Business Interruption Insurance Task Force
Report to the Governor and General Assembly
December 2020

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PA 101-0640

(20 ILCS 1405/1405-32)
(Section scheduled to be repealed on December 31, 2021)
Sec. 1405-32. Task force on business interruption insurance policies. The Department of Insurance shall appoint a task force on business interruption insurance policies consisting of no more than 10 members representing the Department of Insurance and the insurance industry. The Task Force shall include a representative from a national trade association, based in the State of Illinois, that represents insurers who provide a significant segment of market share of the commercial insurance provided in the State of Illinois. The Task Force shall study the impacts of the COVID-19 pandemic on businesses and the need for changes to business interruption insurance policies based on those impacts, including recommendations for legislation.

Task Force members shall serve without compensation but may be reimbursed for their expenses incurred in performing their duties.

The Department of Insurance shall provide administrative and other support to the Task Force.

The Task Force shall submit the report of its findings and recommendations to the Governor and the General Assembly by December 31, 2020. The Task Force is dissolved, and this Section is repealed, on December 31, 2021.
(Source: P.A. 101-640, eff. 6-12-20.)

Task Force Members

Saat Alety, Allstate	Kevin Martin, Independent Insurance Association
Chuck Feinen, State Farm	Andrew Perkins, National Association of Mutual Insurance Companies
Representative Norine K. Hammond	Senator Sue Rezin
Senator Napoleon Harris, III	Steve Schneider, American Property Casualty Insurance Association
Representative Thaddeus Jones	Shannon Whalen, Illinois Department of Insurance

Disclaimer

Per PA 101-0640, the Business Interruption Insurance Task Force was created to "Study the impacts of the COVID-19 pandemic on businesses and the need for changes to business interruption insurance policies based on those impacts, including recommendations for legislation."

At the beginning of each meeting, the Task Force made the following intentions clear:

1. The only official statement by the Task Force is the Business Interruption Task Force Final Report. All comments made throughout the process by members should be viewed as representing the individual opinion of those respective members and those comments serve as a function of the deliberative process necessary to develop a final report.
2. The Task Force took a high-level approach when reviewing the business interruption insurance market and the impact of the pandemic. The Task Force did not comment on any pending legal action or complaints filed with the Department. The Task Force did not review particular policies or contract questions. This report is not intended to address those specific disputes.

Background

The Business Interruption Insurance Task Force (Task Force) was created by Public Act 101-0640. The task force was enacted to study the impact of the COVID-19 pandemic on businesses and the need for changes to business interruption (BI) coverage in insurance policies, including recommendations for legislation to be submitted to the Governor and General Assembly by December 31, 2020. The Task Force is comprised of 10 members that represent the Illinois Department of Insurance and the insurance industry. Task force members served on the committee without compensation and were not reimbursed for expenses incurred as all meetings were held via Webex. Current coverage litigation, recommendations for changes to existing coverage, and complaints filed with the Illinois Department of Insurance were outside the scope of review for the Task Force meetings. The intent of the Task Force meetings was to foster open dialogue as the group prepared possible recommendations for legislation related to business interruption insurance coverage. The Task Force met publicly ten times to gather information and hear presentations concerning various topics such as BI insurance coverage, and proposals to aid in business recovery as a result of a pandemic. The Task Force also received data on the number of commercial policies with business coverage[1]. The meetings were open to the public, so consumers, advocate groups, and others were invited to join the meetings and were asked to identify themselves on the roll call. Attendance records can be found in the meeting minutes approved by the Task Force and included in the report appendices. The public was also offered the opportunity to comment on agenda items during the meetings.

At the time of drafting this report, Illinois and the world is experiencing a resurgence of COVID-19, and mitigation measures are being introduced to reduce and contain the pandemic until COVID-19 vaccines are widely distributed. As outlined in the Restore Illinois plan, decisive actions were necessary to curb the spread: "Governor Pritzker moved quickly to issue a Disaster Proclamation on March 9, restrict visitors to

[1] Appendix B

nursing homes on March 11, close bars and restaurants for on-site consumption on March 16, move schools to remote learning on March 17, and issue a Stay at Home order on March 21."[2] Additional Executive Orders were issued to address the evolving situation. From mid-March through late May, the General Assembly remained in recess but continued to safely work through various groups tasked with identifying policy areas that needed to be addressed when the General Assembly was able to reconvene, which occurred at the end of May. During the final three days of the scheduled session, the General Assembly took action on the key policy areas identified, including the creation of this Task Force.

