

Minutes
Public Act 101-0640
Business Interruption Task Force Meeting #3
September 28, 2020
2:00-3:30pm
Locations:
CALL-IN ONLY
Call-in Information
Phone Number: 1-312-535-8110
Access Code: 1338694372#

I. Opening Comments

Erica Weyhenmeyer welcomed members and guests to the Business Interruption Task Force Meeting and thanked the members for volunteering their time and expertise for the duration of these meetings. She also stated the objective as outlined by the statute, which is 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.”

Erica noted that task force members, when answering questions from the public or media, are not authorized to speak on behalf of the task force. She stated that since this is an open meeting, if there are any members of the public or media present, please be aware that if you are speaking with a task force member, any comments by the task force members do not represent the opinion of the task force. This distinction ensures the group is consulted before any formal communication is made on behalf of the task force. She also made clear that the task force does not intend to issue a public comment prior to the final report. The intent of this is to foster open dialogue as the group prepares recommendations. The final report will be the only public comment made by the task force.

She stated that the task force is designed to consider possible systemic issues with business interruption policies and will not be commenting on any pending legal action or complaints filed with the Department.

Erica then went over guidelines related to the technological platform being used.

II. Roll Call of Members/Guests

Erica asked members and guests to introduce themselves.

Members in attendance (alphabetically):

1. Saat Alety, Allstate
2. Chuck Feinen, State Farm
3. Norine K. Hammond, Representative
4. Napoleon Harris, III, Senator
5. Thaddeus Jones, Representative
6. Kevin Martin, Illinois Insurance Association
7. Andrew Perkins, National Association of Mutual Insurance Companies
8. Sue Rezin, Senator
9. Steve Schneider, American Property Casualty Insurance Association

Companies with an announced attendee (alphabetically):

1. AIG
2. Allstate
3. American Association of Insurance Services (AAIS)
4. American Family
5. American Property Casualty Insurance Association (APCIA)
6. Century Insurance
7. CNA Insurance
8. Country Financial
9. Illinois Insurance Association
10. ISO
11. J.W. Hammer, LLC
12. Liberty Mutual
13. Reinsurance Association of America (RAA)
14. Shaddock & Associates

III. Minutes Adoption

Erica asked if there were any corrections to the draft minutes from last meeting. No corrections were suggested. Erica asked if there was a motion to accept the minutes. Chuck Feinen made a motion to accept the minutes. Senator Rezin seconded the motion. All were in favor and none opposed. The motion passed.

IV. Objective

Erica restated the objective of the task force, which consistent with PA 101-0640, is 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.” A report on findings and recommendations is due to the Governor and General Assembly by December 31, 2020.

V. Federal Business Insurance Activity Presentation by NAIC Senior Financial Policy and Legislative Advisor, Brooke Stringer, followed by discussion

Brooke Stringer stated that the NAIC is the standard setting and regulatory support organization for the chief insurance regulators in the fifty states, DC, and the US territories.

Back in March, the NAIC issued a statement to congress opposing federal legislative proposals that would retroactively apply business interruption coverage on the basis that it would pose a significant risk to the financial solvency of insurance companies.

Two pieces of federal legislation have been introduced that could be retroactive in nature. Business Interruption Insurance Coverage Act, HR6494, introduced by Congressman Mike Thompson D-CA and ‘Never Again Small Business Protection Act’, HR 6497, introduced by Congressman Fitzpatrick R-PA. Both would seek to require insurance companies make business interruption pandemic coverage available in the case of certain external conditions being met. In part because of the understanding of the solvency impact of retroactive proposals, she stated that the discussion has shifted from retroactive legislation proposals to proposals addressing future pandemics. She stated the most likely candidate for legislative movement in the house has been introduced by Congresswoman Maloney and is called the Pandemic Risk Insurance Act (PRIA), HR7011. Insurers would provide coverage for pandemic related losses and there

would be a federal reinsurance backstop to limit total insurer losses. This bill creates a federal pandemic risk reinsurance program, subject to conditions, deductibles, and caps. It would be authorized for seven years and administered by the US Treasury Department. This bill would permit insurers to participate on a voluntary basis. Under the bill business interruption coverage would include event cancellation insurance also. Insurance would be triggered if aggregate industry insured losses exceed \$250M. The coverage consists of a combination of private and public funds.

Another proposal has been developed by industry, the Business Continuity Protection Plan (BCPP). This proposal utilizes more of a parametric approach. It is a business revenue reimbursement plan with the federal government reimbursing up to 80% of revenue replacement. Chubb also has a proposal and so does Zurich. The policyholder community is also developing a proposed solution.

Brooke thought it seemed unlikely that a proposal is workable unless it has industry support. She does not believe anything will be enacted into law this year. The NAIC has not taken a position on any of these proposals. The NAIC believes it is critical that a program be affordable to policyholders to get an adequate take up rate, but does not jeopardize the solvency of the industry and does not hinder the ability of regulators to protect consumers and the solvency of the industry.

