



## Department of Business Regulation Insurance Division

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January 22, 2024

The Honorable Joseph J. Solomon, Jr., Chairman  
House Committee on Corporations  
State House  
Providence, Rhode Island 02903

Re: H7144 – COVID-19 Pandemic Insurance Recovery Act

Dear Chairman Solomon:

I am writing on behalf of the Department of Business Regulation, Division of Insurance to provide information on H7144. It is undisputed that any insurance policy which provided coverage for damages suffered by small business, or anyone else, as a result of the pandemic must respond with payment to insureds in the amount of damages covered by the policy. While there are still a number of lawsuits surrounding this issue nationally, numerous courts that have addressed this issue to date and have found that these particular types of damages were not covered under the policies at issue.

H7144, however, appears to retroactively alter an existing contract. Similar and/or identical bills were introduced in numerous states legislatures in 2020, 2021, 2022 and 2023. None of those bills were enacted. We are concerned about the availability of insurance to Rhode Island small businesses should we become the only state in the nation to enact such a bill. There are constitutional issues to retroactively changing a contract by statute, which we think would be legally challenged.

The bill also contains provisions whereby DBR will assess insurance companies and reimburse insurers who have paid claims. This would be an unprecedented use of assessment powers and very difficult to manage. To date DBR has never used an assessment to make payments to insurers (assessment are utilized to reimburse the state for costs of regulation). In addition, assessments are included in losses which are the basis for future rates so, ultimately, all insureds will pay for these claims in the form of higher future premiums. And since DBR is not used to actually paying claims, we do not have established procedures in place yet to protect against fraudulent claims. As such, in addition to developing payment processes, we would also need to establish safety protocols to combat fraudulent activity.

We would be happy to provide you with whatever additional information you would request. Please do not hesitate to contact me at [elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov) or 401.462.9615 (office) or 401.578.6653 (mobile).

Thank you for your consideration of our position on this proposed legislation.

Sincerely,

Elizabeth Kelleher Dwyer  
Director

cc: The Honorable John J. Lombardi;  
House Committee on Corporations  
Nicole McCarty, Chief Legal Counsel