On May 5th Governor Pritzker announced the Restore Illinois plan which outlined the phases for reopening and created eleven (11) regions statewide based on availability of hospitalization services.[3] Under the various phases of the Restore Illinois plan, different business and other activities would be impacted based on a region's metrics such as the available hospital beds and testing positivity rates. As a region met the criteria, additional non-essential businesses were allowed to operate. As of Friday November 20th, Governor Pritzker ordered Tier 3 mitigation requirements, such as closing bars and restaurants for indoor dining and limiting the size of gatherings, for all eleven regions due to the resurgence of COVID-19.[4]The executive orders in place are reevaluated and reissued every 30 days.

As a result of COVID-19, the nation's and Illinois' economy has suffered. The Task Force received projections that, nationally, business continuity losses (without regard to whether the business purchased a policy that included BI coverage, as has been proposed in some states) total approximately $1 trillion per month.[5] Losses for businesses with fewer than 100 employees produced monthly business continuity losses of $255 billion to $431 billion per month—and $393 billion to $668 billion per month for businesses with fewer than 500 employees nationally.[6]

Similarly, American Property and Casualty Insurance Association (APCIA) estimates that losses for Illinois businesses with fewer than 100 employees range from $1.9 billion to $7.9 billion per month. If you expand the scope to include businesses with fewer than 500 employees, that estimate grows to between $3.4 billion to $13.5 billion per month.[7]

Due to the increasing need for information, the National Association of Insurance Commissioners (NAIC) has been collecting data concerning BI coverage in insurance policies, and the Department of Insurance shared that information with the Task Force.[8] Here is a summary of the NAIC data[9] presented during the September 14th meeting:

National Data:

- Nearly 8 million commercial insurance policies include business interruption coverage. Of those, 90% were for small business, defined as having 100 or fewer employees; 8% for medium

[2] Appendix D
[3] Appendix D
[4] Appendix I
[5] Appendix A, pg. 4
[6] Appendix A, pg. 4
[7] Illinois-specific data provided by Task Force Member Steve Schneider of APCIA
[8] Appendix B
[9] Appendix B

businesses, defined as having between 100 and 500 employees; and 2% for large businesses, defined as having more than 500 employees.

  - Of all policies, 83% included an exclusion for viral contamination, virus, disease or pandemic, and 98% of all policies had a requirement of physical loss. (Small policyholders generally have a higher percentage of policies with exclusions.)
  - Total sum of premium was $44.2 billion; of that $9.2 billion is Business Owners Policies, and $35 billion is Commercial Multiple Peril.
    - Of this total premium 4.90% is specifically premium collected for business income coverage.

Illinois Data:

- Included in those national numbers are a little more than 355,000 commercial policies written in Illinois. Of those policies, 92% were for small business; and 7% for medium business with 1% for large.
  - Total sum of premium is $2.3 billion; of that $490 million is Business Owners Policies, and $1.8 billion is Commercial Multiple Peril.
    - Similar to the national numbers, 4.04% of the total premium is collected for business income coverage.

The Department of Insurance noted that while there is a breakdown by size of business, the data does not specifically tell a state how much premium for business income is dedicated to each business size. Furthermore, in a recent NAIC letter to Congress which was shared with the Task Force, the NAIC stated:

> *The data clearly illustrates insurers are largely unwilling or unable to underwrite the risk of a pandemic, creating an enormous coverage gap for American businesses and subsequent liability for American taxpayers. Going forward, Congress should consider proposals that depending on structure could limit taxpayer exposure to the economic consequences of the next pandemic without jeopardizing the solvency of the insurance industry. Therefore, the NAIC supports establishing a federal mechanism to help ensure widespread availability of business interruption insurance for pandemic risks.*[10]

In recognizing the need for a federal solution, the NAIC did not provide a specific solution nor take a position on any of the solutions already proposed; but the NAIC offered general policymaking parameters and considerations including affordability, insurer solvency, and burden to the taxpayers, that need to be weighed when crafting a solution.[11]

The remainder of this report will discuss additional information the Task Force received; provide an understanding of the insurance policy and of insurable and uninsurable risk; outline COVID-19 grant and relief programs for businesses; present solutions to address this economic risk that Illinois and the nation face as a result of such pandemics; and conclude with possible recommendations.

[10] Appendix C

[11] Appendix C

Defining Insurance

Background

This section of the report summarizes and expounds on the information Dr. Robert Hartwig, Clinical Associate Professor of Finance and Director of the Center for Risk and Uncertainty Management at the University of South Carolina Darla Moore School of Business, presented to the Task Force on September 14, 2020 and in his white paper shared with the Task Force and attached in the appendices of this report. The Task Force asked Dr. Hartwig to present on the foundational concepts related to BI insurance policies. Dr. Hartwig also served as President of the Insurance Information Institute from 2007 to 2016.[12]

