

April 10, 2017

Oregon State Legislature
Senate Committee on Judiciary

sent via email to:
sjud.exhibits@oregonlegislature.gov

RE: SB 510, Child Support Debt Registry - NAMIC's written testimony IN OPPOSITION

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

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the Senate Committee on Judiciary for the April 10, 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 153 members who write property/casualty in the State of Oregon, which represents 44% of the insurance market.

NAMIC and its members appreciate the State Legislature's laudable desire to improve the system for collecting child support arrearages. Promoting the welfare of children is something NAMIC believes is of great important to society, and the societal problem of parents failing to comply with their legal duty to support their children is a serious public policy problem that should be addressed by the government. Any proposed solution to the child support collections problem should be designed in a way that *maximizes* the state's ability to attach the assets of these legally irresponsible parents and *minimizes* the state's interference with private business activities.

Consequently, NAMIC recommends that the Oregon State Legislature should fundamentally revise its legislative proposal that focuses upon procuring insurance claims information for attachments/liens on insurance claim payments. NAMIC is concerned that the proposed legislation would merely implement a quick and partial fix, not an appropriate and effective fix to the broad systemic problem of parents being legally irresponsible for the financial needs of their children. A more comprehensive approach is needed - one that enhances contempt of court sanctions and strengthens legal enforcement of child support orders. Going after insurance claims payments really won't accomplish that much, because the vast majority of insurance consumers rarely ever have an insurance claim. Additionally, since domestic relations law is rife with examples of parents who intentionally under-employ themselves or hide assets to reduce or

avoid paying their child support obligation, these individuals will merely forgo asserting an insurance claim if it will be subject to attachment to pay past-due child support.

Therefore, the proposed legislation will create an unnecessary cost-driver for insurance consumers without creating any appreciable positive impact upon the societal problem of parents disregarding their child support obligations.

Insurance companies are in the business of providing consumers with risk-based insurance protection. Insurers endeavor to provide their consumers with affordable insurance options, so insurers engage in reasonable and appropriate cost-containment practices. Imposing a new administrative burden and cost on insurers is tantamount to imposing a new financial burden on insurance consumers. From a public policy standpoint, insurance consumers should not be forced to pay the cost of fixing a societal problem that pertains to the general welfare of the entire society, not just insurance consumers.

In effect, the proposed legislation is a form of hidden taxation imposed on only insurance consumers to address a problem that should be funded with state tax resources. The proposed legislation creates a classic “slippery-slope” public policy problem, i.e. if a private business sector and its consumers are forced to pay the cost of addressing the child support collections problem, what will be the next general welfare and public safety problem that the private sector will be burdened with having to pay the cost of solving?

In addition to the aforementioned public policy concerns with the proposed legislation, NAMIC respectfully submits the following comments and suggested revisions to the proposed legislation:

1) NAMIC believes that the proposal should be voluntary not mandatory for insurers – The insurance industry has a well-documented history of being socially responsible members of the community. One need only look at all of the charitable activities and community investment programs insurers are voluntarily involved in to see the insurance industry’s commitment to improving their community. The proposed administrative costs and burdens associated with the legislative proposal will have a disproportionately greater adverse impact on smaller insurers, who are more directly affected by any new administrative costs. Thus, insurers should have the right to individually determine whether the legislative proposal may be accomplished in a manner that does not unreasonably hinder their ability to address their insurance consumers’ needs. Insurance consumers should not be harmed by the proposed legislation, and individual insurers are in the best position to determine what the likely impact of the proposed legislation will be for their insurance consumer book of business.

Only 4 states in the nation have a mandatory compliance requirement. If the State Legislature determines, after a few years, that the voluntary approach isn’t working, the state can then revisit the proposed idea of mandatory compliance.

