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April 26, 2017

Colorado State Legislature
House Judiciary Committee

sent via email to:
Bo.Pogue@state.co.us

RE: HB 1319, Appraisals for Insurance Claims - NAMIC's written testimony IN OPPOSITION

Dear Representative Lee, Chair; Representative Salazar, Vice Chair; and honorable members of the House Judiciary Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the House Judiciary Committee for the April 27, 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.

NAMIC appreciates and shares the bill sponsor's laudable desire to ensure that insurance appraisers and umpires selected and used to assist insurers and consumers in the settlement of disputed claims are fair and impartial in the exercise of their professional duties. The very purpose of the appraisal and umpire process is to assist the parties in reaching an amicable and equitable settlement.

Although the proposed legislation is intended to clarify and improve the objectivity and neutrality of the process to promote claims settlements, it is likely to actually create ambiguity and legal conflict between the parties. Specifically, one of the stated legislative objectives of the bill is to make sure appraisers and umpires are impartial and neutral. However, HB 1319 creates two separate definitions of "impartiality" – one for umpires and another for appraisers. The definition of "impartiality" for umpires is consistent with common usage and understanding of what it means to be an impartial and neutral intermediary, i.e. one with "*objective impartiality*"; whereas, the legislative definition of "impartiality" for appraisers is more in line with common usage and understanding of what it means to be an advocate, i.e. "*subjective partiality*".

HB 1319 states:

(2) Impartiality of appraisers and umpires. AN APPRAISER OR UMPIRE EMPLOYED TO ARRIVE AT A VALUATION OF DAMAGES FOR INSURANCE PURPOSES SHALL BE FAIR, IMPARTIAL, DISINTERESTED, AND INDEPENDENT. [Emphasis added]

However, the proposed definition of “impartiality” for an appraiser is inconsistent with this general legislative statement that *both* appraisers and umpires shall be “fair, impartial, disinterested, and independent.”

Specifically, the definition of “impartiality” for an appraiser arguably allows the appraiser to be a current employee of the public adjuster and allows the appraiser to have a professional relationship with a public adjuster that a reasonable person would consider likely to affect the appraiser’s objectivity and valuation of the claim.

The definition of “impartiality” for an appraiser in HB 1319 states:

(III) IS NOT A CURRENT EMPLOYEE OF THE INSURER OR POLICYHOLDER (“or public adjuster” has been omitted from the definition); AND

(IV) IS NOT A FAMILY MEMBER OR AN INDIVIDUAL WITH WHOM A PARTY HAS A PERSONAL RELATIONSHIP (“and professional relationship” has been omitted from the definition) THAT A REASONABLE PERSON WOULD CONSIDER LIKELY TO AFFECT THE APPRAISER’S VALUATION OF THE INSURED PROPERTY.

NAMIC is concerned that this language fails to prevent obvious conflicts of interest between the appraiser and the public appraisers, such as bias in advertising materials or close relationships with attorneys regularly used to assist public adjusters and/or represent consumers against insurers, which Colorado courts expressly used as criteria to find that an appraiser did not meet the existing legal standard for “impartiality”. (Great Northern Insurance Company v. 100 Park Avenue Homeowners’ Association, Inc., District Court Civil Action No. 16-cv-02009-RPM).

In the Great Northern Case, Senior District Judge Richard P. Matsch ruled that, “[i]mpartial is a commonplace word with an established meaning. The simplest dictionary definition is ‘Not partial or biased’ in Webster’s II New Riverside University Dictionary. ‘Partial’ is defined as ‘[f]avoring one person or side over another’ ...”

In the Great Northern case, the Court held that the appraiser used by the public adjuster was not legally impartial because of the close professional relationship the appraiser had with the public adjuster and the plaintiff’s attorney, which created an unfair bias in favor of the insurance claimant and against the insurer.

NAMIC is concerned that the proposed legislation would needlessly throw into question the well-reasoned legal ruling of Senior District Judge Richard P. Matsch and would be counter to the common-sense and common-experience definition of what it means to be impartial, i.e. objectively neutral.

In addition to NAMIC’s concern that the proposed legislative definition of “impartiality” for an appraiser is contrary to the very public policy objective of HB 1319, i.e. to promote real and actual impartiality, NAMIC has the following general concerns with the bill:

1) HB 1319 isn’t necessary – The legal system is well-versed in defining legal and contractual terms like “impartiality” and have effectively addressed the appropriate scope of the legal standards in Colorado. This point is well illustrated by the case of Auto Owners Insurance Company v. Summit Park Townhome Association, (District Court Civil Case No. 14-cv-03417-LTB), where District Judge Lewis T. Babcock specifically set forth the practical requirements for legal impartiality of an appraiser.

Further, there is no evidence to support the contention that the Division of Insurance and the judiciary have failed to properly address the issue of what is meant by legal “impartiality” as it pertains to the appraisal clause in insurance contracts. The simple truth of the matter is that public adjusters just don’t like the reasonable position adopted by the Division of Insurance and the sound legal definition of

“impartiality” adopted by the courts. This bill is really an “end run play” where they are hoping the State Legislature will give them the definition of “impartiality” that will allow them to retain biased appraisers that will assist them in their endeavor to inflate insurance claims settlements and ultimately their contingency fee wages.

2) The proposed legislation could have unintended adverse consequences for the contractual rights of insurers and their policyholders – The insurance appraisal process is specifically addressed in the insuring agreement, and the parties to the contract rely upon the stated and agreed upon rights and responsibilities of the parties. The contractual language in the insuring agreement, including the appraisal clause, is approved by the Division of Insurance as part of their regulatory oversight, and any dispute as to the meaning of a contractual term is subject to judicial review. Consequently, there is no real need for the legislature to interfere with the contractual rights of the parties or intervene into the regulatory bastion of the Division of Insurance or interfere with the legal prerogative of the judicial system to define legal terms in valid contracts.

3) The practical ramifications of HB 1319 will be detrimental to insurance consumers – The proposed legislation would allow public adjusters to “stack the deck” in the appraisal process by retaining appraisers that have clear biases against insurance companies. This will lead to improperly inflated damages assessments by these appraisers and costly delays in the settlement of insurance claims. The appraisal process is intended to streamline and economize the resolution of claims disputes. The proposed legislation and its standard of “subjective impartiality” for appraisers will just polarize the position of the parties and lead to more costly litigation, which is an insurance rate cost-driver for all insurance consumers.

For the aforementioned reasons, NAMIC respectfully requests that you **VOTE NO on HB 1319.**

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,



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