Insurance Fundamentals

Insurance, in simple terms, is a risk transferring arrangement. The policyholder pays a known fee in exchange for an insurance company's promise to pay for covered losses. The insurer utilizes a pooling arrangement to spread loss reimbursement across a broad population, most of whom do not sustain damage during a given policy period. As Dr. Hartwig references, an insurer's ability to insure a specific type of loss hinges on six basic criteria:

1. There must be a large number of exposure units to distribute the losses of a few among the entire population of policyholders;
2. The cause of the loss must be accidental, unforeseen, sudden, and unintentional;
3. Damages must be identifiable and measurable;
4. The magnitude of loss-related damages cannot financially ruin the pool;
5. Loss probability must be calculable to allow modeling and establish pricing; and
6. The fee to transfer risk to the insurance company must be affordable for the policyholder.[13]

An insurance policy is a legal contract. The document defines terms; outlines insured perils, limitations, restrictions, and additional coverages; reviews settlement terms; lists policyholder responsibilities when losses occur, and more. Certain losses, which are typically catastrophic, widespread, highly destructive, or systemic, cannot be insured. Altering legal principles that govern insurance contracts could threaten insurer solvency and ultimately jeopardize policyholder benefits. It could also establish a precedent that any legal contract can be retroactively rewritten, regardless of industry or purpose.

Business Interruption Insurance Basics

Business owners often insure against physical damage to property from events like fire, tornado, vandalism, etc. Many business owners also seek coverage for the possibility that physical property damage may partially or entirely close the operation until repairs are made to reopen the property. The latter is called business interruption (BI) insurance. BI insurance typically covers the closed business's payroll, rent, and lost profits following covered physical damage. It protects the policyholder against loss while the

[12] Appendix G

[13] Appendix A, pg. 2

operation is suspended, pays lost revenue due to temporary closure, and covers increased expenses during the shutdown. Generally, BI insurance coverage requires evidence of direct material damage to property.[14]

BI insurance is optional and must be in place before physical damage occurs. Dr. Hartwig asserted that disease is not a physical loss as intended in BI insurance contract language.[15] As evidenced by the NAIC data presented in section 1 of this report, most BI policies also include a specific exclusion for loss caused by a viral infection. Policies may vary, but most insurers use standardized policy language published by licensed advisory organizations, which serve as national industry resources that develop and publish insurance policy language. The policies published by these licensed advisory organizations typically contain these physical loss requirements and/or virus exclusions. Ultimately, any contract disputes over BI coverage will be settled in a court of law.

History of Business Interruption Insurance Virus Exclusion

BI coverage complements the commercial property insurance policy. As evidenced by NAIC data presented in section 1 of this report showing the widespread use of virus exclusions in policy language, BI insurance policies do not anticipate coverage for damage linked to virus, micro-organisms, or pandemics, and therefore such risks are not included in insurer premiums. When the SARS contagion emerged around 2006, although small in scale, it sparked interest within the industry to add policy language clarifying and reinforcing that BI insurance does not extend to losses caused directly or indirectly by virus or most micro-organisms. Following the SARS outbreak, licensed advisory organizations introduced exclusions to explicitly clarify coverage did not extend to viral and bacterial contaminants. Most insurers adopted the standardized language and continue to utilize it today.

Systemic Risk & Insurance

Insurance is not intended to cover systemic risk. A systematic risk is a risk where:

1. Losses are widespread and cannot be distributed among policyholders;
2. The magnitude of damage in the aggregate has the potential to be so large that any meaningful commitment of industry capital is insignificant compared to policyholder loss and creates a solvency event for insurers; and
3. The risk is unknowable, making it impossible to calculate a sufficient premium to cover the loss.[16]

In the context of insurance, systemic risk could include, but is not limited to, mega-events with the potential to jeopardize enough insurers' financial stability that it could threaten the collapse of the entire industry. Terrorism is an example of systemic risk. Hurricanes, tornados, and wildfires are responsible for significant property damage each year but are not considered systemic risks. These non-systemic risks are insurable because they impact a specific number of policyholders for a limited time and the damages are identifiable and measurable.

[14] Appendix E
[15] Appendix B, pg. 4
[16] Appendix A, pgs. 2-3

Why Viral Pandemic is Uninsurable Business Interruption Risk

Global pandemics pose a systemic risk to the insurance industry and the overall economy. As Dr. Hartwig states, "pandemic risk cannot be spread, shared or diversified across policyholders."[17]

According to the International Monetary Fund, global economic loss to GDP from the current COVID-19 pandemic is anticipated to be $9 trillion.[18] In the United States, the estimated figure for just one month's COVID-19-related business continuity loss for all businesses is $1 trillion, according to the APCIA; when the scope was narrowed to only businesses with fewer than 100 employees that had BI coverage, APCIA estimated business continuity losses ranging from $52 billion to $223 billion per month.[19] These BI loss scenarios confirm that the entire property-casualty industry's financial solvency is at risk if carriers are forced to cover pandemic-related business interruption loss. Providing business interruption coverage for viral pandemics is unsustainable for private insurers because loss potential exceeds industry capital, surplus, and premium resources.

