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March 12, 2015

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

sent via email to:
McKenzieChambers@mt.gov

RE: HB 593, Montana Unmanned Aerial Vehicle Systems Act – NAMIC’s Written Testimony

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 March 13, 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 supports the legislature’s desire to regulate the use of unmanned aerial vehicles (drones) to protect an individual’s reasonable expectation of privacy and promote public safety. As with HB 586, NAMIC believes that state legislatures should allow the Federal Aviation Administration (FAA) to finish their comprehensive evaluation of the issue and finalize their regulations on acceptable use of drones for public and commercial endeavors before state legislatures undertake their own regulatory activities.

NAMIC also has concerns with several provisions in HB 593:

*** Section 5. Prohibitions** - NAMIC is concerned that this section is somewhat ambiguous as to the scope of the prohibitions. Specifically, what is meant by “surveillance”? Does the prohibition apply to only criminal investigative surveillance? The references in this section to “affidavits of probable cause”, “search warrants” and “prosecution” all support the interpretation that this prohibition *only* applies to criminal investigative surveillance. However, other provisions in this section create ambiguity as to what type of “surveillance” is being addressed by the bill, so NAMIC believes that a definition of “surveillance” should be included in the proposed legislation to avoid misinterpretation of HB 593. For example, does the “surveillance” prohibition apply to the non-criminal investigative use of a drone to evaluate an auto accident scene or document damages to a home that is the subject of an insurance claim or investigate a workers’ compensation disability injury claim?

Additionally, NAMIC is concerned about ambiguous language in other provisions in this section of the bill that could adversely impact the use of drones for important commercial use. Specifically, the following provisions in this section are in need of greater clarity: (ii) purposely or knowingly photograph, record, or *view images* of an individual *without the individual’s written consent*; or (iii) *disturb, harass, annoy, or otherwise invade the privacy* of any person. (Emphasis added).

What is meant by “without the individual’s written consent”? NAMIC is concerned that this could be interpreted to require an insurer to secure additional written consent from a policyholder for the use of a drone to assist the insurer in performing reasonable and necessary underwriting and claims adjusting insurance activities consented to by the policyholder, when he/she entered into the insuring agreement contractual relationship. Moreover, the broad language of this provision could arguably be interpreted to prevent an insurer from looking at (“viewing images” of) a wide scale photograph of a community hit by a hail storm or ravaged by a catastrophic event. Although NAMIC appreciates the laudable intent of the legislation to prevent drones from being used for inappropriately invasive purposes detrimental to individuals, the proposed language of this provision could also create problems for legitimate investigative and documentary purposes that benefit individuals. For example, allowing insurance companies to investigate and document hail damage to a number of homes in a neighborhood by use of a drone not only minimizes inconvenience to the insurance policyholders, but also provides the insurer an efficient and cost-effective mechanism to timely address insurance consumer needs for prompt settlement of insurance claims.

NAMIC is also concerned about the extremely broad language relating to the prohibition of the use of a drone if it may *disturb, harass, annoy, or otherwise invade the privacy* of any person. NAMIC believes that these terms should be defined in the proposed legislation by specific reference to criminal code provisions that define what is meant by unlawfully “disturbing”, “harassing”, “annoying”, or “invading the privacy” of another. Otherwise, these terms could be interpreted from a “subjective meaning” standpoint, which could lead to unreasonable and unnecessary litigation over whether the use of the drone actually and unreasonably “disturbed” the individual.

*** Section 6. Appropriate uses of unmanned aerial vehicles** – NAMIC believes that this section should be amended to expressly include a reference to the use of drones by insurers in

their insurance underwriting, claims adjusting, settlement practices, and insurance fraud investigative activities.

For the aforementioned reasons, NAMIC believes that the legislature should postpone passing HB 593 until the final FAA rules on drone use are adopted, so that Montana's law on drone use is consistent with federal law. In the alternative, if the legislature believes that it cannot wait for federal regulation to be adopted, NAMIC respectfully requests that the proposed legislation be amended to address the reasonable needs of insurance consumers who benefit from the commercial use of drones by insurers.

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" and last name "Rataj" being the most prominent parts.

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