



## INSURANCE COUNCIL OF NEW JERSEY

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LEGISLATIVE STATEMENT  
**Opposing Assembly Bill 3844**  
March 16, 2020  
General Assembly Desk Statement

Members of the General Assembly, on behalf of the ICNJ member companies, I want to start by offering to continue to be a partner and a resource in the coming weeks and months as we all work together to address the potential uncertain consequences from this outbreak. The entire property and casualty insurance industry is working around the clock to assess the impact of this outbreak nationally and globally. We remain committed to addressing the needs of our policyholders, our employees' safety and managing the effects of the outbreak and its repercussions in order to maintain the financial solvency of the industry. We anticipate working with our regulator, Banking and Insurance Commissioner Caride, on disaster preparedness measures as the industry has in other instances including Superstorm Sandy. In fact, the industry already is investigating possible coverage options with the Insurance Services Office (ISO), the organization that provides insurance policy templates to the insurance industry throughout the world.

We appreciate the willingness of the sponsors and leadership to hear the industry's significant concerns that this legislation would retroactively interfere with existing insurance contracts and mandate coverage in a commercial insurance policy where it may not currently exist. While it has been argued that no coverage is available, several companies provide the opportunity for customers to purchase a rider to their business interruption insurance policy which would include this as a covered peril.

Please know that a "business interruption" claim is valid when there is a discreet event of physical loss or damage. Policies that exclude "bacteria" and "virus" do so because it's almost impossible to quantify such physical loss. One example where a business interruption policy did cover a unique event was immediately after 9/11 when the Hamilton, NJ post office received a letter containing anthrax. Since the entire facility had to be decontaminated, the presence of anthrax was considered a physical damage and the expenses incurred were covered.

**One major consideration for this body is that A-3844 will be an impediment to small businesses securing Small Business Administration (SBA) loans. Under most federal disaster relief programs, an applicant must certify that they have exhausted all other financial assistance options, including insurance, prior to seeking relief. Under this bill, any small business with interruption insurance can file a claim, regardless of coverage limits or exclusions. So, when**

**the same business applies to the SBA for a loan, they will not be given a green light, but rather an amber light because they must complete the claims process before SBA can assist them. In this instance, exclusions for virus or pandemic help the small business with obtaining an SBA loan. This bill will put New Jersey businesses at the back of the line for whatever Federal relief is passed by Congress.**

**In addition, requiring insurers to provide coverage where none exists is in direct conflict with the U.S. Constitution non-impairment clause that is to safeguard the integrity of contracts against unwarranted interference by the State. As a rule, contracts should not be tampered with by subsequent laws that would change or modify the rights and obligations of the parties.**

In addition, because carriers never anticipated providing coverage for this type of incident and have not collected the appropriate premium to account for it, the losses associated with retroactive coverage could number in the hundreds of millions or more nationwide. For smaller regional carriers, they could be pushed to the brink of insolvency. It is a valid concern of the ICNJ that enactment of A-3844 would make NJ the first state to trigger a nationwide implementation of similar, unconstitutional legislation.

Another concern with the retroactive provision of this bill is the potential invitation for fraud. Without a clear policy for insurers to rely on in these cases, we would be forced to litigate all coverage disputes and settle questionable cases. Insurance fraud hurts policyholders as much as it hurts the companies. According to the Coalition Against Insurance Fraud, American consumers already pay more than \$80 billion per year in increased insurance premiums as a result of insurance fraud.

Additionally, as the bill is currently written, we are gravely concerned that the assessment language would trigger automatic retaliatory taxes in other states where our domestic insurers do business. This is due to the existing tax structure imposed on the insurance industry where all insurers are taxed in every state based on the rates paid in their home state. Assessments are part of that equation, which raise the base tax rate. Also, the "special purpose assessment" noted in A-3844 would be imposed on all insurers, regardless if they write commercial insurance, which is an unfair burden on companies not in the commercial market.

The ICNJ would urge the Legislature to consider the past as you move forward in response to this outbreak. After other natural disasters, including Superstorm Sandy, the state and federal governments chose to provide direct aid to consumers and work with the industry on reforms going forward rather than place the financial stability of the property and casualty insurance market at risk. As a result, New Jersey currently has more insurers selling homeowners' and flood insurance policies along our shoreline than we did before the storm. This is the successful model that should be followed during the present disaster as well.

As this situation continues to develop, ICNJ is committed to continue to work with the entire legislature to explore existing and new mechanisms to support New Jersey businesses and

residents during this unprecedented, global crisis. Until we are able to complete these discussions, we ask the General Assembly to HOLD this bill.

Respectfully Submitted,  
Christine O'Brien  
President, ICNJ

Gary La Spisa  
Vice President, ICNJ

*The ICNJ is the non-profit, state trade association representing property-casualty insurers doing business in New Jersey. Our members include some of the country's largest insurers, prominent New Jersey domestic companies and international carriers, writing over 60% of the homeowners, auto, commercial and workers' compensation markets. The mission of our organization is to create a positive understanding of the property-casualty insurance industry and to promote a pro-business/pro-policyholder environment through advocacy, education and communication with the state's public officials, consumers and media.*