Pandemic-related business interruption risk violates all six insurability criteria previously referenced:

1. Pandemic risk cannot be efficiently pooled or spread among policyholders because virtually all businesses sustain loss simultaneously without respect to location. The ability to share risk is essential to insurance.
2. A pandemic is naturally occurring, but decisions to close businesses are deliberate – as are decisions about reopening. Insurers cannot calculate expected losses or manage premiums to accommodate claim deviations.
3. Pandemics are infrequent events of unknown duration and severity. Related business interruption losses may continue for months or even years. BI loss payouts are not manageable and endanger industry solvency.
4. A pandemic produces a potentially ruinous business continuity risk that is not locally or globally independent. Plus, other types of insured losses continue to occur at the same time business is interrupted. It is impossible to mitigate business continuity risk through diversification.
5. Insurers cannot appropriately price BI policies. There is no historical data to precisely model the frequency and severity of pandemic-related business continuity loss.
6. If premium could be established, the figure would most certainly be unaffordable based on billions of dollars in payout potential.[20]

Policyholder surplus backs up each line of insurance that companies offer. This calculation considers the insurer's assets minus liabilities. According to the Insurance Information Institute, the property-casualty industry's policyholder surplus stood at $812 billion as of September 30, 2019.[21] This figure rises and falls as asset values change. The industry needs at least $400 billion in policyholder surplus to meet minimum regulatory standards for financial stability. With some estimates of virus business interruption risks in the hundreds of billions and climbing, retroactive or prospective legislation forcing insurers to cover systemic

[17] Appendix A, pg. 3
[18] Appendix A, pg. 4
[19] Appendix A, pg. 4
[20] Appendix A, pg. 2
[21] Appendix K

risk would threaten the property-casualty industry's $812 billion capital base.[22] Either action would create a shockwave of insurance company insolvencies. Insolvencies would be disastrous for the broader U.S. economy which is dependent on insurance protection for commercial properties, homes, vehicles, injured workers, and countless liability exposures. Dr. Hartwig concludes that "apart from highly specialized, niche products, it is unlikely business continuity coverage for pandemic risks can be provided to the mass market by private insurers."[23]

COVID-19 Business Grants & Programs

As the adverse effects to businesses from the COVID-19 pandemic became apparent, various assistance programs were developed and implemented. Key assistance programs in Illinois included the Federal Paycheck Protection Program (PPP), the State of Illinois Business Interruption Grant (BIG) program, and a variety of municipal programs. These programs utilize funds made available by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Other available sources of relief include a sales tax deferral program for business struggling due to the pandemic and additional funding for Small Business Development Centers.

The Federal Paycheck Protection Program (PPP)

The Federal Paycheck Protection Program (PPP), which was administered by the Small Business Administration (SBA) was a low interest loan program established by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to help business keep their workforce employed during the COVID-19 emergency. Loans were based on the size of payroll and could be fully or partially forgiven if certain employee retention criteria were met and the funds were used for eligible expenses. According to information published by the U.S. Small Business Administration, 225,409 businesses and nonprofits had received $22.8 billion as of the end of June, with the average loan amounting to $101,368.[24] However, the last date to apply for PPP loans was August 8, 2020.

Business Interruption Grant (BIG)

Another assistance program is the Business Interruption Grant, also known as BIG. BIG was developed by Governor Pritzker and the Illinois General Assembly to provide assistance to small businesses that are struggling due to the COVID-19 emergency. BIG leverages $540 million of CARES Act funds to provide relief in two rounds of grant deployments. Approximately $270 million of these funds will go to small businesses in Illinois that have experienced eligible costs or losses. Another $270 million will go to Illinois childcare, day care, or early childhood education providers. Breakdowns of BIG distributions by Senate and House District are included in the appendix of this report.[25]

[22] Appendix K
[23] Appendix A, pg. 5
[24] Appendix A, pg. 5
[25] Appendix L

Additional Grants and Programs

Cook, DuPage, Will, Kane, and Lake counties received direct allocations of CARES Act funding to start their own grant programs. At the municipal level, the city of **Chicago** had a program that allowed grants to eligible businesses of up to $10,000 each through a lottery process. In **suburban Cook County and unincorporated areas**, eligible businesses received grants of $10,000 each. Eligible businesses in **DuPage and Will Counties** received up to $15,000 grants. **Kane County** allowed up to $20,000 grants, while **Lake County** allowed grants up to $30,000. In **all other areas of the state,** local governments applied for grants and dispersed them to eligible businesses from a combined CARES Act allocation fund.

