

SENATE BILL NO. 2374

Statement of the American Property Casualty Insurance Association

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA members write 61.6 percent of all auto insurance sold in North Dakota, representing nearly \$430 million dollars in direct written premium. On behalf of our members, we offer this testimony in opposition to Senate Bill 2374 and would request to work with the department on favorable amendments.

APCIA offers the following comments in opposition to several sections below of SB 2374.

Section 7 regarding Mandatory Arbitration Endorsements for Property Insurance APCIA offers the following comments. This new section requires disclosures that are typically not required for surplus lines policies. More importantly, it mandates that arbitration proceedings be conducted in North Dakota and governed by North Dakota law. This requirement applies to any property insurance policy issued or delivered in North Dakota. As a result, it also affects multi-state policies where the bulk of the risk is in another state, but only one property is located in North Dakota. This approach contradicts the Nonadmitted and Reinsurance Reform Act, as well as the recently updated NAIC Nonadmitted Insurance Model Act #870, which states that if the insured's home state is not North Dakota, but there is a risk on the policy within the state's boundaries, then the home state has jurisdiction over the policy, not North Dakota.

Additionally, all property and casualty policies would fall under this requirement. Although there is a carve-out for large commercial risks, which has a new definition under Section 4, overall, it would impact surplus lines insurers. APCIA opposes this section of the bill unless favorable amendments are made to exclude excess and surplus lines policies.

Section 8 of the bill, which addresses managed repair programs, it states that the insured retains the right to choose a contractor and can request a different one. This provision appears contradictory to the rest of the bill and seems to render it ineffective. The APCIA would oppose this unless the section is amended. Companies currently offer optional programs, and this proposed language does not seem to change that. However, if the ability to opt out of a program— for which the insured has already received a discount—is not removed, it is difficult to see any insurer choosing to offer such a program under these terms.

Sections 14, 15, 16 – Changes to Risk Retention Group Regulations These sections implement several changes to the oversight of Risk Retention and Risk Purchasing Groups in state law. Most of these changes are acceptable as they do not conflict with federal law. However, one specific change appears to be noncompliant with the federal Risk Retention Act of 1986 (15 USC Ch. 65: Liability Risk Retention). The relevant text, found at the bottom of page 22 and the top of page 23, states the following:

g. The group's activities must not include providing insurance other than: (1) Liability insurance for assuming and spreading all or any portion of the liability of its group members, except a nonmaterial

amount of commercial property coverage incidental to the liability exposure of its group members also may be insured.

The underlined section is “new” and would not be in compliance with the federal law as property coverage is not allowed. The federal law is very specific with regard to allowing only liability coverage.

APCIA looks forward to working with the department on suggested amendments.

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