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Colorado State Legislature  
House Judiciary Committee

March 7, 2018

(Sent via email to committee staff - Bo.Pogue@state.co.us)

**RE: HB 1204 – NAMIC’s written testimony in support**

Dear Representative Lee, Chair; Representative Salazar, Vice-Chair; and honorable committee members:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the House Judiciary Committee for the March 8, 2018, public hearing. Unfortunately, I will be unable to attend the public hearing, because of a prior professional commitment.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 163 members who write property/casualty in the State of Colorado, which represents 45% of the insurance marketplace.

NAMIC is pleased to support the proposed legislation, because reducing the number of uninsured motorists on the roadways is an important public safety concern for citizens in the state. We support comprehensive enforcement of the financial responsibility law and the imposition of motor vehicle traffic fines that discourage and appropriately sanction uninsured motorist activities.

Although, NAMIC supports the current language of the proposed legislation, we believe that this bill provides an opportunity for the Colorado State Legislature to evaluate unnecessary and avoidable insurance rate cost-drivers that impact insurance costs for consumers and lead certain individuals to become uninsured motorists. Insurance costs are increasing in the state at a concerning level for both insurers and consumers. According to recent studies, Colorado is number 3 in rising auto insurance premiums in the entire nation, with a 50% increase since 2011. (*Denver Post*, February 27, 2018, <https://www.denverpost.com/2018/02/27/colorado-car-insurance-premiums-rise/>)

The data collected and maintained by the Colorado Division of Insurances shows that the increase in insurance premiums is not attributable to increased profits of insurers, it is the result of increased insurance rate cost-drivers, the vast majority of which insurers have no control over because they are unilaterally imposed on the insurance industry. NAMIC, in conjunction with the insurance industry,

has been encouraging the Colorado State Legislature to address insurance rate costs drivers for a number of years. For example, the insurance industry has repeatedly supported the Colorado Civil Justice League's (CCJL) legislative efforts to revise the current law on the introduction of evidence to a jury on *paid* medical damages in tort claims. Colorado law currently only allows introduction of *billed* medical damages, which are "Phantom Damages", because they were never actually incurred. They were merely "retail pricing" medical costs akin to an auto dealer's sticker price on a new motor vehicle, which everyone knows is not the actual price of the vehicle. "Phantom Damages" are unfair to defendants, and unnecessary and avoidable insurance rate cost-drivers that adversely impact affordability of auto insurance. Reform legislation on point has been continuously rejected by the State Legislature.

The same may be said about the current judgment interest rate law in the state that incentivizes and rewards plaintiffs for delaying the settlement of their lawsuits and insurance claims. The current judgment interest rate is a fixed 9%, which is much higher than the average rate of return one could make on a reasonably prudent investment in the financial marketplace. The insurance industry has supported the CCJL's efforts to revise the law to balance the needs of both plaintiffs and defendants, so that plaintiffs receive a fair interest rate on their pre- and post-judgment claim, without creating an economic windfall for the plaintiff that is an unnecessary insurance rate cost-driver. Reform legislation modeled after what is being done throughout the country has been continuously rejected by the State Legislature.

Last session, insurers attempted to legislatively fix a technical language problem in the law on improper denial of property and casualty claims, that allows professional services vendors hired by policyholders to assert, even without the consent of the policyholder, their own claims against the insurer. These lawsuits allow a non-party to the insurance contract to seek exemplary damages and attorney's fees over a claims dispute between the insurer and their policyholder. These professional services vendors are not a contracting party to the insuring agreement and were not adversely impacted by the insurer's improper claims decision, so why should they be allowed to have legal standing to assert a first-party based claim against the insurer? These lawsuits are needless and expensive. If the policyholder that hired the professional services vendor has a legitimate argument that the insurer improperly denied their claim, that party to the insuring agreement may assert the claim directly and seek appropriate damages. Once again, this is an example of an unnecessary insurance rate cost-driver that need to be resolved by the Colorado State Legislature if policymakers want to control the increasing cost of insurance coverage for consumers.

NAMIC and the insurance industry have also supported pro-motorist safety measures that have insurance rate cost-driver implications, because of the medical costs and property damages that result from avoidable auto accidents and injuries. This session, we supported SB 49, Concerning the Use of Mobile Electronic Devices While Driving (distracted driving bill), and SB 53, Seatbelt



Primary Offense, which both were designed to reduce the frequency and severity of motor vehicle accidents and injuries. Both of these bills were rejected early in the legislative process.

If the State Legislature wants to comprehensively address the uninsured motorist problem, NAMIC recommends passing legislation that prevents inflated damages claims, excessive judgment interest, litigation abuse of the improper denial of claims settlement statute and other anti-tort reform laws that increase insurance defense costs and unreasonably raise settlement values.

In the interim, NAMIC suggests passing HB 1204 with the proposed amendment to clarify the scope of coverage provided by UM/UIM coverage, so that it is clear to consumers that UM/UIM coverage does not apply to off-road activities, e.g. using an ATV or snowmobile. UM/UIM coverage is intended to address the financial exposure to consumers created by uninsured motorist on public roads who have failed to comply with the mandatory minimum liability coverage limits. The Financial Responsibility Law and the resulting UM/UIM coverage offered by insurers to consumers to address risk of loss resulting from non-compliance with the law was not intended to address off-road recreational vehicle use. The current ambiguity in the language of the statute has led to needless litigation over insurance coverage. With the current uninsured motorist rate in the state, it makes sense, from a public policy standpoint, to adopt legislation that promotes affordability of insurance by protecting UM/UIM coverage from unnecessary insurance rate cost-drivers, like litigation over UM/UIM coverage for off-road snowmobile activities.

For the aforementioned reasons, NAMIC respectfully requests that the House Judiciary Committee **VOTE YES on HB 1204 with the proposed UM/UIM technical language correction amendment.**

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you would like to discuss NAMIC's written testimony.

Respectfully,

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