In a further push to help struggling businesses, Governor Pritzker directed the Department of Revenue to defer sales tax payments for bars and restaurants that had less than $75,000 in sales tax liabilities last year. Although qualified taxpayers were still required to file their tax returns, penalties and interest were automatically waived if they could not make their full tax payment. This applied to tax payments due in March, April, or May. These deferred sales tax liabilities were then due in four equal installments to be made starting on May 20th and extending through August 20th.

In addition to the above initiatives, a $7.3 million investment was made from the U.S. Small Business Administration (SBA) to the Small Business Development Center (SBDC) program. This new funding will assist the SBDC network of 40 community-based teams in providing additional resources for education, training, and professional business advising for businesses impacted by COVID-19.

Federal Proposals

The Task Force hosted presentations by various entities on proposed broad-based federal solutions to address pandemic risks. These presentations included those from the National Association of Insurance Commissioners (NAIC), the American Property Casualty Insurance Association (APCIA), the National Association of Mutual Insurance Companies (NAMIC), Zurich, and Chubb. This section of the report summarizes the information presented by each group. The meeting minutes and associated presentation materials can be found in the appendix. [26]

NAIC Summary

Brooke Stringer, Senior Financial Policy and Legislative Advisor for the NAIC, provided a broad overview to the Task Force during the September 28th meeting. The meeting minutes summarizing her presentation are included in the appendix of this report. She noted that in March 2020, the National Association of Insurance Commissioners (NAIC) issued a statement to Congress opposing proposals to retroactively apply BI coverage to uncovered claims based on COVID-19 and expressing concern that requiring retroactive coverage would pose significant risks to the solvency of insurers and potentially systemic impacts to the sector and financial system as a whole.[27] Two pieces of federal legislation that

[26] See Appendix Items M-P

[27] Appendix C

could be retroactive in nature include the "Business Interruption Insurance Coverage Act" (H.R. 6494) by Rep. Thompson (D-CA) and the "Never Again Small Business Protection Act" (H.R. 6497) by Rep. Fitzpatrick (R-PA). Both proposals seek to require insurers to make BI pandemic coverage available based on, in the case of the Rep. Fitzpatrick proposal, the certification by the Secretary of the Treasury and the establishment of federal government backstop, or, in the case of the Rep. Thompson proposal, upon the effective date of the legislation. Both proposals nullify pandemic exclusions once those conditions are met, unless the policyholder is unwilling to pay for the additional coverage.

In May 2020, the U.S. House Small Business Committee held a forum entitled "Business Interruption Coverage: Are Policyholders Being Left Behind?" The NAIC submitted a letter, included in the appendix of this report, to the committee that made clear the expectation of state insurance regulators that insurers pay claims covered under policies but continued to raise concerns relating to the retroactive application of coverage. Several of the witnesses and members of the committee, both Democrats and Republicans, acknowledged the issues with retroactive application of BI coverage for viruses, and instead focused on the need for a future program to cover such claims. On November 19, 2020, the U.S. House Financial Services Committee's Insurance Subcommittee held a hearing on "Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers."[28]

Ms. Stringer said that in May 2020, Rep. Maloney (D-NY) introduced the "Pandemic Risk Insurance Act (PRIA)" (H.R. 7011), that would operate in a manner similar to the Terrorism Risk Insurance Act (TRIA). PRIA would establish the Federal Pandemic Risk Reinsurance Program to provide a system of shared public and private compensation for BI loses resulting from a pandemic. Subject to certain conditions, deductibles and caps, the program would cover insured losses arising from public health emergencies. It would be authorized for seven years and administered by the U.S. Treasury Department. It also has the following features: $750 billion program cap; voluntary "make available" program for insurers; federal government fully covers 95% of losses; private market deductible of $37.5 billion; covers BI and event cancellation; and triggered when $250 million of aggregate insurer losses from a covered health emergency.

The American Property Casualty Insurance Association (APCIA), the National Association of Mutual Insurance Companies (NAMIC), and the Independent Insurance Agents & Brokers of America developed a counterproposal called the Business Continuity Protection Program (BCPP) that would be a business revenue reimbursement program. The BCPP would utilize a parametric approach and involves the federal government paying up to 80% of revenue replacement for businesses upon the declaration of a public emergency. Insurers and other entities would serve as a premium and claim processors and would not take on any risk under the proposal. Chubb has also put forward a proposal and Zurich has developed a concept that looks at the effectiveness of the existing Federal Crop Insurance Program for potential solutions. The policyholder community is also developing a proposal. There is not any legislation yet based on these proposals. Ms. Stringer said it is anticipated that discussions relating to a future program will continue over the next several months, but nothing is expected to be enacted into law this year.

