than \$1,000 | \$1,672 | \$1,500 |
| Sec. 46 | 38a-908(d) | Rehabilitation and Liquidation Act - Failure to cooperate with Commr.: Fine and/or 1 yr prison, or fine and revocation or suspension of license. | 1979 | \$10,000 | \$28,691 | \$25,000 |
| Sec. 47 | 38a-925(b) | Rehabilitation and Liquidation Act - Any agent failing to give notice or file report as required by section 38a-925: fine and/or license susp/revkd | 1979 | Not more than \$1,000 | \$2,869 | \$2,500 |

| | | | | | | |
|---------|------------|---|------|------------------------|----------|----------|
| Sec. 48 | 38a-935(b) | Rehabilitation and Liquidation Act - Violation of sec. 38a-935 recovery of premiums owed; susp/revk license and/or \$1,000 fine per act in vio. | 1979 | Not more than \$1,000 | \$2,869 | \$2,500 |
| Sec. 49 | 38a-997 | Conn. Ins. Information & Privacy Protection Act - Obtaining information about an indiv. from insurer/agent/org under false pretenses | 1981 | Not more than \$10,000 | \$22,915 | \$20,000 |

Note: 2007 National Consumer Price Index for the years 1913-2005 was obtained from the U.S. Department of Labor, Bureau of Labor Statistics /www.bls.gov/cpi/.

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STATEMENT

PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA (PCI)

**H.B. No. 5159 - AN ACT MODERNIZING INSURANCE DEPARTMENT FINES AND
MAKING MINOR TECHNICAL REVISIONS TO THE INSURANCE STATUTES**

COMMITTEE ON INSURANCE AND REAL ESTATE

February 28, 2008

The Property Casualty Insurers Association of America (PCI) appreciates the opportunity to comment on H.B. 5159, which would significantly increase the Insurance Department's penalty levels. 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 members represent 40 percent of the total property/casualty insurance market in the nation and 42 percent of Connecticut's property and casualty insurance coverage.

PCI respectfully requests that the Committee defer any action on H.B. 5159 and on any increases in the Insurance Department's statutory penalty levels until the issue can be examined more thoroughly. PCI members have raised many concerns regarding the Department's practices in assessing penalties that we would like to see addressed before statutory penalty amounts are increased so significantly. Furthermore, the revenue stream for a state agency should come from general revenues or from premium taxes, rather than penalties. Increasing penalty levels to such an extent raises concerns that this legislation could provide an added incentive to fine insurance companies in order to raise revenue. Finally, PCI is concerned that this bill is inconsistent with the national trend to improve state insurance regulation by moving market conduct regulation away from heavy reliance on monetary fines and penalties.

In reviewing the Department's proposed legislation, PCI members had no qualms over increasing penalties for knowing or willful violations of the insurance law. Such conduct deserves stiff sanction. However, questions surfaced over the Department's willingness to assess penalties for even minor infractions. Other states approach market conduct penalties much differently. Some alternatives for Connecticut to consider would be to follow a sliding scale penalty formula that takes into consideration the particular statute violated, the seriousness of the error, whether consumers were harmed, prior corrective actions by the insurer, whether the error was a one-time event or part of a recurring practice, and the NAIC error ratios. These factors would provide context and perspective to the regulatory scheme. The purpose of fines and penalties should be confined to major violations of the law and patterns of practice, not for individual clerical errors or mistakes.

Such an effort would be consistent with the current direction that the NAIC and other states are taking to improve state insurance regulation. Specifically, rather than relying on and resorting to administrative penalties and fines, the NAIC has developed a market conduct program that instead calls on regulators to take a "graduated" enforcement posture with insurers. Under this regulatory scheme, administrative fines would be reserved for willful conduct, recurring violations with substantial consumer consequences and the like. In addition, the NAIC program calls for Departments to consider a methodology for determining the amounts of fines, based on a host of criteria, including whether the problems have been corrected and other mitigating or aggravating circumstances.

Due to these concerns, PCI believes it is premature to increase statutory penalty levels to the extent called for in this legislation. Instead, the Department should undergo a review of its enforcement program to determine if it is using the best response to market conduct consistent with the current direction that the NAIC and other states are using.

For these reasons PCI respectfully requests that you do not take any action on HB 5159 at this time.