American Property Casualty Insurance Association
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House Labor & Commerce Committee
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801

Via Email

RE: HB 45, Workers Compensation and Contagious Diseases

Dear Co-Chairs Fields and Spohnholz and Members of the Committee:

The American Property Casualty Insurance Association ("APCIA") submits this statement in opposition to House Bill 45.

Representing nearly 60% of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. APCIA members write more than 70% of the workers' compensation insurance in Alaska.

House Bill 45 would add millions of dollars in new costs for Alaska businesses and distort the basic purpose of workers' compensation – by making Alaska employers liable for COVID-19 cases and other contagious diseases that are unrelated to work. The bill unfairly shifts the cost of pandemic response to employers and jeopardizes the stability of the state's workers' compensation system.

The Bill's COVID-19 Presumption Violates Basic Principles of Workers' Compensation

Workers' compensation is a no-fault system that guarantees injured workers prompt indemnity benefits and unlimited medical care, without any deductibles or co-payments, even in the absence of any fault by the employer. This no-fault system benefits both Alaska employers and Alaska employees. Prior to enactment of workers' compensation, an injured worker was without remedy for the workplace injury unless he or she successfully proved negligence on the part of the employer, and similarly, was without remedy if the employer could prove the employee's own negligence contributed to the injury. In return for no-fault compensation, the employer was free from the threat of civil litigation. Essential to maintaining this no-fault workers' compensation system, however, *is proof that the covered injury or disease arose out of and in the course of employment.* Requiring Alaska employers to cover injuries on an absence of fault basis without proof that the injury or disease arose out of and in the course of employment violates basic core principles underlying the workers' compensation system.

The Presumption that COVID-19 Lacks Justification

House Bill 45 provides that all persons in specified industries who contract COVID-19 or other contagious disease during a disaster emergency are presumed to have a compensable workers' compensation claim. The presumption that anyone who contracts COVID-19 or other contagious diseases must have contracted it at the workplace, however, is a fiction that lacks scientific and medical proof. COVID-19 represents a global pandemic, now with over 112 million cases worldwide and almost 2.5 million deaths, precisely because it is not an occupational disease but instead is a disease of ordinary life transmitted between persons who are in close contact with an infected person. People contract the disease in any place where people congregate, including restaurants, stores, public transportation, restaurants, bars, sporting events, houses of worship, social and political meetings and rallies and hundreds of other places. Many people contract the disease at home if another person living in the premises is infected.

While the presumption may have been somewhat defensible in the very early stages of the pandemic, when citizens were staying in place at home, it is impossible to justify creating a presumption that applies to all employees and under the current social context now that Alaska and the rest of the country is returning more to normal social operations. Presumptions create a fiction that COVID-19 and other contagious diseases somehow arise only out of the workplace even though people are now traveling, going to restaurants and bars, attending social events and participating in other large-scale events. As people now return to full-scale social, public and other cultural activities, it would be unfair and irresponsible to place the economic burden on Alaska employers and falsely presume that everyone who has contracted a pandemic disease during this time contracted it in the workplace.

The Scope of The Bill Is Extremely Broad

House Bill 45 would apply the presumption to all employees in the following occupations: emergency medical technicians, firefighters, health care providers, paramedics, peace officers, child care facility employees, grocery store employees, and teachers. Moreover, the bill contains an open-ended provision authorizing the presumption to apply to any employee the commissioner determines places an employee at a similar risk of being exposed to the contagious disease as the occupations specified in the bill. Few states have enacted such a broad and far-reaching presumption. While most states have not adopted presumption legislation, in the overwhelming majority of states enacting a presumption, such legislation has been restricted in scope. Usually, the bill extends to only first responders and/or health care providers who regularly treat and diagnose COVID-19 patients. HB 45, by extending the presumption to grocery workers, teachers, child care workers, and workers in similar occupations, is much broader in scope than the vast majority of presumption bills under consideration in the country. The broad scope of the bill places more Alaska employers at risk for providing indemnity and medical benefits for injures that did not arise out of and in the scope of employment.

The Bill Extends the Presumption to Other Contagious Diseases

House Bill 45 is much broader than the other presumption bills we are encountering around the nation in that it does not limit the presumption to COVID-19 but extends it to all contagious diseases contracted during a declared disaster emergency. While it is difficult to justify the presumption as applied to COVID-19, it is even more questionable, and an outlier, to extend workers' compensation coverage to any contagious disease contracted during a public emergency. Contagious diseases, after all, are diseases contracted in ordinary life by simple communication with other people and are not specific to particular occupations. The bill poses a serious threat to Alaska employers for being liable for numerous diseases now and in the future that have no connection at all to the workplace.

