

PA 11-196

HB6238

House	4518-4571	54
Insurance	349-353 466, 467, 469-474	13
<u>Senate</u>	<u>6747-6765</u>	<u>19</u>
		86

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2011**

**VOL.54
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4474 – 4836**

vote is properly cast.

If all members have voted, the machine will be locked.

Will the Clerk please take a tally.

And would the Clerk please announce the tally.

THE CLERK:

House Bill 6598 as amended by House "A."

Total Number voting 144

Necessary for passage 73

Those voting Yea 144

Those voting Nay 0

Those absent and not voting 7

DEPUTY SPEAKER ALTOBELLO:

The bill as amended is passes.

Would the Clerk please call Calendar 59.

THE CLERK:

On page 3, Calendar 59, Substitute for House Bill Number 6238, AN ACT CONCERNING THE ACTUAL CASH VALUE OF A BUILDING, favorable report of the Committee on Insurance and Real Estate.

DEPUTY SPEAKER ALTOBELLO:

Representing Morris Cove and other fine areas of New Haven, Representative Megna of the 97th, you have the floor.

REP. MEGNA (97th):

Thank you, Mr. Speaker.

Mr. Speaker, I move the Committee's Joint favorable report and passage of the bill.

DEPUTY SPEAKER ALTOBELLO:

Question before the Chamber is passage of the bill. Please proceed, sir.

REP. MEGNA (97th):

Yes, Mr. Speaker.

This bill, essentially, really clarifies existing law that the practice of settling building damage settlements on homes or businesses, commercial buildings, is based on the actual cash value or the depreciated value of construction cost that is the cost to rebuild the building or repair it after a loss.

Now understand that the -- the entire regulated market with property insurance, with respect to buildings, is based on the cost to reconstruct or repair that building. And that's what you pay a premium based upon and that's what the settlement should be based upon. In fact, in the past, the Department of Insurance has rejected, not approved, any policies put forth in front of them that would

allow any other value to be used, such as a real estate market value.

So, essentially, what this bill does is just really define depreciation under actual cash value under the standard fire policy which is in statute 38a-307. And by doing so, it eliminates the ability of any carrier to use a value less than that of construction -- the cost of construction or repair.

The reason why this bill is brought before us, Mr. Speaker, is because way back in 1978 there was a Supreme Court case, I believe it was Sullivan versus Liberty Mutual Insurance, where Liberty Mutual was actual at -- arguing that the depressed real estate market value of a piece of property was the actual cash value and that -- that's what should be the settlement, not the cost to rebuild this building. And the Supreme Court, more or less, held that the real estate market value could be a factor because we don't really describe what constitutes actual cash value under statute, nor do we do so in the insurance policies.

Generally speaking, Mr. Speaker, most companies, 99 percent of all property insurance claims, are handled on an actual cash value basis

using construction cost and that's what this bill does. This bill simply clarifies that using the Department of Insurance's definition of depreciation with respect to buildings, which is wear and tear.

Mr. Speaker, the Clerk is in possession of LCO 7117. I ask that it be called and I be permitted to summarize.

DEPUTY SPEAKER ALTOBELLO:

Will the Clerk please call LCO 7117, which shall be designated House Amendment Schedule "A."

THE CLERK:

LCO Number 7117, House "A," offered by
Representative Mègna and Senator Crisco.

DEPUTY SPEAKER ALTOBELLO:

The good Representative begs leave of the Chamber to summarize.

Objection to summarization?

Seeing none, please proceed, sir.

REP. MEGNA (97th):

Thank you, Mr. Speaker.

This amendment simply changes the effect of date of the underlying bill to January 1, 2012, with that I move adoption.

DEPUTY SPEAKER ALTOBELLO:

The question before the Chamber is adoption of House "A."

Will you remark on the House "A"? Will you remark on House "A"?

If not, I'll try your minds. All those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ALTOBELLO:

Opposed.

Ayes have it. House "A" is adopted.

Further on the bill as amended?

Representative Sampson of the 80th, you have the floor.

REP. SAMPSON (80th):

That would be the 80th, Mr. Speaker, and thank you.

A couple of questions for the proponent of the bill, if I may?

DEPUTY SPEAKER ALTOBELLO:

Please proceed, sir.

REP. SAMPSON (80th):

Mr. Speaker, through you, to the proponent.

Is there a current definition in the

Connecticut General Statutes for ACV or actual cash value?

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

Do you -- do you mean with respect to buildings?

REP. SAMPSON (80th):

I -- through you, Mr. Speaker.

Yes, I mean, as far as an insurance statute that would affect residential property or rental property.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

Under the insurance statutes, no.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker.

Through you, once again.

Do any states currently, that you're aware of, define ACV in their statute?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

I'm not quite sure. There are states that literally pay replacement costs upfront so they -- so they don't necessarily need to define actual cash value, with respect to homeowner policies and possibly commercial policies.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker.

Through you, once again.

So if -- if that's true that we're not sure if there are any other states all -- define ACV and in -- currently in Connecticut, we do not. I would assume that the way the court has some sort of precedent that they use to determine ACV if there's ever a dispute in an insurance claim; is that

correct?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

There are disputed claims out there, Mr. Speaker. There's -- claims that go into arbitration, and so on and so forth, where the real estate -- a depressed real estate market value will be entered into the negotiation process and, as a result of this Supreme Court case, sometimes it's used and accepted even though it undermines and goes against the principles of the regulated marketplace.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker.

Okay. So we agree that there are disputed insurance claims. I didn't think there was any doubt about that, but the determination in one of those claims is really what we need to resolve is whether or not market value is something that is used to determine the final outcome in one of those

claims when we're referring to an ACV-type insurance policy. And so my question would be, is market value a parameter that is often used to determine the result in a disputed claim involving ACV insurance?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

Generally, no, real estate market value is not used.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker.

Through you.

I guess I'll switch gears then. Is there currently a generally accepted definition for replacement cost value in insurance policies?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

In terms of replacement cost, yes. It would be the cost to -- the reasonable cost to repair or rebuild the structure.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Through you, Mr. Speaker, once again.

Does the definition of replacement cost value ever include depreciation?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

Do you mean -- do you mean to say actual cash value or replacement value?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker.

Through you.

I mean replacement cost. I want to know if the replacement cost value definition might include the cost to repair or rebuild something but the definition may, in fact, factor in depreciation, or does it absolutely certainly never include depreciation? I'm trying to make a distinction between replacement cost value and actual cash value as it is taken care of in this bill. So I -- the question one more time is, when replacement cost value is defined in an insurance policy, do they ever factor in depreciation, or do they specifically exclude that from as a factor?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

In all policies, whether it's replacement costs or an actual cash value policy, they will -- if it's a replacement cost policy, they will talk about replacement costs, the cost to repair or replace without a deduction for depreciation and then they'll also talk about actual cash value. But in the policies they never define what constitutes

depreciation and in their financial interest, I can understand why they don't do that.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Through you, Mr. Speaker.

So if I could ask a couple more questions?

If it's not currently defined what ACV is in an insurance policy, who ultimately makes that final determination of what should be paid?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Like I said earlier, through you, Mr. Speaker, the common practice on 99 percent of the claims here in the state are the cost to rebuild or the cost to repair, less reasonable depreciation based on wear and tear or the deterioration of the -- of the actual property, and that's how settlements are arrived at.

Occasionally, and it's really an unfair process because depressed real estate market value is

normally are in urban areas, and you'll find that you could have the -- an identical property claim on a building in New Haven or Waterbury or Hartford to that of a wealthier more affluent neighborhood, the -- the same cost to repair or rebuild that structure, the same identical apparel for that structure, but yet, because of this Supreme Court case, an insurance company can go in there and pay a settlement less than the depreciated value of the cost of construction when those losses are identical. And this is not the intent of the market, the intent of the market is to indemnify that building owner to repair or rebuild that building and, through you, Mr. Speaker, I'm not quite sure if I rambled or answered -- answer your question.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker.

Through you.

I don't know that you've answered my question, but you did provide a lot of valuable insight, and I appreciate that. I think those comments were very

important. They lead me to two additional questions.

