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February 17, 2021

Rep. Matt Lehman (IN), President

Rep. Bart Rowland (KY), Chair, Property & Casualty Insurance Committee

Sen. Vickie Sawyer (NC), Vice Chair, Property & Casualty Insurance Committee

National Council of Insurance Legislators (NCOIL)

Re: NCOIL COVID-19 Limited Immunity Model Act

Dear President Lehman, Chair Rowland, and Vice Chair Sawyer:

On behalf of the National Association of Professional Insurance Agents (PIA)¹, thank you for the opportunity to comment on the February 12, 2021 amendment by way of substitution to the November 9, 2020 Coronavirus Limited Immunity Model Act. We are pleased to provide the following feedback in response to the [February 12 COVID-19 Limited Immunity Model Act](#) (Model Act). Thank you for introducing the Model Act; our members appreciate your leadership on this issue.

PIA Supports the Model Act

PIA supports the Model Act. We recognize the need for temporary, targeted relief from liability related to the unprecedented COVID-19 pandemic, which has placed our nation's businesses at sudden and unfair risk. The temporary protections afforded by the Model Act are necessary to protect businesses from potentially frivolous lawsuits arising out of the pandemic.

As the United States continues to emerge from government-mandated closures, employers around the country are trying valiantly to follow applicable but ever-changing guidelines governing their behavior. In our litigious society, businesses that reopen will likely continue to face lawsuits related to COVID-19 illnesses, injuries, and other problems. The threat of litigation could deter businesses from fully reopening, causing more businesses to fail and more employees to lose their jobs.

PIA is pleased to see that the Model Act allows employers that knowingly disregard public health guidelines to remain accountable; the purpose of the Model is not to protect bad actors but to ensure that employers can reopen their businesses and keep their workers employed, both of which will help move us all toward a safe and effective national economic recovery. Many

¹ By way of background, PIA is a national trade association founded in 1931. It represents member insurance agents in all 50 states, Puerto Rico, Guam, and the District of Columbia. PIA members are small business owners and insurance professionals who can be found across America.

American businesses have demonstrated enormous agility in changing the way they work and what they produce to meet the demands of this pandemic. Many have had to temporarily close their doors to patrons, forcing the absorption of tremendous economic losses to keep their communities safe and desperately need the financial support that safely and confidently reopening could provide. Those businesses will do everything in their power to adhere to applicable guidelines, and even still, they could face an endless march of frivolous lawsuits. Those are the businesses this Model Act seeks to protect.

Even when frivolous lawsuits fail, they can cost businesses dearly; the parties are often required to initiate the litigation process to demonstrate that the suit is meritless. The prospect of, and costs associated with, defending against such suits can deter businesses from reopening partially or fully. Moreover, defending such suits can financially devastate a business, particularly a small business. Small businesses, already devastated by the pandemic and resulting economic downturn, cannot afford to establish compliance with costly public health guidelines and be forced to defend frivolous lawsuits. Small businesses especially will be unable to absorb the uncertainty associated with the prospect of facing boundless liability.

Moreover, we appreciate the inclusion of a sunset provision. Businesses will not need this level of protection forever, and a sunset provision will help reassure skeptics who fear that the Model Act is intended to provide businesses with permanent immunity from liability.

While we support the Model Act as presented, we offer below two recommendations that we hope will improve upon it.

PIA Recommendations:

1. “Testing” Should Be More Specifically Defined

Section 2(A)(3)(b), “testing,” likely refers to tests administered to determine whether an individual is infected with the virus that causes COVID-19. However, since the start of the pandemic, various types of COVID-19 diagnostic tests have been used. Healthcare workers have also begun, in some cases, to test those who have recovered from COVID-19 for the presence of antibodies that may provide immunity from future COVID-19 illness. Indeed, with scientists’ understanding of COVID-19 evolving rapidly, we recommend providing more detail around the word “testing” to avoid ambiguity or legal battles over its intent.

2. “Emergency” Should Be Specifically Named

Section 4, “Effective Date,” suggests that a state’s emergency declaration will be the basis on which the Model Act is passed and effectuated. PIA recommends revising this section to provide a space for a state to include the date and identifying features of its emergency declaration.

Conclusion

PIA encourages NCOIL to quickly pass the Model Act, which preserves legal recourse for those harmed by truly bad actors engaged in willful misconduct. PIA further encourages individual

legislators to introduce and support similar laws within their legislative bodies during the 2021 legislative session to protect small businesses in their districts from unfair and opportunistic COVID-19-related lawsuits.

PIA looks forward to continuing to work with legislators here at NCOIL and around the country to provide limited liability protections for businesses during the pandemic, so that our state-based insurance system can provide the support needed for the nation's businesses to survive this challenging time and ultimately get back to business.

As always, PIA is grateful for the opportunity to provide the independent agent perspective. Please contact me at laurenpa@pianet.org or (202) 202-1414 with any questions or concerns. Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Lauren G. Pachman".

Lauren G. Pachman
Counsel and Director of Regulatory Affairs
National Association of Professional Insurance Agents

cc: Tom Considine, NCOIL Chief Executive Officer
Will Melofchik, NCOIL General Counsel