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January 26, 2017

Montana State Legislature  
House Business and Labor Committee  
P.O. Box 200400  
Helena, MT 59620-0400

sent via email to:  
[karmstrong@mt.gov](mailto:karmstrong@mt.gov)

**RE: HB 137 – State Auditor/Commissioner Omnibus bill - NAMIC’s written testimony IN OPPOSITION to proposed public adjuster amendment**

Dear Representative Noland, Chair; Representative Curtis, Vice-Chair; Representative Ricci, Vice-Chair; and honorable members of the House Business and Labor Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the House Business and Labor Committee for the January 26, 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 134 members who write property/casualty in the State of Montana, which represents 40% of the insurance marketplace.

NAMIC is concerned with the following proposed amendment to HB 137:

Section 17. Section 33-17-102, MCA, is amended to read:

*(21) (a) “Public adjuster” means (i) an adjuster retained by and representing the interests of the insured; or (ii) a person who assumes the rights of the insured under the insurance policy in exchange for performing work for the insured.*

*(b) The term does not include a person who provides an estimate of work to an insurer on behalf of an insured, so long as the insured is notified of all such communications.*

NAMIC is concerned that the proposed amendment is inconsistent with the best interest of insurance consumers, because a public adjuster is retained by a consumer to assist the policyholder with their insurance claim and represent the pecuniary interests of the consumer, not the personal financial interest of the public adjuster.

The proposed amendment would create a confusing and legally complex situation where the public adjuster, the agent of the policyholder, becomes an assignee-claimant asserting his own independent legal claim against the insurer. This is problematic for a number of reasons: First, a policyholder's contractual rights are generally non-assignable pursuant to the terms of the mutually agreed upon insuring agreement. So what would happen if the assignee-claimant (public adjuster) is unable to collect from the insurer? Would that public adjuster have a breach of contract claim against the policyholder and be allowed to assert a lien on the insurance claims settlement?

Second, the proposed amendment, which would allow the public adjuster to have a direct financial interest in the claim, via an assignment of some portion of the value of the claim, would create a clear conflict of interest between the insured and public adjuster. This could place the public adjuster and policyholder at legal odds during the claims process. This is contrary to the very reason why a policyholder retains a public adjuster in the first place, i.e. to represent and promote the best interest of the insurance consumers during the adjusting of the claim.

NAMIC is also concerned that the proposed amendment could create a scenario where a person, untrained in insurance claims adjusting and not licensed as a public adjuster could be able to act as an insurance claims professional. The National Association of Insurance Commissioners (NAIC) Public Adjuster Licensing Model Act specifically states in Section 17, Public Adjuster Fees, that "a person shall not accept a commission, a service fee or other valuable consideration for investigating or settling an insurance claim if the person is required to be licensed under this Act and is not so licensed." [Emphasis added]

The public policy rationale behind this model provision is to make sure that insurance consumers do not get defrauded by people who wrongly represent to the public that they have claims adjusting experience and expertise.

For the aforementioned reasons, NAMIC respectfully requests that the House Business and Labor Committee **VOTE NO on the proposed amend on public adjusters.**

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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