The first, I guess, I'm wondering what the purpose of this bill is if it's already a matter of course that 99 percent, as you said, of insurance policies are already satisfied as far as claims go using the current method, which is replacement cost, less depreciation. Did I understand that correctly?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Just to qualify, depreciation meaning the wear and tear of the -- the actual real property; is that what you meant?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Through you, Mr. Speaker.

Forgive me. I don't mean to belabor the point in any way. I don't mean to -- I'm asking questions. I'm not trying to say anything. I'm trying to find out from you whether or not this bill

is truly needed. First and foremost, because from what it sounds like, I don't know that there are any complaints at the insurance department that folks feel that they're being mistreated because they purchased a policy that is written on an actual cash value basis versus a replacement cost basis, or there is a misunderstanding about how that claim should be handled ultimately. And I'd just like a little more insight as -- as if there are any other claims and to -- and -- an example if you might have one.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Yes, there are claims. Some of them go to court, and homeowners and building owners hire attorneys to represent them, or they may go to an arbitration process or appraisal process which is set forth in most of these building policies and often they're settled, often they're settled on this depressed real estate market value.

And what is interesting is yesterday I received a call from an attorney whom said the carrier of a

homeowner -- owner-occupied homeowner, right in my city of New Haven, the carrier was attempting to pay a value less than the cost construction based on the depressed real estate market. Through -- so yes, it does occur. What percent of losses does it occur on? I can't quite quantify it but it does occur and it either results in an additional cost to that homeowner or building owner in representation or they -- there's a justification because of this Supreme Court case that they might have to accept that settlement which is less than the cost of construction, which actually puts them at a disadvantage in repairing their building, which is the intent of indemnification in a -- in a regulated marketplace.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker.

Well, I think that's pretty interesting that we've established now that there is no typical definition for actual cash value in our statute, and there is some doubt as to whether any other state

provides for such a definition. So I don't know if we want to enter into being the first state that does that, especially, if there might only be a small number of cases where there are some dispute.

And what's more -- I think it's interesting that in cases that go to court, they are often resolved with market value being the basis of such a claim. The reason why is say that is because I've been in the insurance industry myself for about 20 years. I got my insurance license right out of high school. And I have a great deal of experience with this specific type of insurance.

One of the things that I found myself doing early in my insurance career was selling property insurance to landlords and owner-occupied property owners that owned multifamily properties in depressed parts of the state, Waterbury, Bridgeport, for instance, where their replacement value for such properties might be excessive, and to produce an insurance policy based on those factors might be prohibitive to the consumer.

I use an example. A typical three-family house in the City of Waterbury might cost 500,000, for instance, to rebuild it today. If I was to sell a

client an insurance policy that required the insurance company to rebuild that structure and ultimately spend \$500,000 in the process of doing so, the premium on such a policy might be really, really expensive. It's going to be in the multiple thousands of dollars to do so. So very often because the type of insurance that we're talking about is prohibitive costwise, not to mention their property taxes which I'm sure that is no stranger to anybody in Waterbury, for them to make any money in the business of being a landlord, they've got to find an alternative. And the alternative is to purchase an ACV insurance policy. And I spent a few minutes yesterday contacting some insurance agents that I've done business with over the years, and it's been my experience and theirs, as well, that when purchasing an ACV insurance policy the consumer is informed that they're basing they -- the coverage for that policy on the market value.

So for instance, this same three-family house in Waterbury that might be 500,000 to rebuild, it might be worth 200,000 in the marketplace. So we would insure at the market value of 200,000. And the understanding is that the person, if there's a

lost to this property and it's an entire loss, there's a fire, the house burns down, that client is aware they're only going to receive the benefit up to the maximum that is listed on the policy. So they're not going to get their building rebuilt. So -- but they're very aware that they're going to be able to get enough money so they can go purchase a like-type of property because they're going to get back, you know, at least the majority of their money.

The thing is when we have a partial loss, and I think that is where this -- this bill is coming from, in the case of partial claim, someone has a kitchen fire or something like that, there has to be an alternative way to determine the value of the claim because the person failed to insure their property at the full 500,000 that they should have, and they only insured for a percentage of that. So in my experiences, those claims are determined using the same language that's in this bill, which is replacement cost less depreciation.

After years in the insurance business doing this, I can't recall a time where I had a consumer that bought a policy like this having an issue with

not being paid the proper amount once it was explained to them exactly why.

And I have a couple more things I'd like to say about it really quickly. One of them is that I spoke yesterday to a good friend who has been in the insurance industry for 20-plus years and they also teach continued classes here in Connecticut. And I asked him to send me some information regarding the difference between replacement cost value and actual cash value policies. And the very first thing I asked them out of their mouth was, if I called you out of the blue and I said, what's ACV? They told -- would told me market value. And I would venture a guess that if we stated doing that all around the state you'd find insurance agents would agree that ACV is indeed, market value. And she sent me this printout which basically said how ACV is determined. And it essentially says that insurance policies never contain a definition for ACV, and they look to the jurisdictional definition from the courts, just like you and I talked about.

But the number one factor when determining actual cash value is market value. So I think that we're -- we're getting off the beaten path if we're

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going to try and pass a bill that gets away from the definition of ACV being market value because once we do that you are now going to be in a situation where every policy that's offered either has to be full replacement cost, that guy has got to buy the 500,000, or he's got to buy a policy that is replacement cost less depreciation.

Now, on the claims end of a situation, I can understand that might make a lot of sense. But from the front end of the transaction when that client goes to buy that insurance policy, I don't know how we're going to determine that value. And maybe that's a question I can ask, through the Speaker, to the proponent of the bill, how an insurance agent or insurance company should determine what value if they should ascribe to a piece of real property when a consumer is asking for an ACV policy under the definition that would be in this bill.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

Insurers, most insurers in the regulated

market, now I got to -- I keep emphasizing regulated market, Mr. Speaker, because we have a residual, not admitted, surplus lines market which any type of policy could be sold, it could be bought. Fair market real estate value policy is probably available in this surplus lines market.

Getting to the -- your point, the Department of Insurance does not approve of any actual cash value policy based on real estate market.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

And thank you, Mr. Speaker.

Through you.

I believe that is true but only for residential owner-occupied property that does not apply to the circumstance that I just referred to which would be nonowner occupied multifamily dwelling or commercial property.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

All building policies, with all due respect, through you, Mr. Speaker, are based on the cost of construction. Whether it's -- and the intent in terms of actual cash value, whether it's a commercial policy or a homeowner policy because actual cash value is what is paid initially, even if there's a replacement -- even if it's a replacement cost policy, which all homeowner policies, I believe, sold are replacement cost. There may be an ACV policy out there, but they're all based on the cost.

All the -- the rate -- I call them "schemes" for lack of a better word -- whatever the -- the rate of process of each carrier presented to the Department of Insurance is based on the cost of construction. Real estate market value is not a factor. And like I said earlier, the Department rejects policies in the regulated market that would attempt to be sold based on the real estate market value.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Sampson.

REP. SAMPSON (80th):

Thank you, Mr. Speaker.

Through you.

I have to respectfully disagree. I did a great deal of research over the last 24 hours since the first -- I became aware that we might have this bill come before this body, and while it's true that access and surplus lines carrier -- carriers almost exclusively sell exactly what we're talking about, ACV policies based on market value, there are standard market carriers that do as well, and it's not hard to find. I -- I've made a few phone calls and I found quite a few insurance companies that -- that happily do, indeed, market their properties based on ACV. And the agents that sell those policies sell them absolutely aware that they are selling them as a market value alternative to a full replacement cost policy. And it's for the express purpose of helping to avoid -- landlords, specifically, that own property in depressed areas where the replacement cost insurance would be prohibited to them even obtaining the insurance and being able to keep their properties insured.

