To: Senate Economic Development Committee

From: Phil Keller, Director of Insurance Regulation,

Department of Financial Regulation

Re: Summary of 3/29/18 testimony on H. 593

I'm here to address the question of why it makes sense to exclude insurance policies from the automatic renewal provisions of Section 1 of the Consumer Protection bill that you're considering.

Insurance, unlike many consumer products, is already heavily regulated by the state. Every line the Division regulates already has specific statutory renewal and cancelation requirements that are designed to protect the purchasers of that type of product.

For example, automobile and homeowners' policies are typically issued for a period of one year, so unless exempted they would fall within the jurisdiction of this act. But Section 3882 of Title 8 already requires insurance companies to notify automobile and homeowners' policyholders at least 45 days prior to the policy's expiration if they intend to renew the policy and what the renewal premium will be. The purpose of this section is to let policyholders know whether they will be renewed and what they will be paying during the coming year so that they can shop around if they don't like the renewal premium. Requiring companies to notify a policyholder that his or her policy will automatically renew, as Section 1 does, would simply be duplicative of what already exists in Vermont insursnce law.

Unlike automobile and homeowners' policies, where year-to-year comparison shopping is common, products like life insurance and long term care insurance are almost always bought by the consumer as part of a long-range plan to provide financial protection for themselves and their loved ones. Life insurance and long term care insurance also have policy terms of one year or more and are typically held for periods of years or even decades. Even though life insurance and long term care insurance are automatically renewable, the concern with these products is not, like a health club membership, that they might renewed without notice, but that they not be unilaterally cancelled after the policyholder has made a substantial investment. For this reason, individual life insurance policies and long-term care policies can only be cancelled for non-payment of premium and, even then, only after notice and the

passage of a grace period. As an additional protection, life insurance policyholders 64-years and older have the right to designate a secondary addressee to receive notice of a policy's pending lapse.

So there already are explicit consumer protections in place to protect insurance policyholders from the concerns that section 1 seeks to address for less heavily regulated industries. These protections are tailored to the specific type of insurance that is being purchased. They are enforceable through the provisions of Chapter 129 of Title 8, the Insurance Trade Practices Act, which imposes a penalty of up to $1000 for unintentional violations of Vermont insurance law and $10,000 for intentional violations. The Insurance Division has frequently used the Act to enforce the renewal and cancellation requirements of Vermont law. Complaints typically come to us through our Consumer Services Section, but violations are also uncovered during our periodic market conduct examinations of insurance companies' compliance with Vermont law.

Because Vermont insurance law already addresses renewability and cancellation, and because the Insurance Division has a high visibility Consumer Services Section and a robust enforcement function, we believe the exemption of insurance policies from the provisions of Section 1 makes sense.

Finally, in response to the Chair’s question about whether there should be a private right of action against insurance companies that violate the renewal, cancellation and notification provisions of Vermont insurance law, I’d like to point out that in 1988 the California Supreme Court reversed its earlier decision that the state’s Insurance Trade Practices Act created a private right of action on the ground that the creation of a private right of action in California “reportedly has resulted in multiple litigation or coerced settlements” that had brought higher premiums to California consumers. *See* Moradi-Shalal v. Fireman’s Fund Insurance Companies, 46 Cal.3d 287, 302-304 (1988).

I hope this testimony has been helpful. Please do not hesitate to contact me if you have any questions.