SUBMISSION TO THE

LEGISLATIVE ASSEMBLY OF ONTARIO

Standing Committee on Finance and Economic Affairs
(the "Committee")

WITH RESPECT TO

BILL 229, PROTECT, SUPPORT AND RECOVER FROM COVID-19 ACT (BUDGET MEASURES), 2020

ON BEHALF OF

STATION MASTER INVESTMENTS LP
c/o 41 Kingsway Crescent,
Toronto, Ontario M8X 2R5
(the "Organization")

DATED: December 2, 2020

BRIEF

Summary:

- Bill 229 includes Schedule 22, Sections 4 and 5. Section 5 describes the addition of new section 201.2 to the *Insurance Act*.

- This is a proposal to amend the *Insurance Act*, a consumer protection statute. While it may not be obvious, these proposed amendments actually take away the rights of Ontario policyholders who have life insurance policies.

- This proposal will also limit Seniors' rights to invest in their life insurance policy, despite the terms contained in their insurance policies.

- This is a matter of public interest and principle affecting about 1 Million Ontario policyholders and voters.

- There are strict measures in the *Insurance Act* that already prohibit predatory behaviour, like trafficking of life settlements. No more measures are needed at this time.

- **Please remove Sections 4 and 5 from Schedule 22 of Bill 229 and refer them for further study.**

- With the benefit of public consultation, any changes to the *Insurance Act* can be proposed at a later date.

- There is no need to rush these amendments and they do not belong in a Budget bill in any event.

Introduction:

1. Bill 229, *Protect, Support and Recover from Covid-19 Act (Budget Measures), 2020*, includes Schedule 22, an excerpt of which is reproduced in an Appendix to this Brief for convenience. The relevant parts are Sections 4 and 5.

2. The *Explanatory Notes* to Bill 229, under the heading Schedule 22, read: "The Schedule amends the *Insurance Act* as follows:...2. New section 201.2 imposes certain limits on the funds that can be held in certain accounts and side accounts associated with or part of life insurance contracts.".

The Organization submits to the Committee the following:

3. Neither the Organization, nor any other party with a similar interest in universal life insurance contracts containing side accounts, were consulted prior to Sections 4 and 5 of Schedule 22 being included in Bill 229. Such proposed amendments to the *Insurance Act,* being new section 201.2, could have benefited from public consultation.
4. While it may not be obvious, the proposed amendments to the *Insurance Act* (contained in Sections 4 and 5 of Schedule 22) serve to take away contractual rights held by policyholders – thus harming those Ontario policyholders. The policyholders' rights are set-out in their contracts of insurance – written as 'standard form contracts' and meaning that the insurance contracts are not negotiated. The policyholder, when buying life insurance, is faced with a 'take it or leave it' proposition.
5. These amendments to the *Insurance Act*, being the addition of new Section 201.2, change the contract terms, without any agreement on the part of the policyholder to do so, and to the policyholders' detriment. This does not benefit seniors.
6. Other than through the language contained in Schedule 22, policyholders would not be aware of these adverse consequences. Furthermore, the technical language contained in Schedule 22 would not be readily understood by the average policyholder and, as a result, the adverse impact to their rights as policyholders would be difficult to understand.
7. The Organization has estimated that about 1 Million Ontarians hold unversal life insurance contracts that would be affected by these proposed amendments. This data comes from published documents by the Canadian Life and Health Insurance Association ("CLHIA") which reports that 8.4 Million Ontarians had life insurance coverage in 2019 and that, nationally, 13% of individual life insurance coverage is in the form of individual universal life insurance.

8. The purchase of a life insurance contract is a trust relationship. The insured must trust the insurance company to perform all of its contractual obligations to the policyholder (especially given that the policyholder's estate would typically be dealing with the life insurance contract many years after the contract was entered into). This trust relationship is implicit in contracts of life insurance. The proposed additions to the *Insurance Act,* in sections 4 and 5 of Schedule 22, fundamentally change this trust relationship.

9. The budget document of November 5th includes the following text:

    "Supporting the Life and Health Insurance Sector

    Protecting financial services, <u>especially for seniors</u>, is particularly important at this time. Ontario has the largest life insurance industry in Canada, with over 70 licensed life and health insurers providing insurance coverage to 8.4 million people. The people of Ontario buy life insurance to provide financial protection for their families. The government is protecting families by proposing legislative amendments <u>to ensure that this sector is not vulnerable to exploitative behaviour by individuals and companies using life insurance policies with side accounts for investment purposes.</u>". [emphasis added]

    The Organization submits to the Committee that there is **no** "...exploitative behaviour by individuals and companies using life insurance policies with side accounts for investment purposes." and such amendments to the *Insurance Act* do not protect seniors but, in fact, limit the ability of policyholders (including seniors) from utilizing the side accounts in tax exempt insurance contracts for legitimate investment purposes – which is also a legitimate purpose of insurance contracts.

