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STATEMENT OF THE AMERICAN INSURANCE ASSOCIATION

Pennsylvania House Judiciary Committee and Labor Relations Committee

Joint Public Hearing H.B. 1012, H.B. 1013, H.B. 1030
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Eric J. Oxfeld, Counsel
American Insurance Association
1130 Connecticut Avenue, N.W.
Washington, D.C. 20036

American Insurance Association

The American Insurance Association is a national trade organization of casualty insurers.

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ON

H.B. 1012, H.B. 1013, H.B. 1030

I appreciate the opportunity to discuss House Bill 1012, the Toxic-Free workplace Act, House Bill 1013, the Hazard-Free Workplace law, and House Bill 1030, the Crimes Against Workplace Safety law. My name is Eric Oxfeld, and I am a counsel for the American Insurance Association (AIA). AIA represents more than 200 property and casualty insurers who collectively write a substantial part of all workers' compensation insurance provided in the United States and in Pennsylvania.

I come before you this morning in opposition to House Bills 1012 and 1013. This opposition, however, does not come lightly. Our member companies have an historic interest in the health and safety of American workers. In fact, we were a critical part of the reform movement that led to the enactment of workers' compensation laws in every state, including Pennsylvania. We are proud to have been a part of that movement, and we continue to support responsible measures that will better protect worker health and safety. In fact, AIA was a strong, early proponent of

enactment of the Federal Occupational Safety and Health Act. And our affiliate, the American Insurance Services Group, is the nation's leading insurance safety engineering organization.

Moreover, Mr. Chairman, we even agree with the good intentions of the bills before the committee. Workers need financial security when they are injured, and employers need to make the safety of their employees a priority. But, good intentions are not enough. Legislation implementing those intentions must pass the test of rigorous analysis. In short, the bill must work.

We believe that H.B. 1012 and H.B. 1014 are fatally flawed. The fundamental flaw in these proposals is the provision they each contain which would contravene the exclusive remedy provisions in the Pennsylvania Workers' Compensation and Occupational Disease Acts and permit workers to bring an action for damages against their employers for injuries on the job. The workers' compensation program in Pennsylvania already provides income support and medical care for workers disabled by traumatic injury or occupational disease. This protection is provided wholly at employer expense. The level of benefits under the Pennsylvania system is among the most generous of any workers' compensation program in the United States.

Although the particulars of workers' compensation programs vary by state, all of them - including the Pennsylvania Workers' Compensation and Occupational Disease Acts - derive from an essential social compact. Injured workers are entitled to an administrative remedy for lost earning capacity without any consideration of who was at fault, for all injuries arising out of and in the course of employment. In return for providing those benefits, employer liability for damages in tort is extinguished.

This means in Pennsylvania that even when the injured worker is at fault he or she receives first-dollar, unlimited medical coverage, and income support for the duration of disability. To be sure there are improvements which we believe are needed to make the Pennsylvania program more equitable for workers, while attacking the root causes of the escalation in cost to employers in recent years.

But AIA is convinced that the workers' compensation system is fundamentally sound. We believe that a return to the tort system would not serve the interests of the workers or their employers or indeed anyone in our society, with the possible exception of those who make their living from litigation.

We understand that House Bills 1012 and 1013 purport to allow tort action only against certain employers whom one might

characterize loosely as "bad actors." However, we respectfully submit that such a distinction is meaningless in a practical sense because conduct described by the bills falls short of the deliberate injury which properly would justify tort liability. Furthermore, it is extremely doubtful that public support could be sustained for a system which holds employers liable in tort when they are at fault, while requiring them to pay workers' compensation benefits for injuries caused by worker negligence.

The committee also should understand that these bills would add directly, by an amount whose dimensions we can only guess, to the cost of workers' compensation insurance. Workers' compensation insurance policies include Part B, employer's liability, which covers liability for work injuries in addition to the benefits under the workers' compensation program. Payments resulting from liability established by H.B. 1012 and H.B. 1013 appear to be included under Part B, and the rate would need to be increased to reflect this new exposure. Even where the damages are uninsurable - and the bills are silent on this point - there would be added costs because insurers have a duty to defend policyholders. Such increases would work directly against present efforts to stabilize employer workers' compensation costs.

In expressing our views on House bills 1012 and 1013, I specifically distinguish them from H.B. 1030, whose primary thrust is to impose criminal sanctions for safety and health law violations. The AIA advocates vigorous and active enforcement of such laws by all appropriate enforcement tools. Criminal sanctions may indeed be a meritorious, even desirable, means of punishing employer conduct of such a heinous nature that it is tantamount to intentional injury. However, H.B. 1030 as presently drafted appears to raise the same problems I have articulated with respect to H.B. 1012 and 1013 insofar as the bill authorizes a court to award what it calls "restitution" notwithstanding the workers' compensation limitation of liability, under circumstances where the employer's action was not even a predominant cause of the injury.

Furthermore, there is a statement in the bill's "Legislative findings and determinations" section which we believe is highly misleading. Section 9302(2) states that personal injury lawsuits against employers are unavailable in Pennsylvania to deter negligent or intentional actions causing work injury. This statement omits the fact that (1) all states have extinguished personal injury lawsuits based on negligence in favor of workers' compensation benefits, and (2) workers' compensation contains extremely sophisticated mechanisms to give employers a direct financial stake in loss prevention. These mechanisms include a

job classification system which distributes costs among employers by grouping them according to the potential for loss. Pennsylvania uses more than 200 job classifications. This means that the insurance rate for clerical workers, for example, is established at one level while the rate for fire fighters, an extremely hazardous occupation, is fixed at another level. But even more important, the insurance pricing system relies on experience rating of individual employers so that the actual premium collected is adjusted up or down to reflect the results of effective workplace safety efforts (or the lack thereof).

CONCLUSION

We have examined the proposed legislation both from the standpoint of the extent to which the insurance mechanism can cope with it, as well as from a broader public position. Enhancement of workplace safety and health is a praiseworthy objective. However, we do not believe that returning workplace injury to the tort system is an appropriate or effective means of accomplishing it. The problems these bills would create underscore the fact that very careful consideration should be given to their impact before the legislature proves to enactment. We would be happy to work with you to develop constructive approaches, but we do not believe the legislation before the committee merits enactment in its current form.