

Hawaii State Legislature  
House Committee on Commerce and Consumer Protection  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

February 3, 2014

*Filed via electronic testimony submission system*

**RE: HB 2403, Insurance; Motor Vehicle Insurance; First Party Claims; Prompt Payment - NAMIC's Written Testimony for Committee Hearing**

Dear Representative Angus L.K. McKelvey, Chair; Representative Derek S.K. Kawakami, Vice Chair; and members of the House Committee on Commerce and Consumer Protection:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 5, 2014, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Hawaii, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC's members appreciate the importance of providing their policyholders with a timely resolution of their insurance claim, and policyholders are quite satisfied with the timeliness and comprehensiveness of the claims adjusting services provided to them by their insurance company. NAMIC is concerned that this proposed legislation is, not only an unnecessary fix to a

non-existent problem, but also a legislative proposal rife with potential adverse unintended consequences for insurance policyholders.

NAMIC respectfully submits the following concerns with HB 2403:

**1) The proposed legislation is a “solution in search of a problem”**

NAMIC has not seen any Department of Commerce and Consumer Affairs Division of Insurance data to support the contention that there is any type of systemic problem with insurers not settling first-party claims in a timely manner.

Insurers want and need to retain the insurance business of their policyholders, so they do everything they reasonable can to provide their policyholders with fast, fair, and friendly claims services. Unfortunately, since insurance claims are not all identical, some take more time to settle than others, based upon a multitude of legitimate factors that need to be taken into consideration to provide the consumer with the contractual rights they are entitled to pursuant to the insurance policy. HB 2403 would subject claims adjusting to a “one size fits all” time-table that is impractical, unworkable, and detrimental to the policyholder.

Additionally, NAMIC believes that the proposed legislation is entirely unnecessary because insurance consumers already have appropriate legal and regulatory protections in place to make sure that they are promptly paid as soon as liability and damages are reasonably determined. Specifically, the Hawaii's Unfair Claim Settlement Practices Act lists as an unfair practice, the failure to offer payment within thirty days of affirmation of liability if the amount of the claim has been determined and it is not in dispute. (Haw. Rev. Stat. 431:13-103 (a)(11)(F).

**2) The proposed legislation will actually harm not help insurance policyholders**

HB 2403 states, “the insurer shall pay to the claimant an amount the insurer deems fair within thirty days of a demand for payment of insurance benefits . . .”

NAMIC is concerned that HB 2403 will actually delay the resolution of first-party insurance claims, by refocusing legal attention upon the insurer’s initial and partial settlement payment as opposed to the insurer’s final and full settlement payment of the insurance claim.

Specifically, the proposed legislation will impose a bright-line legal deadline for payment that may not be consistent with the needs of the policyholder, who benefits from the insurer being able to conduct a thorough and comprehensive evaluation of the fact of the claim, which may take more than thirty days in certain cases. For example, if the policyholder has a property damage claim where another driver is arguably at-fault and the policyholder would prefer to have the at-fault driver’s insurer pay for the damages to avoid having to pay their deductible as part of their first-party insurance claim, a liability dispute may not be resolved within thirty days, especially if the dispute has to be submitted to intercompany arbitration for a liability determination.

Moreover, certain damages, like UM/UIM damages, require the resolution of an underlying liability claim against an at-fault third-party before the insurer can settle them. The proposed legislation doesn't take these type of situations into consideration and requires a claims settlement payment from the insurer that is impractical and potentially impossible to calculate within thirty days of the demand. Additionally, certain types of damages (the pain and suffering portion of a UM/UIM bodily injury claim) are not conducive, based upon their legal and medical nature, to a damages valuation within thirty days of a settlement demand.

The proposed legislation could force insurers to have to “guesstimate” on damages in order to comply with the unrealistic thirty days settlement payment deadline. The legal and practical application implications of this proposed settlement mandate is not in the best interest of the insurance policyholder and could adversely impact the policyholder in his/her underlying liability claim against the at-fault party.

Insurance policyholders are contractually entitled to and benefit from claims settlement practices that promote fair and accurate settlements, not rushed settlements. HB 2403 misplaces legal emphasis upon speed as opposed to accuracy in the claims settlement process.

### **3) HB 2403 will lead to unnecessary litigation.**

NAMIC is concerned that the proposed legislation is likely to lead to unnecessary and costly litigation that will act as an insurance rates cost-driver to the detriment of insurance consumers.

The language of the bill uses a number of terms and phrases that are subjective in nature and prone to disagreement in interpretation, which will lead to needless litigation.

HB 2403 states that, “the insurer shall pay to the claimant an amount the insurer deems *fair* within thirty days of a *demand for payment* of insurance benefits . . .” (Emphasis added).

Specifically, the language of the bill suggests that the insurer decides what amount is fair, but is that determination legally conclusive, or could the insurer be legally challenged by the policyholder if the policyholder has a different definition of “fair”? Reasonable minds can easily disagree on what is “fair”, especially when the valuation pertains to a subjective issue, like pain and suffering damages in a UM/UIM claim.

Additionally, what is meant by a “demand for payment”? Does it contemplate the submission of a formal settlement demand by the policyholder or would some loose and informal communication about damages between the policyholder and the insurer constitute a settlement demand? If a mere oral communication triggers the thirty day deadline, an insurer could be found in violation of the statute without ever actually knowing that the policyholder intended the informal oral communication to constitute a demand for payment. This type of statutory vagueness creates a fecund field for litigation, particularly when considered in light of the statutory provision in HB 2403 that states, “this section shall not affect any recourse the first party claimant may have against the insurer.” NAMIC is concerned that HB 2403 is really all about creating potential for bad faith litigation over vague terminology and an unworkable payment deadline.

**4) The proposed legislation interferes with the contractual rights of the insurer and policyholder.**

HB 2403 states, “If *after the payment*, the fair value of the claim is still in dispute between the insurer and the claimant, the matter may be resolved according to the provisions in the motor vehicle insurance policy.” (Emphasis added).

NAMIC is concerned that the aforementioned language improperly interferes with the contractual rights of the parties, because it restricts application of the contractual rights of the parties to a time after the thirty day settlement payment. The bill specifically states that the “matter may be resolved according to the provisions in the motor vehicle insurance policy” after the payment. Insuring agreements are in full force and effect upon execution and are legally operative before, during and after the filing of an insurance claim, so the terms of the policy are legally binding upon the parties throughout the professional relationship. HB 2403 would effectuate an improper and unjustifiable interference with the contractual rights of the parties to the insurance contract, which raises constitutional law legal concerns for NAMIC.

In closing, NAMIC respectfully requests that the House Committee on Commerce and Consumer Protection “**vote no**” on HB 2403, because the proposed legislation will only facilitate and encourage claims settlement conflict, not claims settlement resolutions, and will be harmful, not helpful to insurance policyholders.

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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