10. The risk associated with the so-called 'exploitive behavior' is, in fact, already managed by Ontario legislation in section 115 of the Insurance Act which reads:

> “**Trafficking in life insurance policies prohibited**
>
> **115** Any person, other than an insurer or its duly authorized agent, who advertises or holds himself, herself or itself out as a purchaser of life insurance policies or of benefits thereunder, or who trafficks or trades in life insurance policies for the purpose of procuring the sale, surrender, transfer, assignment, pledge or hypothecation thereof to himself, herself or itself or any other person, is guilty of an offence. R.S.O. 1990, c. I.8, s. 115.”. [emphasis added]

11. The life insurance industry in Canada, represented by the CLHIA, had lobbied the Ontario government for these changes. The lobbyist registry, in connection with the CLHIA's lobbying activities, under the heading of 'lobbying goals' reads: "...to advocate for changes to the Insurance Act to reaffirm that insurance contracts are not deposit accounts". It is useful to note that the insurance industry in Canada still provides consumers with universal life insurance policies. Such lobbying effort is intended to benefit the Canadian insurance companies, insofar as it removes and/or limits a financial liability to them which, by corollary, is a financial benefit to the policyholders (whether seniors or otherwise).
12. Examining the text contained in Section 5 of Schedule 22, in connection with the additions to the *Insurance Act* described as 201.2(3) and (4), reveals that these two proposed additions are factually incorrect. The definition of the “side account” contained in Section 4 of Schedule 22 means that a 'side account' is associated with an 'exempt policy' (also defined in Section 4 of Schedule 22). The addition of 201.2(3) is with respect to limits on amounts contained in the side account of an insurance contract that does not include an exempt policy. There is no side account in an insurance contract that is not an exempt policy. Accordingly, there can be no limit associated with a side account that does not exist. Similarly, the proposed addition of 201.2(4) is with respect to an insurance contract that ceases to include an exempt policy. Therefore,

proposed 201.2(4)(a) and (b) have no meaning as there is no side account associated with an insurance contract that is not, or otherwises ceases to be, an exempt policy.

13. The proposed addition of 201.2(3) includes: "... funds held in <u>any account or side account</u> associated with a life insurance contract..." [emphasis added] yet only 'side account' is defined in Section 4 of Schedule 22. There is no meaning to the reference "any account" in these sections and the proposed language does not make sense.

Conclusion:

14. The Organization submits to the Committee that Sections 4 and 5 of Schedule 22 should be removed from Bill 229 pending the opportunity for a public consultation with respect to these proposed amendments and, in particular, the addition of Section 201.2 to the *Insurance Act*.
15. Public consultation on these proposed additions would provide the opportunity for a balanced and expert analysis of the implications (to both the insurance industry and its policyholders (including seniors)) of these proposed changes.
16. There is no need to rush these amendments, which can benefit from comments and analysis in a public form. Furthermore, these proposed additions to the *Insurance Act* do not belong in a Budget bill.

APPENDIX

SCHEDULE 22
INSURANCE ACT

1 The Insurance Act is amended by adding the following section: ...

4 Subsection 171 (1) of the Act is amended by adding the following definitions:

"exempt policy" has the same meaning as in the Income Tax Regulations (Canada); ("police exonérée")

"side account" means an account associated with or part of a contract of life insurance that is intended to hold funds in excess of the maximum amount permitted to be held in an exempt policy; ("compte auxiliaire")

5 The Act is amended by adding the following section:

Limits on amounts held, tax exempt

201.2 (1) The maximum amount of funds held in a side account associated with an exempt policy shall not exceed the sum of,

(a) the funds required to pay future costs of insurance, related premium taxes and administrative fees or charges; and

(b) any additional funds that could, in the future, be eligible to be held in the exempt policy.

Exception

(2) If, on the day this section comes into force, a side account holds an amount of funds in excess of the maximum amount permitted under subsection (1), the following rules apply:

1. No amount is required to be refunded in respect of the funds held in excess.
2. No additional funds may be added to the account until the amount of funds held in the side account is below the maximum amount permitted under subsection (1).
3. Once the amount of funds held in the side account is below the maximum amount permitted under subsection (1), that limit applies in respect of the side account.

Limits on amounts held, not tax exempt

(3) The maximum amount of funds held in any account or side account associated with a life insurance contract that does not include an exempt policy shall not exceed the funds required to pay future costs of insurance, related premium taxes and administrative fees or charges.

Permitted amounts held, ceases to be tax exempt

(4) The maximum amount of funds held in a side account associated with a life insurance contract that ceases to include an exempt policy shall not exceed the sum of,

(a) the funds required to pay future costs of insurance, related premium taxes and administrative fees or charges; and

(b) any additional funds that, on the day before the policy ceased to be an exempt policy, could have, in the future, been eligible to be held in the exempt policy if the policy had not ceased to be exempt.

Determination of amounts

(5) The amounts described in clauses (1) (a) and (b), subsection (3) and clauses (4) (a) and (b) may be determined, from time to time, by the insurer on an actuarial basis based on the expected remaining lifetime of the persons insured under the contract.

Non-application to annuities and variable contracts

(6) This section does not apply to any annuity deemed to be life insurance under this Act or any variable insurance contract within the meaning of section 110.