



NW Insurance Council



NAMIC
NATIONAL ASSOCIATION OF
MUTUAL INSURANCE COMPANIES



**American Property Casualty
Insurance Association**
INSURING AMERICA apci.org

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Mandating Retroactive Business Interruption Coverage is Unconstitutional and Undermines Insurers' Ability to Pay Covered Everyday Claims

SEATTLE, WA –Three trade associations representing property casualty insurers today issued the following statement opposing Washington legislation, SB 5351, to mandate retroactive business interruption coverage in commercial property policies for COVID 19. SB 5351 was heard by the Washington Senate Business, Financial Services & Trade Committee on February 2, 2021. The three trade associations include the American Property Casualty Insurance Association (APCIA), the National Association of Mutual Insurance Companies (NAMIC), and the Northwest Insurance Council (NWIC).

“APCIA, NAMIC, and NWIC strongly oppose SB 5351, legislation that would retroactively rewrite business interruption insurance contracts and undermine the stability of the insurance marketplace and the state’s economic recovery. This legislation is likely unconstitutional. We will aggressively defend against any attempt to undermine contracts, or violate basic due process, government takings, and contracts clauses of the U.S Constitution, as well as the Washington State Constitution.

“Business interruption insurance refers to property insurance policies that cover physical damage, such as from wildfires and tornados. These policies are not intended to cover diseases or pandemic related losses, and no premiums have been paid for such coverage. In the vast majority of cases, insurers did not price policies to include such coverage, and policyholders did not pay for this coverage. Policies are stringently regulated by the Washington Office of the Insurance Commissioner.

“This pandemic is unprecedented in its scale, reach, and economic impact on everyone. Insurers are paying — and will continue to pay — every covered insurance claim related to the pandemic, just like we have for natural disasters and other major events. According to several independent estimates, insurers are expected to pay more globally for covered losses related to COVID-19 than any other catastrophic event in history.



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“Mandating retroactive business interruption coverage to include COVID-19 losses that were never intended to be covered by the insurance contract would undermine the ability of insurers to meet their promises and pay claims on all existing insurance policies. This could cause more harm to Washington’s economic recovery and threaten insurers ability to pay for every-day catastrophes such as wildfires.

“At the height of the pandemic shut-downs, APCI estimated that the potential losses for all sizes of businesses in Washington (not just small business) to be **\$3.8-\$12.2 billion per month** for the segment of the businesses that have coverages that include BI. These numbers dwarf the premiums collected for all relevant commercial property risks, which are estimated at **\$81 million** per month in premium for the lines of business that may include business interruption coverage.

“Insurers understand the urgency of helping businesses and individuals recover from this unprecedented crisis. Many insurers implemented flexible payment solutions for families, individuals, and businesses; suspending premium billing for small businesses such as restaurants and bars; and pausing cancellation of coverage for motorists due to non-payment and policy expiration. This includes more than \$14 billion nationally in policyholder relief for motorists alone.

“Our industry stands ready to work with Washington policymakers. But we oppose this constitutionally flawed legislation that retroactively rewrites insurance contracts and threatens the stability of the sector, to the detriment of all policyholders. Only the federal government can be the financial bridge for a crisis of this proportion and duration.”

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