A Broad Presumption Bill Would Be Prohibitively Expensive

While it may not be possible to provide a precise estimate of how expensive the proposed contagious disease presumption might be, it is clear that the additional costs would pose a significant threat to Alaska businesses. House Bill 45 would significantly increase costs for businesses specified in the bill, including schools, municipalities, groceries, health care facilities and any other business subsequently determined to pose a similar risk for contagious diseases.

Businesses Are Already Under Threat Due to Severe Economic Pressures of The Pandemic

Alaska employers are already facing extreme economic pressures brought on by a global pandemic. As businesses seek to recover from the pandemic and its economic consequences, it seems both unreasonable and unfair to ask Alaska businesses to bear the additional burden of paying indemnity and medical benefits to patients of the pandemic, absent evidence that the person contracted the contagious disease in the course and scope of his or her employment.

The Presumption Fails to Require Sufficient Medical Proof

House Bill 45 allows the presumption to be triggered by a mere diagnosis of COVID-19 made by either a doctor, a physician assistant or an advanced practice registered nurse where a lab test is not available. A mere diagnosis by a doctor, physician assistant or advanced practice registered nurse, however, is not sufficient medical proof that a worker has COVID-19. A subjective diagnosis based on mere symptoms, such as a sore throat and high fever, clearly is not adequate proof a patient has COVID-19. However, often a provider will diagnosis COVID-19 based on these general symptoms that could apply to any number of diseases or illnesses. Allowing coverage and authorizing medical treatment based merely on a subjective diagnosis or a diagnosis and/or a laboratory test is medically unsound, unnecessarily costly, and dangerous to the extent it subjects the worker to unneeded, potentially harmful treatment. Medical literature demonstrates that a patient has COVID-19 based on (1) results of a diagnostic lab test, (2) an appropriate incubation period, and (3) symptoms and signs that require medical treatment. *See* Infectious Diseases Society of America Guidelines on the Diagnosis of COVID-19, https://www.idsociety.org/practice-guideline/covid-19-guideline-diagnostics/ Once these three objective tests are satisfied, it is appropriate to say a patient has contracted COVID-19. Moreover, an antibody test is not an appropriate laboratory test. An antibody test only determines whether a person has been exposed to the coronavirus associated with COVID-19 and the patient's body has developed antibodies in response to the exposure. It does not indicate the person has developed the disease and requires treatment. The appropriate test to determine if a patient has contracted COVID-19 is a positive polymerase chain reaction ("PCR") test. Based on a survey of the most current medical literature, both The Council of State and Territorial Epidemiologists (CSTE) and Infectious Diseases Society of America (IDSA) have concluded that the most appropriate test to determine whether an individual currently has COVID-19 is the PCR test, www.cdc.gov/coronavirus/2019-ncov/lab/testing.html. The test is readily available in the United States. *See*https://www.labcorp.com/tests/139900/2019-novel-coronavirus-covid-19-naa and www.questdiagnostics.com/home/Covid-19/HCP/

The Bill Does Not Provide A Reasonable Opportunity for Employer Rebuttal

House Bill 45 allows an Alaska employer to rebut the presumption only upon a showing of clear and convincing evidence that the claimant contracted the contagious disease from non-work sources. "Clear and convincing" is an extremely high bar of evidence that cannot be met even by persuasive evidence that the contagious disease did not arise out of and in the scope of employment. Given that the presumption already dispenses with the normal requirement that a claimant recover workers' compensation indemnity benefits and medical care only after an evidentiary showing that his or her injury or disease arose out of and

in the scope of employment, it is essential that the employer be able to rebut the presumption by offering evidence that the injury or disease was from non-work sources. The only fair evidentiary standard for such a rebuttal is by a preponderance. It is difficult to justify a standard that does not require the claimant to offer any evidence that the injury was work-related but then require the employer to offer clear and convincing evidence that the injury was non-work-related to rebut the presumption.

The Bill Applies Retroactively

House Bill 45 applies retroactively to November 15, 2020. Retroactive application of bills such as House Bill 45 that fundamentally changes the nature of coverage for claims under the workers' compensation act is fundamentally unfair and inequitable. Neither employers nor insurers ever calculated that ordinary diseases of life, such as contagious diseases, would be presumed to be covered workers' compensation claims absent any proof that such diseases were contracted in the course and scope of employment.

We urge your "no" vote on HB 45. Thank you for your consideration. Please let me know if APCIA may provide any additional information.

Sincerely,

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