

May 4, 2020

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
1350 Pennsylvania Ave., Suite 504  
Washington, D.C. 20004

Dear Chairman Mendelson:

As members of the House Committee on Oversight and Government Reform and House Committee on Appropriations Subcommittee on Financial Services and General Government, we are writing to express our serious concerns with the “Coronavirus Omnibus Emergency Amendment Act of 2020,” which is pending before the D.C. Council. We strongly believe that the business interruption (BI) insurance provisions in this legislation are unconstitutional and will threaten the long-term availability of insurance in Washington, D.C. (D.C.). Enactment of such provisions would directly harm the city’s residents and would likely require direct and significant Congressional intervention.

The legislation would require insurers to retroactively amend contracts to provide for BI coverage for businesses below a certain size, regardless of any specific policy language. Forcing insurers to pay for losses that are not covered by contract and for which they never collected premium is merely shifting the burden from one party to another with no basis in fact or legality. This move by the D.C. Council will drive up the cost of insurance and call into question whether contracts in the city are worth the paper on which they are written. There is a reason that the founders of our great nation, in drafting the Constitution, prohibited states and the federal government from retroactively amending contracts – because they understood that all well-functioning governments and legal systems rest on the sanctity of contracts.

In addition to seriously undermining contract law, the legislation would significantly strain the solvency of insurers who are forced to pay uninsured losses and directly harm D.C. policyholders who experience losses that are covered by contract. For example, if this bill is enacted, D.C. businesses who have protection from hurricanes, fires, and other perils that are covered by BI insurance could find that insurers forced to pay uninsured losses lack the loss reserves to cover their claims. Furthermore, any move to require insurers to cover all perils in BI coverage would make such coverage unaffordable for D.C. businesses, as insurers would have to reprice coverage to account for the government amending their policies on a political whim.

The legislation before the D.C. Council will harm policyholders and likely lead to those businesses and the D.C. government seeking a bailout from Congress – an entirely avoidable outcome. The National Association of Insurance Commissioners and National Council of Insurance Legislators are opposed to such legislation, which has not been enacted in any other state in the nation. We urge you to table this harmful legislation and look forward to your prompt written response regarding this issue.

Sincerely,