And this is -- this is my biggest fear with

this bill is that if we go forward with this, the only type of insurance that's going to be offered to these folks is either, A, a full replacement cost policy with a prohibitive price tag attached to it, or a not-admitted carrier, like we just talked about. I would much rather have our consumers buying insurance from admitted, regulated insurance carriers in our state than not-admitted access and surplus lines carriers that they have no authority over, and then, ultimately, there is the Connecticut Fair Plan, which I had a conversation with them also, and while they didn't come out and say so, the value that's placed on the policy is understood to be market value in the -- in that case as well. And I think that Fair Plan is the insurance of last resort, that's where somebody goes when they can't get insurance anywhere else. And I think if we're going to put the same kind of price tag characteristic on a Fair Plan policy, then that last resort goes away.

So with that, Mr. Speaker, I'm going to oppose this -- this bill, and I'm going to urge my colleagues to do as well.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Sampson.

Before we proceed to the next speaker, I'd just like to offer an apology to Representative Coutu, who I missed -- who wanted to speak on House "A." And once again, it was in -- in advertent, sir, and I do apologize.

Representative D'Amelio of the 71st, you have the floor, sir.

REP. D'AMELIO (71st):

Thank you, Mr. Speaker, and good afternoon to you.

DEPUTY SPEAKER ALTOBELLO:

Good afternoon.

REP. D'AMELIO (71st):

You know, I just -- I supported this bill out of committee, but after really looking at it and, you know, I spoke to Representative Megna yesterday. There is an unintended consequence if we do pass this legislation today that I didn't even realize, especially, like in the investment market. If you do own, like Representative Sampson said, a four-family house in the City of Waterbury and you have a \$200,000 mortgage, when you go to buy your

insurance, you need to buy at least \$200,000 worth of that insurance, and you're aware of that fact because your insurance agent will explain to you that if you want a true replacement cost value policy that could, you know, the replacement cost on a four-family house could cost you \$500,000, you would have to insure that property up to \$500,000.

If the language in the bill that's before us is adopted, my fear is that all policies would have to be written to have a true value to that property so the unintended consequence would be that insurance, especially, on the multifamily marketplace and even the residential side could be extremely expensive at -- at that point.

I understand Representative Megna's point on this bill because there is a problem out there, but my fear is that if we do adopt the bill, as written, that it really will have a negative effect in the marketplace due to, you know, for the high cost of insurance. And I don't think that's the policy that we're really trying or attempting to pass here at this time.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative D'Amelio.

Representative Smith of the 108th, you have the floor, sir.

REP. SMITH (108th):

Thank you, Mr. Speaker, and good afternoon.

DEPUTY SPEAKER ALTOBELLO:

Good afternoon, sir.

REP. SMITH (108th):

Just a few questions to the proponent of the bill, if I may?

DEPUTY SPEAKER ALTOBELLO:

Please proceed.

REP. SMITH (108th):

Thank you.

I'm a little bit confused in reading over the statute, but that's not hard to do for me, I guess. I'm just wondering whether this bill applies to both replacement value and actual cash value policies.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you -- through you, Mr. Speaker.

Yes, it does.

DEPUTY SPEAKER ALTOBELLO:

Representative Smith.

REP. MEGNA (97th):

-- in a regulated marketplace -- excuse me,
Mr. Speaker.

REP. SMITH (108th):

Thank you, Mr. Speaker.

And again, through you.

And as I understand a -- a full replacement value policy, if -- if a homeowner purchases a full replacement value policy, it is my understanding -- or has been my understanding that if there is a casualty where the house would burn down, then -- then the cost to replace that house and building would be paid for under the policy without any type of depreciation in effect; is that correct?

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

If they have a replacement cost policy,
Mr. Speaker, what generally occurs, depending on the carrier and the policy, but what generally occurs is that individual would be paid for the -- the actual cash value or the depreciated cost of the repairs

initially and then once repairs are completed, would be reimbursed for the differential.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Smith.

REP. SMITH (108th):

I apologize, Mr. Speaker. I just -- I didn't catch the last part of that. If he could repeat it?

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

Generally speaking, depending on the policy, policies could be written different ways, depending on the carrier and the broadness of the language of the policy, but for all intents of purposes, the depreciated value of the construction cost would be paid to the homeowner initially, whatever was agreed upon. After the repairs were undertaken, the differential between the replacement cost and that depreciated value would be reimbursed to the homeowner.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Speaker.

So through that analogy, then it would appear then that the homeowner would be made whole assuming that the property appreciated in value. If the property had not appreciated in value, would the homeowner then still be made whole under replacement policy as it exists today?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

If the homeowner or building owner has replacement cost coverage as adequately insured to meet the clauses in the policy, yes, they would be protected generally speaking, but as I mentioned earlier, sometimes there is a practice among a few carriers and a few individuals where they may attempt to pay a value less than what we're talking about here.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Speaker.

And again, through you, I'm not aware, and I've read over a number of insurance policies through the years, but I don't recall seeing anywhere on the dec page or throughout the policy where it talks about, for a replacement coverage policy, that it would be paid less depreciation. And I thought I heard you state earlier that's the standard practice, at least here in Connecticut, so I'm just wondering whether that's the practice or it's talked somewhere actually in the policy that it's replacement costs less depreciation.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

I would reckon to say, probably 70 to 90, 95 percent of replacement cost policies, whether they're on commercial properties or homeowners, will have a clause in there, a replacement cost clause, that says they pay the actual cash value at the time

of loss, assuming you're adequately insured, and then after repairs are undertaken, they'll reimburse you the differential.

You could have a company, Mr. Speaker, like I don't want to mention any companies, but there's premier companies out there that may alter that language and say we're not going to hold back the depreciation, we're going to pay you everything up front. There are companies out there like that. But the bottom line would be the scenario I just discussed.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Speaker.

And what concerns me is the comment that if you're "adequately insured" because I think if someone is purchasing a cash replacement policy, they're expecting that the property be replaced if there is a casualty. A full replacement cost policy cost more money, therefore, you expect to have the -- the property restored to its condition so, I guess, I don't understand when you say if it's

adequately insured. If you check the box, full replacement value, are you then not adequately insured or is there something else that the constituent or the homeowner should be looking for?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

Whenever you purchase insurance on your home or your -- or your commercial building, in the regulated marketplace, you want to make sure you have enough to rebuild the building, and the insurer wants to make sure you pay a premium based on that cost. So when I say "adequately insured," generally speaking, when you read this replacement cost provision, it essentially says if you're insured to 80 percent or greater of the replacement cost of the building, we will pay your replacement cost. If not, you may never collect more than the actual cash value, or you may, if you're insured a little -- a little under 80 percent, you may collect to some of that depreciation but never the full replacement cost.

As a general rule, that's the way most homeowner and commercial replacement cost policies read in the regulated approved marketplace.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Smith.

REP. SMITH (108th):

And, again, thank you for those answers. It's very helpful and insurance was always one of those areas that just confused me and still does.

Just looking at the language of this bill now, the question to you, the proponent of the bill, through you, Mr. Speaker, is it talks about depreciation off the value of the building and it then looks to the value of the real property. And I'm just not sure why those two are tied in together because I understand how real property can appreciate and depreciate, but if the cost -- the replacement cost of a building is a \$100,000, I don't see how the value of the real property has anything to do with the actual replacement cost of a building. Let's say \$100,000 and hopefully, that question is understandable, if -- if not, I'll try to rephrase it.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

I'm not quite sure, and I apologize what the question is. If you could please rephrase it?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Smith.

REP. SMITH (108th):

I'll try and do a better job.

Through you, Mr. Speaker.

Looking at lines 28 to 33, it talks about the actual cash value of the -- "at the time loss for a building shall be the amount which it would cost to repair or replace such building with material of like kind and quality, minus depreciation." All of that makes sense so far to me. Then it goes on to say "depreciation means, decrease in real property over a period of time due to wear and tear." So real property doesn't depreciate in my mind due to wear and tear. I could understand the building depreciating due to wear and tear, but real property is real property, you know, it generally stays the

same. So I'm just wondering whether that language there in line 32, instead of "real property" should actually read the value of the building over a period of time due to wear and tear.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

No, according to LCO that should be "real property."

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Smith.

