



HEADQUARTERS	WASHINGTON OFFICE
3601 VINCENNES ROAD	122 "C" STREET, NW
INDIANAPOLIS, INDIANA 46268	SUITE 540
TELEPHONE: (317) 875-5250	WASHINGTON, D.C. 20001
FAX: (317) 879-8408	TELEPHONE: (202) 628-1558
WWW.NAMIC.ORG	FAX: (202) 628-1601

April 12, 2005

The Honorable Governor Bill Owens
Colorado State Capitol
136 State Capitol
Denver, CO 80203-1792

Sent by facsimile transmission:
(303) 866-2003

Re: Please VETO SB 134

Dear Governor Owens:

The National Association of Mutual Insurance Companies (NAMIC) on behalf of its approximate 1,400 national member insurance companies that underwrite 43 percent of the property/casualty premium written in the United States respectfully requests that you **veto** SB 134, for the following reasons:

A. SB 134 would be harmful to the State's Workers' Compensation System

SB 134 would be harmful to the State's Workers' Compensation System, because it would: 1) change a fundamental procedural aspect of the administrative law hearing process by reordering the presentation of the parties' evidence and substantive case; this could indirectly impact the burden of proof and burden of production assigned to the respective parties; and 2) prevent the Administrative Law Judge from being able to conduct a thorough and complete adjudication of the case, i.e. the judge would not have the opportunity to ask clarifying questions to the expert witnesses who would be banned from testifying at the hearing.

B. SB 134 would unnecessarily increase the cost associated with providing Workers' Compensation Coverage

The proponents of SB 134 have argued that the bill will decrease the cost of workers' compensation coverage, because the bill will reduce litigation costs. However, litigation costs (estimated to be between 3-5% of the total cost of workers' compensation claims) are just a small part of the total cost of administering the system. Medical and indemnity costs are the primary variables that influence the total cost of workers' compensation. If workers' compensation carriers are prevented from being able to meaningfully defend, via the use of expert witnesses at the hearing, against groundless and frivolous claims, workers' compensation carriers will end up being required to pay excessive claims that could have and should have been refuted by expert testimony. This

will ultimately drive up the costs associated with administering the system and the cost to employers who are legally obligated to procure said coverage.

C. SB 134 is inconsistent with basic tenets of Procedural and Substantive Due Process

One of the basic tenets of Procedural and Substantive Due Process is that a litigant is to be afforded a reasonable opportunity to provide its substantive “case in chief” to the trier of fact and law. SB 134 would prevent the workers’ compensation carrier from having the freedom to structure its defense as it deems appropriate and offer expert testimonial evidence at the hearing. In essence, the workers’ compensation carrier would be denied an opportunity to offer relevant and permissible testimonial evidence that may be necessary to refute the medical claims alleged by the claimant. This would be unfair and inequitable, and could result in judicial determinations that are inconsistent with the facts and merits of the case.

D. SB 134 would adversely impact employers and meritorious claimants

If workers’ compensation carriers are prevented from being able to effectively defend against groundless and frivolous claims, the workers’ compensation system will be burdened with questionable claims at the expense of meritorious claims. This will ultimately lead to higher insurance costs to employers and reduced benefits to employees who will end up paying for those claimants who will take advantage of the fact that the workers’ compensation carrier will be barred from offering testimonial evidence to refute specious medical claims.

In closing, NAMIC respectfully requests that SB 134 be **vetoed** so that this bill does not adversely impact the positive headway made by the 1991 Workers’ Compensation Reform Act (SB 91-218).

Respectfully,

Christian John Rataj, Esq.
NAMIC State Affairs Manager