2) NAMIC is concerned that the bill does not define what kind of insurance “benefits or payments” must be reported to the registry. Insurer payments that are payable to a third-party to repair or replace encumbered property, such as a car or a house, must be excluded from the definition of “benefits or payments”, because the claimant does not have direct access to these funds. Additionally, insurance indemnity payments such as reimbursements to medical providers for professional services rendered should also be excluded from the definition. As well as

insurance payments to the banks, credit unions, and others who have a contractual right to have collateralization of their loan. For example, if a claimant's motor vehicle has a car loan associated with its title, the insurer has to take this legal information into consideration when making an insurance claims payment.

In essence, liability claim payments or UIM claim payments for "General Damages" – the non-economic pain and suffering type damages that are not subject to a mortgagee or loss-payable clause in the insurance contract are really the insurance "benefits and payments" that may ultimately be attached for payment of child support arrearage. Consequently, NAMIC believes that the bill needs to be revised to precisely define what is meant by the phrase, "benefits or payments".

3) NAMIC is also concerned that the proposed legislation could adversely impact the insurer's contractual duty to its policyholders. When a policyholder is being defended or is otherwise in reliance upon their insurer to assist them in settling their liability claim, the policyholder is reasonably entitled to assume that their insurer will act exclusively in their interest and not to address some state public policy objective, like assisting in the collection of child support. NAMIC is concerned about the State inserting itself into the insurance claims process by imposing a duty upon insurers to delay settlement of an insurance liability claim until the insurer checks with the state's debt registry, especially if such a delay could adversely impact the legal rights of the insurer's policyholder or jeopardize the insurer's ability to timely and cost-effectively settle the claim for the benefit of their policyholder.

4) NAMIC believes that the proposed requirement for insurers to enter into agreements with the Department of Justice to provide information and financial records to department for claimants who are obligors of past due support is unnecessary. There is already a well-established and effective alternative to the proposed debt registry concept that would allow the state to learn of liability claim payments an insurer anticipates making well in advance of the payment being made, so as to allow the state to file a proper lien or order to hold and deliver against that claim or suit.

The Insurance Services Office (ISO) has an automated program that matches claimant identifiers against state and national data bases of child support enforcement actions, and alerts the appropriate agency of a possible claim payment so that the agency may take appropriate legal actions to pursue the collection of the child support arrearage before any payment is made. Not all insurers belong to ISO, but for those who do, ISO estimates 90% file a "Bodily Injury Index" form electronically at the outset of a liability claim. The specific programs searched by ISO's Child Support Enforcement Reporting Service include two child support enforcement organizations – the Child Support Lien Network (CSLN) and the Office of Child Support Enforcement (OCSE). These programs are available to the State as a "data match" resource to identify potential collection targets. All of this is done in an electronic file environment from claimant data that the insurer already collects; thereby, eliminating the added cost and risk associated with the proposed debt registry process.

5) NAMIC also respectfully requests that the proposed legislation specifically state that insurers are immune from and held harmless from any legal or regulatory liability associated with their good faith compliance with the disclosure of personal identifiers and

claims information. The proposed legislation would require insurers to disclose personal and potentially confidential claims information to the state, to engage in a process that could lead to the attachment of the claimant's insurance settlement proceeds, and possibly delay the timely settlement of insurance claims. In effect, compliance with the proposed legislation could expose insurers to civil claims from policyholders and claimants, and regulatory sanctions from the Division of Consumer and Business Services (DCBS) for delaying the settlement process or violating a provision of the insurance code while the insurer attempts to comply with the reporting requirements created by the proposed legislation. Thus, the proposed legislation should expressly address this issue to provide insurers with protection against this potential liability exposure.

6) NAMIC also respectfully requests that insurers be provided with a reasonable period of time to comply with the new law. Insurers will need to implement IT changes, create new internal claims adjusting procedures, and train claims staff on how to handle claims that may be subject to a child support lien. Providing insurers with less than a year to implement this insurance claims settlement attachment law would create unnecessary administrative costs and burdens for insurers. NAMIC recommends an implementation date of July 1, 2018.

For the aforementioned reasons, NAMIC respectfully requests that the Senate Committee on Judiciary **VOTE NO on SB 510.**

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