REP. SMITH (108th):

And I'm just wondering, again, why real property is a factor in these -- in this situation.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Because of other areas of the statute, and LCO felt that that was the best -- best term to use, "real property."

Through you, Mr. Speaker.

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DEPUTY SPEAKER ALTOBELLO:

Representative Smith.

REP. SMITH (108th):

I have great respect for LCO and will abide by that decision, but I think, perhaps, we'll take another look at it if we have a chance next year to see if that really is the intent here because I think the real value of the property is going to increase in value or decrease in value based on the marketplace. The depreciation of a building is going to increase or decreased based on the wear and tear or the upkeep. And I think that's really what we're talking about.

I thank the gentleman for his answers.

And thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Smith.

Representative Coutu.

REP. COUTU (47th):

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

-- you have the floor.

REP. COUTU (47th):

-- and thank you from before. I know there

was a little mix up, but I appreciate your support.

I have a few questions, through you, and I'll just start out with a brief ideological view of the insurance market. The insurance market is based on risk. And it's a market where people, who need to protect themselves from risk, purchase a product from a company. And there's many companies -- and currently, as far as I can tell, there's multiple plans relating to actual cash value and replacement cost for residential and commercial buildings.

And I have a few questions trying to decipher this legislation. The first one, through you, Mr. Speaker, is will this piece of legislation, for the most part, remove actual cost value policies, for the most part, out of the regulated insurance market?

Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

I'm not quite clear on what that question is. But this language is placed in what we call a standard fire policy, Mr. Speaker, which is literally an insurance policy and statute which is

the basic element of all regulated building policies here in the state.

DEPUTY SPEAKER ALTOBELLO:

Representative Coutu.

REP. COUTU (47th):

The way I'm understanding this is that by passing this and basically saying replacement cost has to be, for the most part, the only way that someone could get insurance in the standard market. It would have to be full replacement cost coverage; is that true?

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

No. An individual or a business or -- or a three- or four-family home in a depressed area can insure that structure for just about whatever amount of money they would -- they would want to put on it. There are policies out there, in the regulated marketplace, that would have what we call co-insurance clauses where you could literally under insure, but you would become a co-insurer of that

property and the loss would be prorated with the insurer. So there's nothing in the regulated marketplace that, even with this legislation, that would limit the amount of insurance a building, other than a home, a commercial property could -- could buy. Whatever limit they choose to buy on that building, they could, whatever is affordable to them.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Coutu.

REP. COUTU (47th):

I thank the gentleman for his answer.

I have some concerns that, talking about actual cash value and some of the concerns that some of my colleague stated, this may put potential customers in a position where there really is just the option of replacement cost and, with that, it puts pressure on premiums because, as far as I can tell, there is a difference between actual cost value and replacement cost and the premiums are much higher because you're getting more coverage for potentially greater disaster where the building is completely demolished and then you want to replace it.

So with that I urge my colleagues to reject this legislation. I do believe, as some of my colleague stated, that it could influence the insurance market in a negative way. And secondly, it would increase premium costs for people who want to buy insurance for their homes.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Coutu.

Representative Schofield of the 16th, you have the floor, madam.

REP. SCHOFIELD (16th):

Thank you, Mr. Chairman.

Just a friendly question for my Chairman of Insurance Committee for purposes of legislative intent.

DEPUTY SPEAKER ALTOBELLO:

Please proceed.

REP. SCHOFIELD (16th):

In -- thank you, Mr. Speaker.

In lines 31 through 33 where it talks about depreciation including only wear and tear, when we talked previously, Representative Megna and I, I understood from him that that word "wear and tear"

included the concept of, sort of, obsolescence. So for example, where a roof might have been damaged in a storm that if the roof is more than 20 years old, it would be depreciated to reflect the fact that roofs are really only intended to have a 20-year lifespan, and so you would be paid less than if you had just put the roof on the year before. So I just want to confirm that my understanding is correct.

Through you, Mr. Speaker.

Thank you.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

That's absolutely correct.

DEPUTY SPEAKER ALTOBELLO:

Representative Schofield, further?

REP. SCHOFIELD (16th):

Thank you, Mr. Speaker.

That's all I needed.

DEPUTY SPEAKER ALTOBELLO:

Representative Williams of the 68th, you have the floor, sir.

REP. WILLIAMS (68th):

Thank you, Mr. Speaker, and good afternoon.

Through you, a question or two to the proponent of the amendment -- bill.

DEPUTY SPEAKER ALTOBELLO:

Please proceed, sir.

REP. WILLIAMS (68th):

Thank you, Mr. Speaker.

Through you, to Representative Megna.

I'm trying to sort of figure out the -- and there's a complicated issue, of course, and I'm trying to figure out what correlations this might have in other areas of the insurance world. And I -- I think about the auto insurance industry. If you were to buy a 2010, you know, Ford Taurus, and you would be insured for a certain amount from your auto insurance company, and you would pay a monthly premium and you would receive a certain benefit. But the benefit, if you were to have a car accident, would be that the insurance company would pay you, you know, they wouldn't pay you what bought, you know, what you paid for the car. They would pay you what the car is worth. Is that correct under our current law?

Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

There, again, I believe, you pay the actual -- they pay the actual cash value on the automobile policy. But, Mr. Speaker, what I want to point out to the good Representative is that the intent of this regulated market with building policies is to indemnify that building owner for the cost to repair or rebuild. And that's essentially what this clarifies. It clarifies the existing practice of indemnifying them for the cost to repair or rebuild, eliminating -- eliminating depressed real estate market values by affecting that settlement.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Williams.

REP. WILLIAMS (68th):

Thank you, Mr. Speaker.

And through you, to Representative Megna, the example or the analogy that you just used though would only be in the event of someone buying that policy; is that correct?

Through you.

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DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Through you, Mr. Speaker.

Buying a policy for a building in the regulated marketplace?

REP. WILLIAMS (68th):

That's correct.

DEPUTY SPEAKER ALTOBELLO:

Representative Williams.

Representative Megna.

REP. MEGNA (97th):

Yes, that's true.

DEPUTY SPEAKER ALTOBELLO:

Representative Williams.

REP. WILLIAMS (68th):

So I guess, through you, Mr. Speaker, my -- my question is certainly the markets are different, but the -- the thought process is that the auto insurance company only pays out what the value of that automobile is and the insured only pays a premium based on what their benefit is. And it -- it would appear to me that if we were to do it in the auto insurance world, anyway, the way that is

being proposed here today, that insurance premiums would go through the roof; is that correct?

Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

The actual cash value of an automobile under an automobile policy is not the same as the actual cash value of building damages under a building policy, Mr. Speaker.

We're dealing with construction costs and a depreciated construction costs. The fair market value of a car, I guess one could compare it to the fair market value of a building less the value of the land, if that's what you -- you want to do. But we're -- we're clarifying that we're dealing with just construction costs.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Williams.

REP. WILLIAMS (68th):

Thank you, Mr. Speaker.

And I know that's not a perfectly analogous situation but I guess my point is that what we may

be serving to do here is potentially increasing the cost of a premium through -- to a homeowner; is that incorrect?

Through you -- or building owner, I should say?

Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

That's absolutely incorrect, Mr. Speaker.

The entire marketplace is based on the cost of construction, and the settlements and loss ratio and all that are based on the -- the actual cash value or the replacement value of those settlements.

This bill should not impact the marketplace at all. It will just clarify the existing practice and make sure homeowners and building owners get enough money to repair their building, which is what is the intent of this marketplace.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Williams.

REP. WILLIAMS (68th):

Thank you, Mr. Speaker.

And I guess the confusion therein lies in the

fact that -- and I'm not on the insurance committee -- but it appeared to me that the insurers, who are certainly not without many faults of their own, seems to testify that this would have a significant impact in the marketplace; is that correct?

Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

No, that's incorrect, Mr. Speaker.

Many of the insurers already use this practice and had no issue with this bill. And none of them -- I have not heard from one carrier that told me that you're going to impact premiums, number one.

And

number two, Mr. Speaker, like I said before, the intent is to indemnify these building owners for a construction costs.

Through you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Williams.

