

May 6, 2014

The Honorable Elaine Nekritz
Chairperson, House Judiciary Committee
245-E Stratton Office Building
Springfield, Illinois 62706

Re: Letter in Opposition to SB 3287 - House Judiciary Committee Hearing, May 7, 2014

Dear Representative Nekritz and Members of the Committee:

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty trade association in the country, with 1,400 regional and local mutual insurance member companies serving more than 135 million auto, home, and business policyholders and writing in excess of \$196 billion in annual premiums. More than 200,000 people are employed by NAMIC member companies. In Illinois, we have 211 member companies, including 105 domestic companies, which underwrite 44% of the state's insurance.

NAMIC strongly opposes SB 3287, which undermines the core principle that the workers compensation system is the exclusive remedy for on-the-job injuries. The bill, as worded, also contains a significant loophole that renders the apparent retention of exclusivity for certain service organizations meaningless,

I. Expanding Liability Creates Higher Costs and Less Access to Safety Professionals

In the interest of brevity, NAMIC will not repeat the cogent points against SB 3287 that have been made by the Illinois employer community and risk management professionals except to say that eroding the workers compensation exclusive remedy standard is incompatible with an effective job-creation strategy for Illinois, particularly one directed at small employers who will have less access to job safety professionals due to the costs this bill imposes.

II. The Bill as Drafted Contains a Loophole that Precludes Exclusivity for Many Service Organizations Affiliated with Companies, Insurers and Brokers

820 ILCS 305/5 states in part that a "service organization retained by employer, his insurer or his broker to provide safety service, advice or recommendations" has immunity similar to that available to an employer, insurer or broker for employee injuries covered by the Workers' Compensation Act. If enacted, SB 3287 would restrict this service organization immunity to

The Honorable Elaine Nekritz
May 6, 2014
Page Two

only an organization “that is wholly owned” by the employer, insurer or broker (hereafter “entity”).

At first glance this appears to say that the loss of immunity only applies to third-party organizations that are retained by the entity and not service organizations that are part of the entity. But carefully read, the elimination of immunity extends to all service organizations that are affiliated with an entity in any way except via 100% downstream ownership.

Thus, if an entity and the service organization are separate subsidiaries of a common upstream parent, there is no immunity as the service organization is 100% owned by a different, albeit affiliated, firm. Arguably this would also be the case when the service organization and insuring function are part of the same corporate person, as neither “owns” the other. There clearly is less to this exemption than what meets the eye.

Even if this loophole were to be closed, the bill would be still objectionable if for no other reason than it would treat small companies more harshly than larger firms.

In conclusion, NAMIC believes that the bill, by chipping away at workers compensation fundamentals, is bad public policy and should be rejected.

Thank you for your attention to this issue. If you have any questions or comments, please do not hesitate to contact me. In the meantime, I remain,

Sincerely,



Mark Johnston
Director, State Affairs – Midwest Region

cc: Mr. Phil Lackman
 Mr. Kevin Martin