

January 20, 2015

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

sent via email to:
karmstrong@mt.gov

RE: HB 118, Delivery of Insurance Documents – NAMIC’s Written Testimony

NAMIC’s position: Opposed unless amended

Dear Representative Berry, Chair; Representative Salomon, Vice-Chair; Representative Lynch, 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 21, 2015, public hearing.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country’s largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 134 members who write property/casualty insurance in the State of Montana, which represents 40% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC appreciates and shares State Auditor Lindeen’s and Representative Bennett’s commitment to promoting the best interest of insurance consumers and their laudable desire to afford insurance consumers and insurers the opportunity to use, in an efficient and effective manner, modern technology to communicate with each other, and record/store important insurance documents in a convenient electronic format.

E-delivery legislation should encourage and facilitate the use of e-communications by insurers and consumers. NAMIC is concerned that the current draft of the proposed legislation is not user-friendly for insurance consumers and insurers.

Although the proposed legislation mirrors many provisions adopted in other states and welcomed by the insurance industry, NAMIC is concerned that several sections in the proposed legislation appear to be inconsistent with each other or may create confusion as to what an insurer and policyholder must do to be in compliance with the proposed e-delivery law.

In regard to the current language of the proposed legislation, NAMIC is concerned that certain provisions in the proposed legislation may have the unintended consequence of discouraging and hindering insurers and policy holders in their use of e-communications in their professional relationship. Specifically, there are a number of provisions in the proposed legislation that will likely create unnecessary administrative burdens and costs for insurers, expose insurers to needless and costly liability, and create avoidable inconveniences for policyholders.

*** Section 5. Protection of information.** *An insurer delivering notices or documents by electronic means shall take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing the notices or documents: (1) Results in actual receipt of transmitted information;* (emphasis added).

In effect, the proposed legislation would require that *all* e-communications be treated like US Postal Service certified mail, return receipt, which isn't required for standard delivery of insurance communications, notices and documents by non-electronic means. So why should this new administrative burden be imposed on e-delivery transactions?

Additionally, NAMIC is also concerned about the phrase "appropriate and necessary (emphasis added) measures" reasonably calculated to ensure that the insured is in "actual receipt" of the transmitted information. What is a "necessary" measure? One could argue that the only "appropriate, necessary, and reasonable" way for an insurance company to ensure the e-delivery system transferred the notices or documents to the policyholder is to actually secure a formal "acknowledgement of receipt" from the policyholder. This would create an administrative burden for both insurers and their policyholders, which could discourage insurers from offering and consumers from using the e-delivery system in the first place.

Moreover, what is meant by "actual receipt of transmitted information"? Does the policyholder have to actually open the email message or just receive it in the email inbox? Since the definition of "actual receipt" is ambiguous, it could be legally interpreted by a court to require that the policyholder must directly and proactively acknowledge to the insurer that he/she received the e-delivery of the document and require that the policyholder specifically affirm that he/she actually opened the document attached to the e-communication. This would result in an unnecessary inconvenience for the policyholder who would need to take an affirmative action to acknowledge "actual receipt" of the e-communication. The policyholder doesn't have to comply with such an administrative burden if the insurance communication, notice or document is sent by US Mail Service, so why should it be required for e-delivery? This requirement is contrary to the very purpose of e-delivery – convenient and efficient communications between insurers and policyholders.

Consequently, NAMIC recommends that Section 5, which is not part of the National Association of Insurance Commissioner's (NAIC) model bill on point, be removed from HB 118.

*** Section 6.Exceptions to Electronic Delivery -** *Regardless of whether a party consented to delivery by electronic means, an insurer delivering a notice of cancellation, non-renewal, or discontinuance of an insurance policy to the policyholder shall deliver that notice by a permissible non-electronic method and may additionally deliver the notice by electronic means. (emphasis added).*

NAMIC is concerned by this proposed requirement on insurer to deliver certain notices by US Postal Service when the consumer has specifically requested and consented to e-delivery as the approved method of communications. This proposed requirement totally defeats the very purpose and benefit of e-delivery to insurers and their policyholders.

If the policyholder requests that they receive *all* insurer communications, including *all* notices, via e-delivery, why shouldn't the consumer's preference be honored? Why should the policyholder be forced to go to a US Post Office, which the consumer is trying to avoid in the first place by requesting e-delivery of documents, to pick-up a certified mail notice that the consumer is already receiving via email delivery?

Although, NAMIC appreciates that this provision is intended to promote consumer protection, if the policyholder exercises informed consumer choice to use e-delivery and the consumer represents that he/she has the ability to access all e-delivery documents and notices, there is no legitimate public policy rationale for disregarding clearly expressed consumer choice. Consumer protection shouldn't be anti-consumer.

Further, this provision is conceptually in conflict with Section 2 (2) of the bill, which acknowledges that electronic delivery of a notice or document is equivalent to any delivery method, including US Mail, otherwise required by law.

Consequently, NAMIC believes that this section, which is not part of the NAIC model bill, should be removed from the proposed legislation, because it is inconsistent with the needs and desires of insurance consumers who want to fully utilize and benefit from e-delivery services, and is likely to create an unnecessary administrative cost that could act as an insurance rate cost-driver.

For the aforementioned reasons, NAMIC respectfully requests that the House Business and Labor Committee either AMEND HB 118 to make it consumer-friendly, or VOTE NO on the bill, so that it doesn't create new administrative problems for insurers and deny consumers the practical benefits of e-communications.

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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