REP. WILLIAMS (68th):

Thank you, Mr. Speaker.

I see here in the Insurance Committee's GAF

report that the Property Casualties Insurers Association of America, the Independent Insurance Agencies of Connecticut and the Insurance Association of Connecticut all testified in opposition to the bill and that -- and one -- at least one case, their testimony was that this would have a negative impact on the marketplace.

So I thank the gentleman for his answers. I, you know, certainly have a lot of questions about this bill and look forward to hearing further debate.

Thank you.

DEPUTY SPEAKER ALTOBELLO:

Representative Megna.

REP. MEGNA (97th):

Thank you, Mr. Speaker.

I believe the testimony that Representative Williams is referring to may be the original bill, which was much more comprehensive and had other items in it. I don't know if that testimony is direct with regard to clarifying actual cash value.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Megna.

Representative Sampson of the 80th, you have the floor.

REP. SAMPSON (80th):

Thank you, Mr. Speaker, for the second time.

With due respect to the Chairman of the Insurance Committee, he just stated that all property insurance is sold based on the replacement value, and it's not. I -- I can't say it any more clearly than that.

Ideally, all insurance policies might be sold on the replacement value of the cost to rebuild a structure, but in point of fact, many, many insurance policies are not. We had examples from my colleague from Waterbury, and throughout my career, I have sold many, many insurance policies.

In the real world, someone will come to you and ask for insurance on their property and you offer them the best possible insurance they can get, which would be the full replacement cost of that structure. But oftentimes, especially in circumstances like we've already described, the cost is prohibitive because the value of the property, the true actual cash value or market value, as I will clarify in a second, is much, much less. And

it would make no sense for that person if their only concern is to get back their investment rather than to have the building rebuilt to spend that kind premium.

So I guess this argument boils down to you get what you pay for. If consumers have the option to buy a full replacement cost policy, they should fully expect, if they're paying that kind premium source, they buy that kind of insurance, to get a full replacement cost policy. If they buy something less, an a ACV policy, which all it takes is a few minutes of Googling to find out that that's what the courts call ACV is market value, fair market value, that's what it is. Trying to say it's something different is only going to cloud the issue, cause insurance carriers to be wary of selling these types of policies, and, ultimately, it's going to drive up the cost of insurance for everyone, and leave that alternative out as an option for someone that might be a landlord in Waterbury or Bridgeport or someplace like that. And I think it's a -- Connecticut should not be the place to start that. We have enough issues as far as attracting business in Connecticut. I don't think landlords is

something else we want to go after.

And, again, I urge my colleagues to reject this bill. I think it is a poorly conceived idea and it is taking us down the wrong path. Other states have not done it. We should not be first.

And thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative.

Representative Hurlburt of the 53rd, you have the floor.

Oh, okay.

Further on the bill as amended? Further on the bill as amended? If not, staff and guests please retire to the well of the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber.

DEPUTY SPEAKER ALTOBELLO:

Have all members voted? Have all members -- if not the machine will be locked. Will the Clerk please take and announce a tally.

THE CLERK:

House Bill 6238 as amended by House "A."

Total Number voting	146
Necessary for passage	74
Those voting Yea	95
Those voting Nay	51
Those absent and not voting	5

DEPUTY SPEAKER ALTOBELLO:

The bill as amended passes.

Would the Clerk please call Calendar 224

THE CLERK:

On page 40, Calendar 224, Substitute for House
Bill Number 5368, AN ACT EXTENDING CERTAIN PET SHOP
LICENSEE REQUIREMENTS TO PERSONS AND ORGANIZATIONS
THAT IMPORT ANIMALS FOR ADOPTION.

DEPUTY SPEAKER ALTOBELLO:

Representative Hurlburt of the 53rd, you have
the floor, sir.

REP. HURLBURT (53rd):

Good -- good afternoon, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Afternoon, sir.

REP. HURLBURT (53rd):

And I apologize for having my -- my mic request
on prior. We were a little jumping the gun a little

**JOINT
STANDING
COMMITTEE
HEARINGS**

**INSURANCE AND
REAL ESTATE
PART 2
339 – 666**

2011

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lk/gbr INSURANCE AND REAL ESTATE
COMMITTEE

February 1, 2011
1:00 P.M.

CHAIRMEN: Senator Crisco
Representative Megna

VICE CHAIRMAN: Representative Johnson

MEMBERS PRESENT:
SENATORS: Kelly

REPRESENTATIVES: Altobello, Aresimowicz,
Dargan, Hoydick,
Roldan, Sampson,
Schofield, Yaccarino

REP. MEGNA: The first hour is reserved for legislative agencies and municipalities or should I say the first ten minutes.

And the first one on the list to testify is Representative Hennessey. Is he in the room?
No.

Representative Gonzalez? No.

All right. We'll move onto House Bill 6238. The first person up is Susan Giacalone or Bob Kehmna.

SUSAN GIACALONE: Good afternoon, Representative Megna, Senator Crisco, and members of the Insurance and Real Estate Committee. For the record, my name is Susan Giacalone. I'm here on behalf of the Insurance Association to testify in opposition to House Bill 6238, AN ACT CONCERNING REPLACEMENT COST COVERAGE UNDER HOMEOWNER'S INSURANCE AND COMMERCIAL RISK POLICIES.

Quite frankly, as this Bill has been written, we're not really sure what it's trying to

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1:00 P.M.

accomplish. The -- it includes some very confusing definitions and actually alters the very market, the competitive market that exists currently in Connecticut.

The way the market is designed is to provide insureds the ability to choose insurance products that best fits their need. Some of the policies that are out there are an actual cash value policy which provides the insured coverage up to a set dollar limit and a replacement value policy that provides coverage replacing, but that's if insureds replace -- actually replaces the home.

The terms that are used in this version of the bill actually takes terms that aren't -- you can't use in concert. They take terms that are very confusing. They actually have provisions that are contradictory to each other that makes some of the provisions even unworkable as written.

Additionally, it mandates that an insurer has to consider any reasonable cost values. Well, I don't know what that means. I don't know how that's -- when it comes into play, how it impacts the product. As it is right now, we have a very competitive market in Connecticut and we would like to see it remain the same. Thank you.

REP. MEGNA: Thank you.

I've got a couple of questions.

A VOICE: (Inaudible.)

REP. MEGNA: Okay. Senator Crisco.

SENATOR CRISCO: Do you have anything good to say

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about the bill?

REP. MEGNA: The -- actually, I was reading the testimony from the Property Casualty Insurers of America who represent a thousand companies and -- and they understood it.

What the bill intends to do is three things: Permit a property owner to partake in establishing how much insurance should be on a -- a building. Quite often they're denied that. And it's a very subjective number so we want -- we don't want people to be extremely overinsured, so we want to allow them to participate in that process.

And, number two, we don't want to -- on a replacement cost homeowner policy, we don't want an insurer to use fair market value for actual cash value when that's lower. The policy is rated on construction costs. And the actual cash value should be the depreciated, the wear and tear of those repair costs, not the fair market value if it's lower than that.

And number three, the replacement cost provision under most homeowner policies hold back the depreciation. And sometimes they never even pay that homeowner the depreciation even if they did the agreed repairs. And the carrier winds up keeping that depreciation, never giving it to -- never giving it to the homeowner. So what the -- what that aspect of the bill does is say you can't hold onto the depreciation under replacement costs. You need to pay that to the homeowner up front. That's what the bill is trying to do.

I know that you -- you -- you talked about a competitive market place, but homeowners

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1:00 P.M.

sell -- carriers sell actual cash values or replacement costs. However, some of them when they sell their replacement costs, they never give that replacement costs to the insured even though the insured does all the repairs just as is agreed to with the insurance company. And that's what that -- that issue is all about.

Thank you.

Are there -- are there any other questions?
No?

Thank you, ma'am.

SUSAN GIACALONE: (Inaudible).

REP. MEGNA: Sure.

SUSAN GIACALONE: (Inaudible).

REP. MEGNA: I'm sorry.

SUSAN GIACALONE: -- oh, I'm sorry -- the insured ability to partake in -- in --

REP. MEGNA: Yes.

