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January 26, 2015

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

sent via email to:
lkeim@mt.gov

RE: SB 132, Aftermarket Parts – NAMIC’s Written Testimony in Opposition to Proposed Legislation

Dear Senator Buttrey, Chair; Senator Anntzen, Vice-Chair; Senator Stewart-Peregory, Vice-Chair; and honorable members of the Senate Business, Labor, and Economic Affairs Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the Senate Business, Labor, and Economic Affairs Committee for the January 26, 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 respects and appreciates Senator Vance’s desire to make sure that insurance consumers understand the auto repair process. However, NAMIC is opposed to SB 132, because the proposed legislation would adversely impact auto insurance consumers.

Insurance consumers benefit from laws and regulations that promote efficient and cost-effective auto repairs, and which prevent auto repair shops from coercing and misleading auto repair

consumers into paying for unnecessary and more expensive original equipment manufacturer (OEM) parts. SB 132 is contrary to all of these consumer-friendly public policy objectives.

Specifically, the proposed legislation would *not* promote efficient and cost-effective auto repairs. SB 132 would require insurance companies to make inaccurate and inappropriately alarming disclosures to auto insurance consumers about the alleged and unfounded perils associated with having non-original equipment manufacturer (Non-OEM) parts installed on their motor vehicle.

Although, insurers could use this proposed disclosure to market to consumers more expensive auto insurance coverages that use only OEM parts in the auto repair process, NAMIC's members believe that this legislative proposal is inconsistent with the best interest of insurance consumers, who want insurers to engage in reasonable and appropriate cost-controls that promote affordability of auto insurance. Since the reliability and safety of Non-OEM parts has been repeatedly demonstrated by a number of credible automobile parts testing organizations, there is no legitimate reason why insurers should be required to "scare" consumers into purchasing unnecessary and more expensive auto insurance coverages that provide for payment of OEM parts.

Additionally, the proposed consumer disclosures are arguably coercive and misleading. Specifically, SB 132 would require an insurer to make the following consumer disclosures:

- c) the use of aftermarket parts might affect the original manufacturer's warranty or extended warranties; and
- d) the use of the aftermarket parts might affect the lease agreement of a motor vehicle.

First of all, requiring insurers to provide legal advice about how the use of Non-OEM parts may impact a consumer's contractual rights as they relate to automobile manufacturer warranties and motor vehicle leases is arguably a violation of an insurer's First Amendment Commercial Free Speech Rights. Additionally, such a disclosure could be interpreted as an insurer providing legal counsel, which could create legal liability exposure for insurers and subject them to sanctions for engaging in the unauthorized practice of law. Moreover, these proposed disclosures are misleading and arguably deceptive, which could expose insurers to legal claims for deceptive trade practices.

The Magnuson-Moss Warranty Act (15 U.S. CODE § 2302) prohibits a manufacturer from voiding a warranty just because the consumer installs parts manufactured by someone other than the automobile manufacturer, so the proposed disclosure is inaccurate and misleading. The proposed consumer disclosure is not educational or informative, it is subtly deceptive ("might affect the original manufacturer's warranty") and coercive because no consumer wants to risk voiding their automobile warranty by using Non-OEM parts in their motor vehicle repair.

Further, the proposed legislation is inappropriately "heavy-handed" by conclusively stating that "[a]n insurer who fails to provide the disclosure required under this section *commits* an unfair method of competition or a deceptive act or practice in the business of insurance as provided in Title 33, chapter 18." (Emphasis added). So in effect, if an insurer is unwilling to provide

arguably misleading, deceptive, and subtly coercive disclosures to their policyholders, the insurer *shall be* held liable for engaging in a deceptive act or practice. In essence, SB 132 would place the insurer in a classic “Hobson’s choice”, make an arguably misleading and deceptive disclosure to the consumer and risk being sued by the policyholder for contractual bad faith and deceptive trade practices, and be exposed to regulatory sanctions by the CSI for violation of insurance code provisions relating to the sale of insurance, or be *in violation* of this statutory provision and subject to liability for a deceptive trade practice.

In addition to the anti-consumer protection aspects of this proposed legislation, NAMIC is also concerned that SB 132 imposed unworkable and impractical disclosure requirements that could adversely impact an auto insurance consumer’s ability to procure timely state mandated auto insurance coverage. Specifically, SB 132 states that “[a]n insurer shall provide written disclosure to a consumer, acknowledged in writing by the consumer, *before* issuing, delivering, or accepting a premium for a motor vehicle *liability* policy. . . .” (Emphasis added).

This requirement is problematic for a number of reasons:

1) Requiring written disclosure and securing a written acknowledgement of the disclosure from the consumer will needlessly delay the procurement of insurance coverage, because the consumer won’t be able to secure state mandated auto insurance coverage *until* he/she acknowledges in writing the disclosure. This will create unnecessary administrative burdens and costs for insurers and needless inconvenience for auto insurance consumers, especially for those consumers who want to purchase insurance over the phone or by way of the internet (bill doesn’t address e-delivery of the disclosure and consumer acknowledgement);

2) SB 132 would require this disclosure and consumer acknowledgement for *all* auto insurance consumers, even those who are purchasing only state mandated liability coverage. If a consumer is not purchasing first-party collision or comprehensive insurance coverage, the insurer is not going to be paying, per agreement of the parties, for any auto repairs to the policyholder’s vehicle, so this auto repair parts disclosure and acknowledgement requirement is irrelevant to the insurance sales transaction; and

3) The proposed disclosure and acknowledgment requirement will create a consumer burden without any corresponding consumer benefit. A policyholder doesn’t need detailed auto repair parts information at the time of the insurance sales transaction; rather the consumer needs auto repair information at the time of the submission of an auto insurance claim and when the motor vehicle is being repaired. Since insurance claims adjuster already provide policyholders with detailed information about the auto insurance claims process, the terms of the insurance coverage (including information about what is covered by the auto insurance policy), and the motor vehicle repair process, there really isn’t any need for additional consumer disclosures, especially since there is no data to support the contention that there is any problem in need of remediation, or that consumers need or desire additional auto repair parts disclosures from their insurer.

For the aforementioned reasons, NAMIC respectfully requests that the Senate Business, Labor and Economic Affairs Committee **VOTE NO on SB 132.**

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,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is fluid and cursive, with the first name "Christian" being the most prominent.

Christian John Rataj, Esq.
NAMIC – Senior Director of State Affairs, Western Region