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NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

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February 16, 2015

Members of the Senate Transportation and Public Utilities and Technology Standing Committee
Utah Capitol
Salt Lake City, Utah

Via email

RE: Opposition to Senate Bill 180

Committee Members:

The National Association of Mutual Insurance Companies (NAMIC) respectfully shares its concerns regarding SB 180, pertaining to amendments to the use of arbitration in third party motor vehicle accident cases.

We are 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. In Utah, we represent 143 insurers doing business in the state, comprising 42 percent of the marketplace.

SB 180 would change the rules of evidence by statute in third party automobile arbitration appeals. Specifically, a party who did not seek the appeal for the de novo trial would be able to introduce into evidence the amount of the award from the arbitration. In other words, the party who "won" the arbitration wants the court to know what the results were from the arbitration, despite the fact there is no need for such information in the de novo trial. NAMIC believes this is problematic legislation for a number of reasons.

The purpose of a de novo trial is for a trier of fact to take a fresh look at all of the facts, without the influence of what another finder of fact might have determined. The Legal Information Institute explains it best:

> When a court hears a case de novo, **it is deciding the issues without reference to the legal conclusions or assumptions made by the previous court to hear the case**. An

> appeals court hearing a case de novo may refer to the trial court's record to determine the facts, but will but rule on the evidence and matters of law without giving deference to that court's findings. A trial court may also hear a case de novo following the appeal of an arbitration decision.[1]
>
> (emphasis added)

This tradition of giving trial courts the ability to look at the evidence anew is not a novel concept. The party seeking the appeal should be able to do so with the confidence that any prior determination of liability or damages will not taint the trier of fact.

The prior arbitration award amount is irrelevant under the Utah Rules of Evidence. SB 180 would override the current rules of evidence – specifically Rules 401 and 403. Rule 401 makes evidence relevant if:

> (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
>
> (b) the fact is of consequence in determining the action.[2]

There's been no demonstration that the arbitration award is a fact of consequence in determining whether a driver was at fault and, if so, how much the driver should pay the claimant. Further, introducing the arbitration award at the de novo trial would create unfair prejudice and mislead the finder of fact in violation of Rule 403 of the Utah Rules of Evidence.

Appeals of arbitration awards under this statute are rare. Aside from the legal reasons cited above, there are practical concerns about the need for this legislation. Our members report few arbitrations are actually appealed. This legislation would affect only a very small number of claims. If few parties are actually appealing arbitration awards, we would submit that is solid proof that there isn't a problem that needs addressing.

This legislation infringes upon the rights of parties to due process. The Utah Legislature has created various laws congruent with the letter and spirit of the Utah Constitution to provide mechanisms for due process. If a party decides to avail itself of those due process options, it should be able to do in an impartial way. This legislation would inject partiality into the de novo trial process, in direct conflict with the reason for having a "de novo" trial.

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[1] http://www.law.cornell.edu/wex/de_novo
[2] Utah Rule of Evidence 401.

Creating what is in essence a new rule of evidence to discourage arbitration award appeals does not serve the interest of justice.

If an insurer is abusing the arbitration appeals process, the remedy is with the Department of Insurance and not the Legislature. From time to time we hear stories of how a particular insurer appeals dozens of arbitration awards every year in an effort to slow down the claims resolution process. NAMIC is not aware of any company doing so; our members report that arbitration appeals under this statute are very rare. In the rare chance a particular insurer is somehow abusing the arbitration appeals process, the Department of Insurance has a number of market conduct tools at its disposal from which to choose to investigate and resolve such problems. We believe the Department should be allowed to resolve such allegations under their current regulatory authority.

I hope you will feel free to contact me if you have questions or concerns about our position.

Sincerely,

Paul Martin
Director – State Affairs
Southwest Region

CC: Sen. Stephen Urquhart