SUSAN GIACALONE: -- the value. That's already there. I mean the insured can say they like to get insurance at a certain value, if the insurer doesn't want to do it at that value, there's other insurers who might. That's part of the function of the competitive market. So, again, there's some confusion in how this was written and how's that's applicable. And I think maybe we can continue to have some conversations. But as --

REP. MEGNA: Yeah, maybe that part isn't necessary.

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I understand what you're saying. And the carrier doesn't have to insure if the -- if the property owner just is stuck on a value and the insurer will not insure for anything less. I mean, it's the insurer's option just not to take the risk too.

SUSAN GIACALONE: But that's not how this is written. This is mandates that we have to take it at the insured's value. But, we'll, if you, you know --

REP. MANGA: I understand.

SUSAN GIACALONE: -- I'd like to continue conversations. Thank you.

REP. MEGNA: You might want to stay there though.

Anybody else to testify on 6238?

Thank you.

Actually, I'm going to go back to the Legislators and then I'll come back to you, Susan, because you'll be the next one up.

Representative Gonzalez.

REP. GONZALEZ: Good afternoon, Representative Megna, Senator Crisco, and members of the Insurance and Real Estate Committee. Thank you for giving me the opportunity to address the Committee on Bill 5565 and 6169 this afternoon. My name is Minnie Gonzalez. I'm a State Representative from Hartford, and I represent the Third District.

Although the bill that I'm going to refer to speak to territorial ratings and unfair situations that creates for people even in

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The Biller Law Firm, LLC
Jon D. Biller†
Frank J. Raio
Louise R. Zito†
Christopher M. GallagherOf CounselDoreen J. Bonadies^
Nicholas G. Sekas†#

January 31, 2011

Committee Members
Insurance and Real Estate Committee
Connecticut General Assembly

Dear Committee Members:

The undersigned has been licensed to practice law in both the States of Connecticut and New York for the past 25 years. My law practice is almost exclusively complex insurance litigation on behalf of consumers and policyholders. I have also held a Connecticut Public Insurance Adjuster's license for over 35 years. I write in support of HB6235 and HB6238.

With respect to HB6235, I understand this bill provides that insurance companies shall provide advance payments in situations where losses are covered and the need exists for funds. This bill would greatly help Connecticut consumers. I have personally been involved in hundreds of claims where coverage has been accepted but wherein the homeowner or business owner has been forced to wait sometimes for months before receiving any money on an insurance claim. It is important to note that this practice is not uniform throughout this State. For example, there are some insurance companies who readily provide advance payments once they have determined the loss is covered. Also once the insurance company arrives at an evaluation, some insurance companies will pay their evaluation as an undisputed offer or an advance. This bill is not directed to those insurance companies who provide reasonable advances and provide the payment of undisputed offers.

HB6235 is intended to address those others insurance companies who use their financial power to force their insured's to suffer what is sometimes unbelievable misery even when there is a covered insurance claim and they have an insurance policy they have paid for. I have represented homeowners who have lost their entire home and all of their belongings and who have waited months for payments to be made. I have also represented business owners whose losses are covered but some insurance companies refuse to make reasonable advances or to pay their offers as undisputed advances. I have a claim right now were the insured has not been paid

for fourteen months, even though the claim is covered and the insurance company made an offer months ago.

This bill does not require payments to be made where the loss is not covered or where the insurance company has denied coverage for the loss. However, where the loss is covered, Connecticut consumers should know that their insurance companies will be obligated to make reasonable advances to them, and this bill assures that all insurance companies doing business in Connecticut will be required to provide reasonable advances.

With respect to HB6238, I also strongly request this committee pass this bill. The undersigned argued the case of Northrop v. Allstate Insurance Company to the Connecticut Supreme Court. Prior to the Northrop decision, insurance companies required homeowners to rebuild their homes and borrow money despite the fact that they had a covered claim and an insurance settlement. While the Northrop decision has been helpful in allowing homeowners to rebuild their homes, there are many who cannot because the insurance company applies a holdback and contractors cannot afford to finance all of the work. By requiring insurance companies to pay replacement cost coverage without holdback, this bill will allow Connecticut homeowners to have the necessary insurance funds to repair their damaged homes.

In addition, I also support this bill because it clarifies that actual cash value is the cost to rebuild minus reasonable depreciation. Some insurance companies have taken advantage of the decline in the real estate market and have tried to equate actual cash value with the market value of the damaged property. In some cases, Connecticut consumers can insure their homes based on replacement cost, yet when they suffer a loss if their insurance company does not use replacement cost less depreciation to determine actual cash value, the insurance company can pay only a fraction of the amount of coverage arguing that market value is equivalent to actual cash value.

I have personally been involved in a number of cases where homeowners are unable to rebuild their homes because an actual cash value payment based upon market value will now allow the insured enough money to hire a builder to make the necessary repairs to their home. These bills will greatly help Connecticut consumers and I strongly urge their passage.

Sincerely,

Jon D. Biller

JDB/sc

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Warren C. Ruppard
President

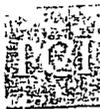
February 1, 2011

**Testimony of the Independent Insurance Agents of Connecticut
to the Insurance And Real Estate Committee
In Opposition to Raised Bill 6238**

Senator Crisco, Representative Megna and members of the Insurance and Real Estate committee, my name is Warren Ruppard and I am President of the Independent Insurance Agents of Connecticut. The Independent Insurance Agents of Connecticut is a trade association which has been located in Connecticut and has represented independent agents for 112 years. IIAC currently represents more than 400 member agencies and their associates as well as their 3500-plus employees. I come to you today to speak in opposition to Raised Bill 6238.

Replacement cost coverage and actual cash value coverage are two industry standards for establishing the proper amount of insurance coverage that an insured decides to purchase. The insured, working with their agent, selects the coverage and agrees to the type of coverage and values used for insurance. This allows the insured to manage their insurance purchase so that they will insure the amount of risk they desire at a price that is affordable to that individual. In addition, using replacement cost and actual cash value in its current form allows for flexibility of coverage and choices for the consumer.

The current usage of replacement cost and actual cash value is a proven method throughout the industry and no changes are necessary for Connecticut consumers. We urge the committee to oppose Raised Bill 6238.



Property Casualty Insurers
Association of America
Shaping the Future of American Insurance
1600 North State Road, Des Plaines, IL 60018-3200

STATEMENT

PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA (PCI)

H.B. No. 6238 – AN ACT CONCERNING REPLACEMENT COST COVERAGE UNDER HOMEOWNERS INSURANCE AND COMMERCIAL RISK POLICIES.

COMMITTEE ON INSURANCE AND REAL ESTATE

February 1, 2011

The Property Casualty Insurers Association of America (PCI) appreciates the opportunity to comment on H.B. 6238, which would define actual cash value for replacement cost coverage and prohibit the withholding of holdbacks by insurers. Our comments are provided on behalf of the member companies of PCI, a national property casualty trade association with over 1,000 member companies. PCI member companies provide 41 percent of Connecticut's property casualty coverage.

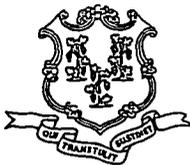
Replacement cost coverage provides an additional benefit beyond the depreciated actual cash value loss so that the insured is able to repair or replace the property. One of the basic principles of replacement cost coverage requires that the insured not receive the expanded indemnification provided under replacement cost coverage until the property is actually repaired and/or replaced. As a result, the insured first collects their depreciated or actual cash value loss, and when the property is repaired or replaced in accordance with the conditions of the policy, the insured is paid the difference between the actual cash value loss and the replacement cost loss. The money withheld is customarily referred to as a "holdback."

This bill would prohibit the insurer from withholding the payment in excess of the depreciated value in order to ensure that the property is rebuilt. This contradicts the premise upon which replacement cost coverage is based, which is to ensure that the homeowner is able to rebuild the property. Without a holdback, the insurer has no way to ensure that the property is rebuilt and the payment in excess of the depreciated value of the property simply becomes a windfall to the policyholder. Authorizing the provision of windfalls in connection with homeowners insurance would present moral hazard concerns and would not be beneficial. This would also likely result in increased premium costs for replacement cost coverage.

