

Oregon State Legislature  
Oregon State Capitol  
Senate Committee on General Government, Consumer and Small Business Protection  
900 Court Street NE  
Salem, OR 97301

5/22/13

*Sent via electronic transmission to committee administrator at: channa.newell@state.or.us*

**RE: HB 2821A, Personal Injury Protection Benefits (PIP) and Underinsured (UIM) Motorist Coverage - NAMIC's Written Testimony in Opposition to the Proposed Legislation**

Dear Senator Shields, Chair; Senator George, Vice-Chair; and members of the Senate Committee on General Government, Consumer and Small Business Protection:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the committee for the May 22, 2013 public hearing. Unfortunately, I will be in another state at a previously scheduled legislative meeting at the time of this hearing, so I will be unavailable to attend. Please accept these written comments in lieu of my testimony at the hearing. This letter need not be formally read into the committee hearing record, but please reference the letter as a submission to the committee at the hearing.

NAMIC is the largest and most diverse property/casualty trade association in the country, with 1,400 regional and local mutual insurance member companies serving more than 135 million auto, home, and business policyholders and writing in excess of \$196 billion in annual premiums that account for 50 percent of the automobile/ homeowners market and 31 percent of the business insurance market. More than 200,000 people are employed by NAMIC member companies. NAMIC has 143 members who write P. & C. Insurance in the State of Oregon, which represents 45% of the marketplace.

HB 2821A would: 1) Modify current law on the reimbursement (legal and contractual subrogation rights) of personal injury protection providers by limiting their right to reimbursement to "only the extent that the total amount of [PIP] benefits paid exceeds the damages suffered by that person"; 2) Extend personal injury protection benefit coverage for certain expenses from one year after date of injury to two years after date of injury; and 3) Require insurers to provide UIM coverage without any off-set for the damages recovered by the policyholder from the at-fault driver.

On behalf of NAMIC's members, we respectfully *oppose* the proposed legislation for the following reasons:

**1) HB 2821A could adversely impact the affordability of PIP and UIM insurance coverage for consumers -**

The proposed legislation will change current law in two significant ways that will have an appreciable and unavoidable impact on the cost of PIP insurance coverage for insurers and their policyholders: 1) The bills will *double* the PIP benefits coverage period; and 2) The proposed legislation will severely restrict an insurer's ability to pursue insurance subrogation, which is used to legally and contractually mitigate damages.

It is hard to imagine how *doubling* the PIP benefits coverage period wouldn't be an insurance rates cost-driver. Extending the coverage period will increase the number of claims submitted; the number of medical bills submitted; make it easier for plaintiff attorneys to "puff-up" their non-economic damages claim; and will increase the claims administration costs, claims adjusting expenses, and legal defense costs. All of these business operating costs directly impact the cost of the insurance product to the consumer.

Additionally, the proposed legislation would severely restrict an insurer's ability to pursue insurance subrogation by limiting the insurer's right to reimbursement to "only the extent that the total amount of [PIP] benefits paid exceeds the *damages* suffered by that person." Current law only restricts the insurer's right to reimbursement to PIP benefits paid in excess of the *economic damages* suffered by the person. Once again, it is hard to imagine how a bill that limits an insurer's ability to mitigate its damages wouldn't be an insurance rates cost-driver. The proposed legislation is estimated to increase PIP costs by \$55.6 million by mandating that the claimant fully recover all economic damages and noneconomic damages (pain and suffering, loss of enjoyment, emotional distress, inconvenience, etc.) before an insurer has a right to pursue subrogation against the at-fault driver.

A fundamental principle of business, any business, is that the cost to the consumer is directly influenced by the cost of doing business, so when one increases the cost of doing business by preventing the company from recovering reimbursements it is legally and contractually entitled to and which help keep the cost of doing business down, there will be an unavoidable increase in the cost of the product to the consumer.

HB 2821A will also fundamentally alter how UIM coverage is selected by consumers and priced by insurers. Under the current law in Oregon, which is consistent with the historic approach to UIM and the national trend, a policyholder purchases an amount of UIM coverage based upon the amount of total coverage they want to have for the claim from all indemnitors (the at-fault driver's insurer and the policyholder's own insurer).

The proposed legislation is unnecessary and there is no legitimate public interest or public policy argument to support introducing this type of coverage into the marketplace, especially when it is likely to burden consumers with higher insurance costs. Nothing in current law, or the marketplace, prevents a consumer from purchasing higher UIM coverage limits if he/she wants added UIM protection and can afford a more expensive insurance coverage.

Additionally, HB 2821A will needlessly require insurers to spend money on creating and re-pricing their current UM/UIM coverage products to take into account the fact that they will no longer be entitled to a set-off for the damages already paid to the policyholder by the at-fault driver's insurer. These new administrative and actuarial costs will ultimately be paid for by the insurance consumer, via higher insurance rates.

Insurer experience with this type of UIM coverage in other states is that such coverage invariably drives-up insurance defense costs, increases the price to consumers of all UM/UIM insurance products, and incents the submission of unreasonable settlement demands intended to create unfair negotiating leverage for consumer attorneys. The proponents of HB 2821A would like you to place the financial interests of consumer attorneys, who will have a new litigation "gold mine" (additional automobile insurance coverage money available in a lawsuit to make their attorney contingency fees more lucrative), over the financial interests of insurance consumers, who will have to pay more for a UIM no-set-off insurance coverage that most consumers don't need, want, or can afford.

**2) Since the proposed legislation will be an insurance rate cost-driver for a state mandated auto insurance coverage (PIP), the proponents of the bill should be required to demonstrate that the proposed legislation is necessary and beneficial to all insurance consumers, not just a few litigants and their plaintiff attorneys -**

The state Financial Responsibility Law requires an owner or operator of motor vehicles to have PIP coverage in order to lawfully use their automobile in the state. The proposed legislation is likely to increase the cost of this mandated insurance coverage, which will make it more expensive for consumers to legally comply with their financial responsibility requirements. The proposed legislation could adversely and disproportionately impact low-income insurance consumers, who may not be able to afford an increase in the cost of a state mandated auto insurance coverage.

Consequently, the proponents of HB 2821A should demonstrate why this proposed insurance rates cost-driver bill is truly necessary and beneficial to *all* insurance consumers, particularly low income consumers, who will really feel the economic impact of this proposed legislation.

For the aforementioned reasons, NAMIC respectfully requests that the committee VOTE NO on this unnecessary and inappropriate insurance rates cost-driver bill.

Thank you for your time and consideration of NAMIC's written testimony. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you have any questions pertaining to my written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian J. Rataj". The signature is fluid and cursive, with a large initial "C" and "R".

Christian J. Rataj, Esq.  
NAMIC's Western State Affairs Manager