Brooke Stringer concluded her overview and opened the discussion up for questions.

Kevin Martin thanked Brooke for the overview and asked if she was aware of any state taking legislative or regulatory action for retroactive coverage or anything else. Brooke responded that at the state level, legislation was introduced in eleven jurisdictions. Some include retroactive elements, related to COVID or government shut down. A number face legal obstacles and none to date have advanced.

There were no further questions for Brooke.

VI. Structure of Meetings/Next Steps

Steve Schneider asked if the Department had any recommendations for inclusion in the report. Erica stated that the Department did not.

Representative Jones pointed out that the task force was supposed to be generating ideas and members should speak up, or if they don't want change, they should say so. Steve Schneider stated they do want change. He brought up one of the federal plans, the BCPP, the one brought by industry. He recommended the task force consider that proposal and consider favorably encouraging the legislature on that proposal. Kevin Martin then contributed that they definitely want to come up with a solution, and that there was a lot at stake. Representative Jones said that he is sure the other side has ideas. Representative Hammond stated that it would be prudent to look at existing proposals and referenced Brooke Stringer's comments about the state proposals facing court challenges. She stated the task force could encourage legislators to get behind a federal proposal. Representative Jones asked if the task force is concerned with lawsuits or with fixing the problem. He questioned if the task force is just waiting for a federal solution, are they just wasting their time. Representative Hammond stated that working hand in hand with the federal government would not be a waste of time. Senator Rezin agreed with working cooperatively with federal legislators. She stated that this was a unique situation. The task force may be able to help move a federal solution since this is a crisis situation. They may be able to help move things along more quickly. Representative Jones asked for clarification of whether their goal was not to propose legislation, but to wait for federal action. He asked what happens if the federal government doesn't take action or doesn't take action for two years for instance. He wanted to know if the task force was going to propose a placeholder solution. He then asked Erica if we were going to hear from the other side.

Erica Weyhenmeyer asked Steve Schneider for clarification of the industry proposal. Steve briefly discussed the plan and referenced the uninsurability of the risk. Kevin Martin asked where they were on the discussions on this proposal. Don Griffin, who works with Steve Schneider, further described the proposal and industry efforts to get something moving but said it wouldn't be this year. One thing they want to be sure of is that the states (Illinois included) don't have to pay for it. The federal government is the only entity that can afford the cost. He recommended that Illinois help come up with ways to help prevent the spread of the virus. They do not encourage taking this risk on at the state level, but rather encourage federal action. Representative Jones asked if that was a defeatist attitude. Don Griffin referenced the Illinois budget and the related financial obligation from any Illinois solution. Representative Jones asked why everything had to point back to the budget. Don Griffin said that the product has to be subsidized. Industry can't afford it. The premium would be unaffordable, so there has to be a subsidy. Representative Jones again asked what the other side would say. Don Griffin said that the other side would want industry to pay it all now. But retroactive legislation hasn't passed because it has to work for everyone. Representative Jones said that he appreciates those comments, but thinks it is a one-sided picture. He said he would like to hear from the other side.

The Zurich representative stated that she was not prepared to talk about their solution. She stated that one of the reasons Zurich is pushing for a federal solution is that they need one option, one solution, not fifty plus options. Representative Jones said that he understands and maybe the federal government could come up with a guideline. The Zurich representative stated their program is somewhat based on the crop plan. Representative Jones asked again what happens if the federal government doesn't act? Is the task force going to put forward a placeholder solution. Don Griffin suggested the task force wait for the federal government to act. He stated that Illinois doesn't want to move forward by themselves. Steve Schneider stated that they want to drive the federal government to act. He said that this is a national problem, not a state based one. Representative Jones asked again if they should just wait for the federal government or were there any plans that have an element that the state can move forward on? Steve said, the risk is so great, it is uninsurable and there is not much that can be done at the state level.

Representative Jones asked when the task force would have the opportunity to hear from the other side. Erica Weyhenmeyer asked how he was defining 'other side'. Representative Jones said that he meant people supporting policyholders that might have a plan. Erica asked the task force whether they had any recommendations on speakers. Don Griffin stated that there were policyholder groups that would be willing to speak. Representative Jones was interested in speakers that had solutions.

Erica Weyhenmeyer stated that a recommendation for speakers for the next meeting was needed. She asked if someone could reach out. She then asked if it would be helpful for Zurich to present, or for someone to speak on the BCPP solution until a speaker with an alternate view could be identified. Representative Jones asked if anyone knows of someone with an alternate view. Steve Schneider said they are focused on their solution. Kevin Martin said he was not sure who that entity might be. They need solutions other than 'pay for it'.

Erica asked if while the group considers who could speak to the policyholder perspective if the task force would like to hear presentations on the Zurich and BCPP solutions.

Representative Hammond made a motion to hear presentations on both at the next meeting. Steve Schneider seconded the motion. All were in favor and none opposed. The motion passed.

VII. Comments

The meeting was opened for public comments. There were no comments.

VIII. Adjourn

The Meeting adjourned at 3:15 PM.