

3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

March 7, 2017

Colorado State Legislature
Senate Judiciary Committee

sent via email to:
Conrad.Imel@state.co.us

RE: SB 182, UIM Coverage - NAMIC's written testimony in support

Dear Senator Gardner, Chair; Senator Cooke, Vice Chair; and honorable members of the Senate Judiciary Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the Senate Judiciary Committee for the March 7, 2017, public hearing.

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 market.

The proposed legislation addresses three distinct insurance rate cost-driver problems created by the current law on uninsured and underinsured motorist coverage: 1) Ambiguity as to whether a policyholder may collect for the *same* auto accident damages and injures from *both* their UM/UIM auto insurance coverage and their medical payment auto insurance coverage; 2) whether an insurer may offer and a policyholder may elect to have no "stacking" (aggregating) of coverage limits in the separate UM/UIM coverages issued by the same insurer in one or multiple policies; and 3) whether an insurer and policyholder may agree to have a UM/UIM coverage limit that is clearly set by the policyholder, and independent of and not determined by the amount of the at-fault driver's liability insurance coverage limits.

10-4-609 (1)(c) – The proposed language in this section merely makes it clear that a policyholder may not collect more than the amount of their *total* injuries or loss for one accident by requesting coverage from two auto insurance coverage provisions in their policy. This is a common-sense clarification that is fair and equitable because one intuitively should not be able to collect more than their actual damages regardless of the number of different insurance coverages they have that may afford somewhat overlapping or complimentary coverage. Insurance coverage is intended to indemnify and restore the policyholder to their pre-accident condition; it is not intended to provide the policyholder with an economic windfall or profit.

10-4-609 (2)(a) – The proposed amendment to this section is intended to make it clear that a policyholder and an insurer may agree to not allow "stacking" (aggregating) of UM/UIM coverage limits, whether the UM/UIM coverages have been issued to the policyholder in one policy or in multiple policies by the insurer and/or its affiliated companies. This is a reasonable and appropriate pro-insurance consumer

option that is intended to address the policyholder's desire not to have to pay for "stacking" of coverage limits that they may not want, need or be able to afford. If a policyholder wants higher UM/UIM coverage limits, equal to what they would have if their multiple UM/UIM coverages were "stacked" (aggregated), this higher coverage limit may currently be purchased by the consumer. Mandated stacking needlessly limits consumer choice and the individual's ability to address their personal insurance coverage needs in a cost-effective manner.

10-4-609 (4)(b) and (5.5) – The proposed amendment to this section makes it clear that the policyholder's UM/UIM coverage limits apply to payments made to other parties involved in the accident, who are not the insured, and these payments impact the remaining UM/UIM coverage limits available to the insured. This is a straightforward clarification that eliminates any confusion over the fact that the *total* UM/UIM coverage limits selected by the policyholder is in fact the *total* coverage limits for the accident for all parties asserting a claim pursuant to the insured's UM/UIM coverage.

The proposed amendment to Subsection 5.5 is a pro-insurance consumer provision that will assist consumers in making UM/UIM coverage limits decisions, and allow consumers to purchase the exact amount of UM/UIM coverage limits they need, want or can afford.

Prior to the change in the law a few years ago, it was a long-standing practice that UM/UIM coverage was purchased by consumers with the policyholder understanding that if he buys \$100k in UM/UIM coverage, the consumer has \$100k in *total* coverage available for the auto accident. Thus, if the at-fault driver is uninsured the policyholder has \$100k in *total* coverage, and if the at-fault driver is underinsured (i.e. the at-fault party has less liability coverage limits than the injured party has in total damages) the policyholder can go to his/her UIM policy and receive the difference for \$100k in *total* coverage.

The proposed amendment makes it so that the policyholder may once again readily determine what UM/UIM coverage limits to purchase, because the amount of the at-fault party's liability coverage doesn't impact the *total* amount of coverage the insurance consumer has available in protection. If the policyholder wants \$500k in *total* coverage, she can purchase that specific optional amount.

In contrast, the current law makes it impossible for the policyholder to be certain of the amount of their UM/UIM coverage, because their *total* coverage protection will be partially based upon a variable the consumer cannot control (i.e. the amount of the liability coverage limits purchased by the at-fault party).

EX. 1(a): **Proposed amendment**– X determines that he needs \$100k in *total* coverage protection, so he buys \$100k in UM/UIM. Consequently, he has \$100k in *total* coverage, regardless of what the at-fault party has in liability coverage limits or whether the at-fault driver is uninsured or underinsured. Either way, the policyholder has \$100k in coverage, if he has \$100k in damages or injuries.

EX. 1(b): **Current law** - X determines that he needs \$100k in *total* coverage protection, so he buys \$100k in UM/UIM and gets into an accident with an at-fault driver. If the at-fault driver is *uninsured*, X has \$100k in *total* coverage limits, if the at-fault driver is *underinsured* with only \$25k in liability coverage, X has \$125k in possible underinsured coverage limits (\$25k in liability coverage and then \$100k in "pure excess/ no setoff" UM/UIM coverage). This doesn't make any sense. In essence, the actual value of the policyholder's \$100k UM/UIM coverage limits is ultimately determined by whether the at-fault driver is uninsured or underinsured.

NAMIC appreciates that some may argue that the proposed UM/UIM amendment, which allows the insurer to "set-off" the amount of the at-fault driver's liability policy coverage limits denies the policyholder of the full value of the underinsured coverage limits. However, this contention is conceptually and legally incorrect, because the policyholder selects the amount of the *total* coverage

limits that he/she wants and he/she gets that exact amount of the coverage limits purchased. The mere fact that the UM/UIM insurer gets to “set-off” the amount of the liability coverage limits paid (which is nothing more than a prospective form of “contractual subrogation”, i.e. a legal right the first-party insurer has to mitigate damages and recover what it paid out to its policyholder as a result of the negligence of the at-fault party) doesn’t change the *total* coverage protection selected and paid for by the policyholder. The policyholder is not denied any contractually agreed upon UM/UIM coverage limits benefits. If the policyholder purchased a *total* of \$100k in coverage, she ends up receiving \$100k in coverage apportioned and paid by the at-fault party’s liability insurance carrier and the UM/UIM insurance coverage carrier.

NAMIC believes that the proposed amendment is pro-insurance consumer choice, because the current law requires policyholders to pay for a UM/UIM coverage limit that is based upon a coverage limits amount that may be greater than what the policyholder actually selected. This requires the policyholder to have to pay for a coverage limit they may not want or need. Under a traditional UIM coverage system, insurers are able to take into consideration when calculating UM/UIM insurance coverage rates their legal ability to recover damages paid to their policyholder from the at-fault driver’s liability carrier. This is done by reducing the payment of the underinsured coverage limits by the amount already collected by the policyholder from the at-fault driver’s liability insurance carrier. This is not only fair, but it also is a reasonable way to engage in insurance rate cost-containment. Since consumers currently have the right to select and pay for as high a UM/UIM coverage limit as they desire for enhanced financial protection, the current prohibition against allowing a set-off merely reduces consumer choice by forcing *all* UM/UIM coverage policyholders to have to purchase a de-facto higher coverage limits underinsured policy.

For the aforementioned reasons, please **VOTE YES on SB 182, and reform UM/UIM coverage to be more consumer-friendly.**

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC’s written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC – Senior Director of State Affairs, Western Region