In October 2020, the NAIC released a statement supporting the establishment of a federal mechanism to help ensure widespread availability of BI insurance for pandemic risks. While the NAIC does

[28] Appendix J

not have a position on any of the specific proposals at this time, to the extent the insurance sector or insurance contracts are the vehicles used to address such risks, they believe it is critical that any federal legislative solution be designed in a manner that does not undermine state insurance regulatory authorities to protect insurance consumers and ensure the solvency of the industry. It also must not jeopardize the financial condition of insurance companies or affect their ability to pay other types of claims. Finally, any solution should be affordable to policyholders to ensure adequate take up rates, but also reduce the overall taxpayer exposure to risks from a pandemic.

APCIA/NAMIC/IIABA Business Continuity Protection Program (BCPP)

Donald Griffin, Department Vice President, Personal Lines with the American Property Casualty Insurance Association (APCIA), and Jon Bergner, Vice President of Public Policy and Federal affairs with National Association of Mutual Insurance Companies (NAMIC), presented on the Business Continuity Protection Program (BCPP) to the Task Force during the October 13th meeting. The APCIA/NAMIC presentation materials and the meeting minutes summarizing the presentation are included in the appendix of this report. The objectives of the BCPP are to understand and work to address business needs, particularly those of small businesses. The BCPP, endorsed and strongly supported by the APCIA, NAMIC, the Independent Insurance Agents' and Brokers' of America (IIABA), and the Illinois Insurance Association (IIA), creates a protection plan to address business needs in the aftermath of a pandemic. The BCPP creates a solution to help the United States' economy manage the risk of future pandemic events, facilitate economic recovery and assure a more resilient economy for the future.

The BCPP would work by creating revenue replacement assistance to the business community. Businesses could purchase protection for up to eighty percent of their payroll, benefits and other necessary expenses for three months. The United States Department of the Treasury would administer the program, with limited voluntary administrative assistance from insurers. A one-page electronic application would be utilized to provide impacted businesses access to a program that would provide immediate relief in a future pandemic crisis. Revenue replacement would be based upon previously filed federal income tax returns. The BCPP would be available to any interested business in the United States, inclusive of profit and non-profits organizations. Businesses would have had to have been enrolled for at least ninety days prior to a presidential declaration of a pandemic emergency.

Supporting groups believe that BCPP would be beneficial to the national economy because it would preestablish a mechanism, exclusively underwritten by the federal government (but the government may purchase reinsurance), for distributing immediate closure relief to covered members. This mechanism would provide economic and legal certainty to businesses in need and the general economy at a time of tremendous economic stress.

Zurich North America Prospective Pandemic Concept

Deirdre Manna, Senior Vice President and Head of Government Affairs in North America for Zurich North America (Zurich), presented on the Zurich North America Prospective Pandemic Concept to the Task Force during the October 13th meeting. The Zurich presentation materials and the meeting minutes summarizing the presentation are included in the appendix of this report. Zurich strongly believes there is a meaningful role for insurers to play in managing the difficult exposure of pandemics while leveraging the financial stability and scale that only the federal government can deliver. They developed a concept that they believe has merit and looks at the effectiveness of the existing Federal Crop Insurance Program for potential solutions.

Zurich's draft concept for facilitating pandemic protection aims to provide essential liquidity to businesses resulting from federal and state mandated shut-down orders. Pandemic policies would cover 80% of a business's critical operating expenses for up to three months. Policy limits and benefit payment schedules by state would be set within the policy at time of issuance. At time of loss, payments would immediately be distributed per the policy schedule after two event triggers were met; a federal health emergency declaration activating the program and then state-level health emergency closure orders specifically impacting the policyholder's business type. Payments would require no validation or verification prior to distribution. Businesses would be required to self-certify that they suffered an economic loss, potentially via the subsequent year tax return process. If no loss were incurred, they would be required to return any funds received.

The U.S. Department of Treasury would administer the federal pandemic protection program. This includes developing the product, ratemaking and administration. The product would be distributed by state-licensed agents and brokers and underwritten by property & casualty insurance carriers. Insurers offering property and commercial multi-peril quotations would be required to offer a pandemic protection product quote based on the federal rules and rates. Businesses could qualify for preferred pricing discounts by demonstrating adoption of certain risk mitigation and resiliency standards and best practices. The program would include a federal preemption like the Federal Crop Insurance Program, alleviating the need for carriers to file forms, rules and rates with state departments of insurance.

Businesses could choose to purchase the product and carriers would be required to accept all customers. Carriers would then participate in a federal reinsurance program, again modeled from the Federal Crop Insurance Program. Carriers would decide based on their own underwriting appetite how much risk, if any, they wish to retain by placing individual policies into one of three reinsurance programs: a 100% ceded treaty, a 95% ceded treaty or a 90% ceded treaty. The federal reinsurance program treaties would have no annual or occurrence cap, providing carriers with certainty around the risk they have retained.

