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February 9, 2015

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

sent via email to:
hthigpen@mt.gov

RE: HB 369, Litigation Costs in Certain Lawsuits – NAMIC’s Written Testimony in SUPPORT of Legislation

Dear Representative Bennett, Chair; Representative Doane, Vice-Chair; Representative Court, 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 Business and Labor Committee for the February 10, 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 supports HB 369, because it is a pro-insurance consumer, pro-judicial economy, and pro-tort reform legislative proposal. In today’s overly litigious world, legally frivolous and factually groundless litigation has a significant adverse economic impact upon the business community, insurance industry, and judicial system. Tort reform is intended to reinstate common-sense legal principles that promote the fair, equitable, and cost-efficient use of the judicial system to resolve legitimate legal disputes.

NAMIC supports HB 369 as a thoughtful and measured tort reform bill for the following reasons:

1) The proposed legislation will help discourage the filing of many legally frivolous and factually groundless lawsuits.

In many civil lawsuits, the plaintiff retains an attorney on a contingency fee contractual basis, i.e. the plaintiff does not pay, out of pocket, any attorney's fees to litigate the claim. The plaintiff's attorney gets paid fees only out of any civil judgment or settlement of the case. This type of fee arrangement, which is available only to plaintiffs, not defendants, in civil law suits provides meritorious litigants with affordable access to the judicial system, but it also provides opportunity for litigants to file legally frivolous and factually groundless lawsuits in hopes of financially coercing defendants into paying "nuisance settlements" (settlements that are more economical to the defendant than paying the high price of tendering a legal defense against the lawsuit).

One of the by-products of the contingency fee arrangement is that even when the defendant prevails at trial on the merits, the defendant still financially loses, because the defendant has to pay his/her attorney's fees. The contingency fee defendant doesn't have such a financial risk. HB 369, which would entitle the prevailing party in litigation to an award of attorney's fees, would help restore some balance to the litigation system by forcing the plaintiff to have to consider the risk of having to pay an award of attorney's fees in his/her "cost vs. benefit analysis" as to whether to file a questionable lawsuit and whether or not to accept a reasonable settlement offer.

2) HB 369 will encourage parties to settle lawsuits and use alternative dispute resolution.

The attorney's fees award provision in the proposed legislation will force *both* parties to consider the potential cost of not accepting a fair and reasonable settlement offer, i.e. the cost of the prevailing party's attorney's fees. Additionally, with *both* parties having to consider the risk of an award of the other side's attorney's fees there is an economic incentive for the parties to consider using more cost-efficient forms of alternative dispute resolution to settle claims.

3) The proposed legislation promotes judicial economy.

Legally frivolous and factually groundless litigation needlessly congests court dockets, which creates delays for litigants with legitimate claims, and unnecessary staffing and resource burdens for the judicial system. Tort reform legislation like HB 369 helps reduce costly misuse and abuse of the legal system.

4) HB 369 is a pro-business and pro-insurance consumer bill that is fair to all litigants.

The proposed legislation is fair to all litigants, because both plaintiffs and defendants have an equal opportunity of being the prevailing party entitled to the award of attorney's fees. HB 369 is pro-business and insurance consumer, because tort reform legislation like HB 369 helps reduce litigation costs, which are a significant insurance rate cost-driver for insurance consumers and a

substantial operating cost for businesses that adversely impacts the price of consumer goods and services.

For the aforementioned reasons, NAMIC respectfully requests that the House Judiciary Committee **VOTE YES on HB 369**.

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 cursive script, appearing to read "Christian John Rataj".

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