In addition to our concerns relative to the provisions prohibiting holdbacks, PCI is also concerned with the new subdivision b added by this bill and its requirement that insurers consider any reasonable cost values for a dwelling submitted to the insurer by the insured. We are concerned about what type of consideration would be required by the insurer and whether and to what extent the insurer would be required to take such values into account.

We are also concerned with the definition of actual cash value proposed subdivision c. The use of the word "rebuild" rather than replace is unusual and of potential concern. In addition, we are concerned that this definition may exclude the consideration of certain other factors which may be appropriate in determining actual cash value for a residential dwelling.

For the foregoing reasons, PCI urges your Committee to not favorably advance HB 6238.



STATE OF CONNECTICUT
INSURANCE DEPARTMENT

Testimony of the Connecticut Insurance Department

Before the
Insurance and Real Estate Committee

Tuesday, February 1, 2011

House Bill 6238 – An Act Concerning Replacement Cost coverage Under Homeowners
Insurance and Commercial Risk Policies

The Insurance Department submits the following testimony regarding House Bill 6238 – An Act Concerning Replacement Coverage Under Homeowners and Commercial Risk Policies. Respectfully, the Department would like the Committee to consider a few technical issues that could have the unintended consequence of eliminating several important consumer protections.

First, Section 1, subsection (b), appears to be a change in the industry standard for determining replacement cost of a home. For example, the meaning of the terms “reasonable cost value” and “appropriate amount of coverage” are ambiguous and it is unclear who will make the determination as to what is “reasonable” and “appropriate.” It is equally unclear who is required to make that determination and when the determination is to be made. The Department believes that consumers are better served if there is a clear understanding of how the replacement cost is determined.

Also, under subsection (c), the Department would like to note that changing the current definition of “actual cash value” may unintentionally inflate the actual cash value, by prohibiting an insurer from considering the age and obsolescence of the property. This could mean higher premiums for consumers.

In addition, the Department respectfully notes that by removing the term “replacement cost” and replacing it with “cost to rebuild,” very important consumer protections may be undermined. The current standard for replacement cost (C.G.S. sec. 38a-307) requires that a home be rebuilt with materials of like kind and quality. By changing the definition, it no longer requires replacement with materials of like kind and quality, which is not in the best interest of consumers.

Thank you for allowing the Department the opportunity to offer comments to this bill. As always, we are available to answer any questions the Committee has.

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L2**Statement****Insurance Association of Connecticut****Insurance and Real Estate Committee****February 1, 2011****HB 6238, An Act Concerning Replacement Cost Coverage Under Homeowners Insurance and Commercial Risk Policies**

The Insurance Association of Connecticut, IAC, is opposed to HB 6238 as it is confusing and will do severe harm to the homeowner's insurance market place in Connecticut.

HB 6238 unnecessarily alters the very nature of homeowner's coverage currently available in the market. The requirements set forth in HB 6238 do not exist anywhere else in the country. The market is designed to provide options to the insured when purchasing homeowner's insurance and the tools for insurers to underwrite and price such policies accordingly. Currently, an insured can choose a less expensive policy that is designed to provide coverage only to a set dollar amount (an actual cash value policy). Or the insured can choose to purchase a policy that will pay the insured to replace a property, known as a guaranteed replacement cost policy. HB 6238 attempts to statutorily define these products in a manner that is inconsistent with the market. The effect of the definitions contained in HB 6238 essentially eliminates the use of the current actual cash value policies widely purchased in Connecticut. The terms "actual cash value" and "replacement value" are terms that cannot be used in concert as is done in HB 6238.

The definitions and application of the provisions of HB 6238 are confusing. The inclusion of "depreciation" within the definition of (c) is nonsensical. Subsection (d) contradicts the provisions of subsection (c). Subsection (c) states that a "replacement cost" policy can account for depreciation, however, subsection (d) specifically prohibits any "holdbacks". If a "holdback" is depreciation, then this proposal is unworkable. If a "holdback" means a portion of money owed on a policy, this requirement ignores a fundamental concept of the replacement policy; that the full value of replacement is paid only if the property is actually replaced. By denying the ability of an insurer to

"holdback" such funds, the policy no longer operates as a replacement policy. Furthermore, the definitions used in this proposal are only applicable for total losses ignoring the vast majority of claims that only involve repairs.

HB 6238 mandates that an insurer "consider any reasonable cost values" that are submitted by the insured. What does this mean? At what point in the process is this applicable? If it's to be considered at the time of loss, how does one calculate the premium for such a policy? The value at which a property is insured is negotiable. If the insured and insurer do not agree on what value a property should be insured at, the insured has the ability to seek coverage from other carriers. This is a function of the competitive market place. Denying an insurer the ability to assess a risk and establish a value at which it is willing to insure it will be disruptive to the competitive marketplace that exists in CT.

HB 6238 could result in all insurers having to insure a property at a value established by the insured. Permitting the insured to self define the value of one's property for insurance purposes invites abuse and is a possible incentive to fraud.

The IAC urges your rejection of HB 6238.

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House Bill 6234.

Thank you, Madam President.

THE CHAIR:.

Mr. Clerk.

THE CLERK:

Madam President, calling from Calendar page 13,
Calendar Number 562, Substitute for House Bill Number
6238, AN ACT CONCERNING THE ACTUAL CASH VALUE OF A
BUILDING, as amended by House Amendment Schedule "A,"
LCO Number 7117, favorable report of the Insurance
committee.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President.

Madam President, I move for acceptance of Joint
Committee's favorable report and passage of the bill
in concurrence with the House.

THE CHAIR:

Approval on passage of the bill.

Will you remark further, sir?

SENATOR CRISCO:

Yes, Madam President.

I'd like to bring to the attention of the Circle

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that this is an extremely important consumer bill in regards to claim payments and -- and also reconstruction; that is, it clarifies the general practice of settling claims based solely on the value of the cost to repair or reconstruct the building at the time of loss. There has been a -- a trend sometimes when the market value of the property has been used as a computation of -- of a claim and that is extremely unfair and not right. The real estate market value has no reason to be related to the -- for the cost of construction or repair.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark further? Will you remark further?

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President.

Through you, to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR KELLY:

Thank you.

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Can you give us the change in definition of cash value?

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you.

In regards to the cash value, basically, it's the -- it's not replacement cost. It's the actual cost of repairing the particular damage to the -- either the resident or the -- a commercial building.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

And is there any offset or reduction for depreciation?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, current practice requires that there is -- there is some depreciation, and when the work is completed then there's a reevaluation and sometimes that depreciation is reimbursed.

THE CHAIR:

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Senator Kelly.

SENATOR KELLY:

Could you explain to us how the depreciation will be determined or what's the process that we're going to go through to determine the actual value of depreciation?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, I -- I believe it's a basic accounting principal in regards to a life of a particular structure, in regards to a life of a particular part of the building, so there's, you know, accounting procedure in addition to the adjuster's agreement with the insurance company as far they feel is the right amount for depreciation.

THE CHAIR:

Sorry -- Senator Kelly.

SENATOR KELLY:

And how would that happen or occur in the residential context?

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you to the good Senator, basically, it happens between either the adjuster for the insurance company and the contractor or sometimes an independent adjuster who works with the insurance company adjuster and the contractor.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Isn't that the current practice and procedure now being done under current law?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Yes, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Through you, Madam President.

So how would this bill change that practice?

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, there have been experiences in situations in the past where insurance companies have advocated the market value for the settlement of a claim and not the actual cash value.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

While I understand the -- the -- I'm going to say I'm going to break this -- this amendment in the definition down into two components. One is dealing with the cash value, and I understand how this legislation handles that aspect of -- of this transaction. But it's the -- the reduction or the -- the depreciation that I'm -- I'm dealing with and the definition on depreciation. How is that change -- how is that process changed under this current legislation?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you, I don't believe there's a change in the acceptable principle of depreciation.

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THE CHAIR:

Senator Kelly.

