

Oregon State Legislature
Oregon State Capitol
Senate Committee on Judiciary
900 Court Street NE
Salem, OR 97301

2/14/15

Sent via email to: mike.reiley@state.or.us

Re: HB 2700, Class Action Settlements or Judgments and Legal Services Program - NAMIC's Written Testimony in Opposition to the Proposed Legislation

Dear Senator Prozanski, Chair; Senator Kruse, Vice-Chair; and members of the Senate Committee on Judiciary:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the committee for the February 16, 2015 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 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 153 members who write property/casualty insurance in the State of Oregon, which represents 46 percent 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 is opposed to HB 2700, because it will adversely impact the efficiency and fairness of the current class action tort litigation process. We specifically concur with the comments in opposition to the bill articulated by the Oregon Liability Reform Coalition, and ask that this committee not modify a class action tort litigation process that is working to the benefit of all litigants.

NAMIC is also concerned with Section 3 of the proposed legislation, which state:

O. Payment of damages. As part of the settlement or judgment in a class action, the court may approve a process for the payment of damages. The process may include the use of claim forms. If any amount awarded as damages is not claimed within the time specified by the court, or if the court finds that payment of all or part of the damages to class members is not practicable, the court *shall order* that:

(1) At least 50 percent of the amount not paid to class members be paid or delivered to the Oregon State Bar for the *funding of legal services* provided through the Legal Services Program established under ORS 9.572; ... (Emphasis added).

NAMIC appreciates the bill sponsors' desire to help fund Legal Services Programs that provide important legal assistance to the indigent. However, Legal Services Programs, like all other social welfare programs, need to be funded through state taxes, private philanthropy, or contributions from organizations directly associated with the program, like the Oregon State Bar Association for Legal Services Programs.

Since NAMIC represents mutual insurance companies, that have specific legal and contractual duties to their policyholders because of their ownership interest in the mutual insurance company and certain contractually defined rights to share in profits earned by a mutual (via rebates to policyholders in the form of dividend distributions or reduced future insurance premiums), we are opposed to this provision as being inconsistent with a fundamental legal aspect of mutuality and detrimental to mutual insurance company policyholders.

Mutual insurers should not be forced to pay collected policyholder premium as part of settlement or judgment to individuals or organizations (legal services programs), who are not actual parties to the insurance claim lawsuit and who have not been injured or financially harmed by the mutual insurance company's insured.

Any insurance claims settlement or judgment funds not paid out to the class action parties should be returned to the mutual insurance company defendant, who has a legal duty to its policyholders to engage in reasonable and appropriate underwriting, claims adjusting, and legal settlement practices that impact the profitability of the mutual insurer and the ownership interests of mutual insurance company policyholders.

Moreover, from a public policy and freedom of speech constitutional law standpoint, public welfare programs, like legal aid services, should not be funded by way of *judicially forced privatization*, i.e. forcing defendants to pay a portion of their civil settlement or judgment to fund social welfare programs that may be completely incompatible with the defendant's political beliefs.

For the aforementioned reasons, NAMIC respectfully requests that the committee **VOTE NO on HB 2700**.

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, if you have any questions pertaining to my written testimony.

Respectfully,



Christian J. Rataj, Esq.
NAMIC's Senior Director State Affairs -Western Region