The Chubb Pandemic Business Interruption Program

John Fielding, Senior Vice President and General Counsel, Global Government and Industry Affairs with Chubb Insurance Company (Chubb), presented on the Chubb Pandemic Business Interruption Program to the Task Force during the October 26th meeting. Chubb's presentation materials and the meeting minutes summarizing the presentation are included in the appendix of this report. Chubb asserted that because some risks – such as pandemics – create losses so extensive that they are not insurable in the traditional private insurance market, any solution to address losses in future pandemics will require the federal government to play a significant role in providing protection to businesses. Nonetheless, Chubb believes there is a critical role for insurers to play, not only in administering a pandemic insurance program, but in taking on risk. If the federal government can establish appropriate guardrails and create a sensible program, structured to limit the risk insurers are assuming on their balance sheets, Chubb believes the industry can play a risk-sharing role alongside the government. They believe it is important for industry to participate in the solution by taking on risk because industry involvement can help drive better behaviors. It can lead to better understanding of pandemic risk, risk mitigation and preparedness, as well as an opportunity for increased risk-sharing over time as direct and secondary markets develop.

The Chubb proposal creates a framework with two main components: one for small businesses and one for medium and large businesses. They have bifurcated the program because pandemics affect small businesses differently. Many small businesses have limited financial resources, with less liquidity, less access to capital, credit, and other risk-management mechanisms than larger businesses. Their needs are different and require a different approach than larger businesses.

The first part of the Chubb proposal is the Business Expense Insurance Program (BIP) for businesses with up to 500 employees. The BIP provides coverage for up to three months of payroll, with payments made upon government declaration of a pandemic or related lockdown. The parametric claims structure allows for immediate payments and avoids the complexity of adjusting individual claims. The program limit is $750 billion, with insurers taking $15 billion in the first year, increasing to $30 billion over the life of the program. Policyholders pay premium on the insurers' portion of the risk, but not the government portion, which ensures affordability and will encourage take-up. While not mandatory for companies to purchase coverage, there would be a strong opt-out and companies that choose not to purchase coverage would forego access to any federal assistance in the event of a future pandemic.

Part two of the program creates a federal reinsurer: Pandemic Re (Pan Re). Businesses with more than 500 employees could purchase BI coverage on a voluntary basis from private insurers, who would cede a share of the risk (and premium) to a government reinsurer. Coverage would be limited to $50 million per policy, and the industry retention would not exceed $15 billion initially, increasing to $30 billion over the life of the program. Pan Re would have a finite risk aggregate limit of $400 billion representing the maximum potential obligation of the government and participating insurers. Capacity could be increased with the addition of more government funding if desired.

Additional Federal Proposals

As part of Ms. Stringer's NAIC presentation, she provided an overview and status update on additional federal solutions proposed in Congress in addition to the general parameters summarized earlier in this section. The additional proposals she presented on are outlined below.

Pandemic Risk Insurance Act of 2020 (PRIA) U. S. HR 7011

The Pandemic Risk Insurance Act of 2020 was introduced on May 26, 2020 by Representative Carolyn Maloney (D-NY) and was referred to the House Committee on Financial Services. As of November 5, 2020, the bill has 27 cosponsors. *The bill is not expected to be signed into law this year but is expected to be reintroduced next Congress.*

This bill would create a reinsurance program similar to the Terrorism Risk Insurance Act (TRIA) for pandemics by capping the total insurance losses that insurance companies would face. Insurers would be able to elect to participate in the program if they meet certain criteria. Specifically, insurers participating in the program would be required to offer, in all BI insurance policies, coverage for public health emergencies related to an outbreak of infectious disease or a pandemic declared on or after January 1, 2021, and certified by the Department of Health and Human Services.

The program would be triggered when aggregate industry insured losses for participating insurers resulting from a covered public health emergency exceed $250 million. The bill establishes the share of insured losses the federal government would cover, conditions for federal payments to participating insurers, a $750 billion annual cap on total program (insurers and the federal government) liability for insured losses, and the amount of insurer deductibles. The bill also provides for the treatment of existing BI insurance policies and state residual market insurance entities; accordingly, insurers may be liable for program losses even if they choose not to join the program. The Government Accountability Office would be required to report on the availability and affordability of BI insurance.

On September 10, 2020, Representative Maloney hosted a roundtable discussion with stakeholders to discuss her legislation. On November 19, the House Financial Services Subcommittee on Housing, Community Development and Insurance held a hearing entitled “Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers,” and the committee examined this legislation.[29]

Business Interruption Relief Act of 2020 (H.R. 7394)

On June 26, 2020, the Business Interruption Relief Act was introduced by Representative Mike Thompson (D-CA) and referred to the House Committee on Financial Services. As of November 5, 2020, the bill has no cosponsors and is not expected to gain any further supporters or move further this Congress.