SENATOR KELLY:

So in this new language it says, as used herein, depreciation means, a decrease in value of real property over a period of time due to wear and tear. Now you indicated that we're going to use accounting principles and adjusters. The -- the language we're using says, wear and tear. Can you tell me how those differ or how they're -- they're similar?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you, to the Senator.

I believe they're the same.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President.

And thank you, Senator Crisco, for your answers with regards to my questions here this afternoon.

While I believe that his bill attempts to correct an issue by defining the actual cash value in a -- in

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a -- I'm going to say, a more comprehensive manner. I am concerned by the language included in this bill with regards to the depreciation and the decrease in value for real property over a period of time due to wear and tear.

The -- the bill does not define wear and tear. It doesn't explain how we're going to get to wear and tear. And I think if we're going to put in new definitions that could change the current practice -- and we heard testimony that the -- the current practice takes into account this process with adjusters but that's not in the bill. What's in the bill is a new definition, in my opinion, and that new definition, I think, lends itself to more confusion than answers, and for those reasons I would oppose the bill.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark further? Will you remark further?

If not, Mr. Clerk -- oh, sorry, Senator Guglielmo.

SENATOR GUGLIELMO:

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Thank you, Madam President.

I also rise in opposition to the legislation. Basically, there's a difference in how the actual cash value and replacement cost work and this would basically -- at least the way that I read it -- eliminate that distinction, force property owners to insure these at the replacement cost value which would increase their cost of the coverage, also actually, can't present a moral hazard because you have people that are buying homes, business, buildings at a -- right now, especially, at a fairly low rate because the market value has been decreasing. If they have to insure them for replacement cost, they'll be insuring them for a great deal more in many cases than they paid for the building. And you take -- even on a residential level, you take some of the older homes that are quite large in our small mill towns, where I live in Vernon and Stafford, these houses are not as popular as they used to be because they're expensive to heat, so you can get them at a fairly reasonable price. But if you're force to insure them for the replacement cost, then you're going to be pay -- you're going be insuring the house for more than you actually paid for it.

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Creates, I think, a lot of problems. And my understanding is there's a -- it's kind of a -- a solution chasing a problem. There haven't been many complaints at the insurance department that I'm aware of and that I don't believe anybody from the public testified in favor of this legislation.

Thank you, Madam President.

THE CHAIR:

Thank -- thank you.

Senator Frantz.

SENATOR FRANTZ:

Thank you, Madam President. Good afternoon.

And I have a question, through you, because I also have some concerns over this bill.

Through you, Madam President.

THE CHAIR:

Please proceed, sir.

Senator Crisco.

SENATOR CRISCO:

Yes, ma'am.

SENATOR FRANTZ:

Good afternoon, Senator Crisco. The question I have for you is when you define what the new cash value is going to be in this bill, does this take into

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account in antique homes something that may have been built 200-plus years ago and has, in fact, gone up in value, market value, because of its rarity, because of its potential historical value and other things that might make it a truly unique house, not so much in a replacement sense?

SENATOR CRISCO:

Madam President, through you, to the Senator, it could, depending upon the situation.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

I believe the answer was, it could, through you, Madam President, and I will accept that, but I couldn't find it, and I admit it's been a fairly cursory look that I've taken at the bill so far, but I couldn't find any language that deals with a unique situation like that, and -- and, therefore, unless there's an additional response, I think it does kind of open up a can of worms because you -- you may find the insurance company or the settler trying to argue that replacing this invaluable home after it got struck by lightning is going to cost X, when in fact it's worth 10X, and would have been worth 10X had that

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house been put on the market before it was struck by the bolt of lightning, so that's a concern of mine.

And the second question, through you, Madam President, is this, is the definition of depreciation -- we know that we have -- we know that we have adjusters coming into -- to look at a -- certainly, the record of a house that's been destroyed, but -- but there's got to be a wide range of different levels or intensities of depreciation in a home. I mean, for example, if you have kids that like to play indoor lacrosse or if you like to, you know, like to have a lot of dogs in your house and they're big aggressive bulldogs, they tend to chew up the floors pretty quickly, as well as the couch, and I'm just curious, through you, Madam President, if conditions like that -- circumstances like that might, in fact, be dealt with in the language of this bill?

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you.

I believe, from my knowledge, when a situation like that -- there are situations where the adjuster and the insurance company will try to come to a fair

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amount of reimbursement.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

Okay. Thank you. Could you rephrase the last part of that question?

Through you, Madam President.

I wasn't able to understand it.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, I stated that when there is a unique situation, as the good Senator was mentioning, from my experience, there -- the insurance company and the adjusters sit down and try to come to a mutual agreement.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

Thank you.

Through you, Madam President.

I wasn't able to go through too much of the testimony. I assume that this did generate a great deal of interest in the industry so I can't imagine

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there not being some good representation from the insurance industry, property and casualty, anyway, as well as the adjuster community.

Did they speak out in favor of this bill and with the amendment, which seems to be just a date amendment? We're they still in favor of this bill?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, from my recollection of the public hearing, I believe there was still, you know, some disagreement.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

Thank you.

Some disagreement, okay. That doesn't necessarily clear up the concerns that I have about this bill, and; therefore, I will be voting against it. I think I know where you're trying to go with this language, but there's always next year, and I would look forward to having a conversation with you to address those concerns for the next time around.

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And thank you for your answers.

And thank you, Madam President. Appreciate it.

THE CHAIR:

Thank you.

Will you remark further?

Senator Suzio.

SENATOR SUZIO:

Thank you, Madam President.

Just a quick question for the proponent.

Have there -- has there been an incidence or problems associated with this particular issue and have there been many complaints to the Insurance Department?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you.

I believe that's why the bill is before us.

THE CHAIR:

Senator Suzio.

SENATOR SUZIO:

And thank you.

Through you, Madam President.

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I haven't had a chance to read any public testimony. Could the good Senator just kind of recap what the testimony was regarding the experience or the problem that's generated the momentum for this bill?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, I'm not able to do that this time. I don't have copies of the testimony.

THE CHAIR:

Senator --

SENATOR SUZIO:

I'm sorry. I couldn't quite hear. Would you remind repeating --

SENATOR CRISCO:

Madam President, through you, to the Senator, I am unable to respond to that because I don't recall the testimony.

THE CHAIR:

Senator Suzio.

SENATOR SUZIO:

Thank you very much, Madam President.

Just through you, again, Madam President, Senator

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Crisco, you mentioned, I think, that -- that apparently there's been some issues or problems with this. Is there any statistics or quantitative way to establish what -- how big a problem this has been?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, I think I mentioned based on some testimony that I recall there has been a situation where the consumer has not been treated equitably.

THE CHAIR:

Senator Suzio.

SENATOR SUZIO:

Thank you, Madam President.

And then just finally, the Commissioner's Department on this supports this bill?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, I'm not aware of either way.

THE CHAIR:

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Senator Suzio.

SENATOR SUZIO:

Has the -- through you, Madam President, has the
Commissioner's Department taken any position on the
bill?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you, to the Senator, I'm
not aware.

THE CHAIR:

Senator Suzio.

SENATOR SUZIO:

Thank you.

Those are my questions, Madam President.

And thank you, Senator Crisco.

THE CHAIR:

Thank you very much.

Will you remark further? Will you remark
further?

If not, Mr. Clerk, will you please call for a
roll call vote? And the machine will be opened.

THE CLERK:

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

THE CHAIR:

Have all members voted? Have all members voted?
The machine will be locked.

And Mr. Clerk, will you please call the tally.

THE CLERK:

Madam President, the motion is on the adoption of House Bill 6238.

Total Number Voting	36
Those voting Yea	23
Those voting Nay	13
Those absent and not voting	0

THE CHAIR:

The bill has passed.

Mr. Clerk.

THE CLERK:

Madam President, the bottom of page 11, Calendar Number 520, Substitute for House Bill Number 6472, AN ACT CONCERNING HEALTH INSURANCE COVERAGE FOR OSTOMY SUPPLIES, as amended by House Amendment Schedule "A,"