The bill would establish within the Department of the Treasury the Business Interruption Relief Program, a temporary voluntary federal financial assistance program for insurers that voluntarily pay benefits under certain policies for COVID-19. Specifically, an insurer would qualify for the program if the insurer has at least one outstanding and existing policy for BI coverage that expressly covers losses during a civil authority shutdown as a result of the COVID-19 pandemic, and expressly excludes coverage for a virus.

This bill appears to be very similar to the proposal set forth by the restaurant group, the Business Interruption Group. The Business Interruption Group is a coalition of celebrity chefs and restaurant owners that sought to gain assistance from Congress for losses to their businesses. The lawyer representing this group has introduced several lawsuits against property-casualty insurers disputing the terms of claim payments provided under BI policies.

[29] Appendix J

Never Again Small Business Protection Act of 2020 (H.R.6497)

On April 14, 2020, the Never Again Small Business Protection Act of 2020 was introduced by Representative Brian Fitzpatrick (R-PA). As of November 5, 2020, the bill has six cosponsors and is not expected to gain any further supporters or to move further this Congress.

This bill would require that insurers offering BI coverage must offer additional coverage for losses that result from business interruption due to a federal, state, or local government order to close during a national emergency. This coverage would not apply to losses incurred by an otherwise qualified business if that business involuntarily terminated the health care or the employment of an employee during the national emergency period. An insurer would be permitted to exclude this additional coverage from a contract for BI coverage if the insured agrees in writing, or if the insured fails to pay the corresponding premium increase. The bill would become effective only upon certification by the Department of the Treasury that a federal backstop exists to serve as a mechanism to reinsure insurers against excessive losses as a result of these requirements.

Business Interruption Insurance Coverage Act of 2020 (H.R.6494)

The bill was introduced on April 14, 2020 by Representative Mike Thompson (D-CA) and was referred to the House Committee on Financial Services. As of November 5, 2020, the bill has ten cosponsors and is not expected to gain any further supporters or move further this Congress.

The bill would mandate insurers that provide BI coverage to insure as a part of this coverage losses from a viral pandemic, a federal, state, or local government-ordered business closure or evacuation, or a power disruption conducted for public safety purposes. It would also retroactively nullify any related exclusions in existing contracts. The bill would only permit an insurer to reinstate such exclusions with written approval from the insured, or, if the insurer provides written notice at least 30 days prior to the reinstatement, if the insured fails to pay the corresponding premium increase.

Recommendations

Per PA 101-0640 the Business Interruption Insurance Task Force presents the following recommendations:

1. All policymakers and stakeholders should review this important report regarding business interruption insurance produced by a task force comprised of one representative from the Illinois Department of Insurance, four legislators (Senators Harris and Rezin and Representatives Jones and Hammond), and individual representatives from the American Property Casualty Insurance Association (APCIA), the Illinois Insurance Association (IIA), the National Association of Mutual Insurance Companies (NAMIC), Allstate Insurance Company and State Farm Insurance Companies. In particular, policymakers should thoroughly review "Section 2: Defining Insurance" prior to moving forward with any statutory changes in order to bolster an understanding of the fundamental principles of business interruption insurance and the implications for policyholders, insurers, and the broader economy.
2. To address the immediate financial distress of businesses, the federal government should issue another round of relief to fund the programs mentioned in Section 3 of this report. Additionally, in an effort to provide a long-term solution to address future pandemic risks to businesses, the federal government should pass a broad-based solution, such as one of the solutions outlined in Section 4.
3. To achieve recommendation #2, the General Assembly should pass a Joint Resolution urging the federal government 1) to provide another round of relief funding to address the immediate need of businesses and 2) to pass a federal solution to ensure there is a mechanism in place in the future. Once additional federal aid is provided, the Governor and General Assembly should again act swiftly to distribute the aid to businesses.

Appendix

A. Dr. Robert Hartwig NAIC Whitepaper
B. September 14th Meeting Minutes
C. NAIC Letter to Congress
D. Restore Illinois Plan
E. Department of Insurance BII FAQ
F. September 28th Meeting Minutes
G. Dr. Hartwig Biography
H. SBA Paycheck Protection Presentation
I. State of Illinois COVID-19 Website
J. November 30th Meeting Minutes
K. Insurance Information Institute Website
L. BIG Awards by Legislative District
M. Chubb Associated Materials
N. Zurich Associated Materials
O. APCIA-NAMIC Presentation on Future Pandemics and Solutions
P. BCPP Overview Presentation
Q. October 13th Meeting Minutes
R. October 26th Meeting Minutes