

3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

www.namic.org

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

March 9, 2016

Senator Jim Rice, Chair
Senator Clifford R. Bayer, Vice-Chair
Senate Agricultural Affairs Committee

Sent via email to: sagri@senate.idaho.gov

Re: House Bill 525, Dangerous or At-Risk Dogs – NAMIC’s written testimony in opposition to House amended bill

Dear Senator Jim Rice, Chair; Senator Clifford R. Bayer, Vice-Chair; and honorable members of the Senate Agricultural Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony for the public hearing on HB 525. NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 40 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers.

NAMIC member companies serve more than 170 million policyholders and write nearly \$225 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 percent of the business insurance markets. NAMIC has 142 members who write property/casualty and workers’ compensation insurance in the State of Idaho, which represents 40% of the insurance marketplace.

NAMIC and its members are opposed to the House floor amendment to HB 525, which imposes a “strict liability” (also known as “absolute liability” or “automatic liability”) legal standard for negligence based dog bite claims for “dangerous” or “at risk” dogs. NAMIC is opposed to this significant departure from the standard legal requirement, that an owner or possessor of a dog be actually negligent in his control of the animal for there to be civil liability. Further, NAMIC is concerned that there is no public policy rationale for supporting the expansion of the application of the “strict liability” legal standard to basic negligence claims that do not pertain to ultra-hazardous activities.

NAMIC respectfully submits the following comments in opposition to the House floor amendment to HB 525:

1) The proposed “strict liability” provision is unnecessary – There is no evidence to support the contention that plaintiffs injured from dog bites are unable to successfully litigate negligence claims against owners or possessors of dogs. The unintentional tort of negligence is the long-

established legal standard throughout the nation for the vast majority of civil lawsuits, especially in cases involving injuries to a third-party arising out of routine activities by a defendant that typically do not pose any particularly unique risk of harm to others when conducted in a reasonably prudent manner. There is no public policy rationale for imposing “liability without proof of fault” for a defendant who has an unintended mishap while walking his “dangerous” dog, when the same defendant is only liable for damages caused by his “negligence” when driving his automobile. Both dogs and motor vehicles are potentially “dangerous” if handled in an unreasonable and negligent manner.

2) The House floor amendment to HB 525 is inconsistent with the intent of the bill - The proposed legislation was designed and intended to change the labeling of certain dogs from “vicious” to “dangerous”, to provide courts with greater discretion in imposing management restrictions on “dangerous” dogs, and to impose misdemeanor penalties for “dangerous” dog regulation violations. HB 525 shouldn’t be used as a legislative vehicle to fundamentally alter civil liability law. If the supporters of the House floor amendment believe that certain areas of tort law need to be re-evaluated by the legislature, NAMIC recommends that such a proposal be discussed first with interested stakeholders during the interim session before being introduced at the legislature. Fundamental changes to an area of law should be done clearly and conspicuously, not as “an add-on” to unrelated legislation, so that citizens of the State of Idaho have ample opportunity to express their concerns with the proposed changes to the law. This is particularly important when the proposed changes to the statute create serious civil liability exposure for a common civic activity, like dog ownership.

3) HB 525, as amended, will incentivize and reward the filing of frivolous and inflated-damages dog bite lawsuits - The proposed legislation will create “liability without proof of fault” so plaintiff attorneys will be able to file lawsuits on cases where the plaintiff is unable to prove that the owner, possessor or custodian of the “dangerous” dog did anything wrong in maintaining control of the animal and was at-fault for the injuries to the plaintiff. Since plaintiffs won’t have to prove that the owner, possessor or custodian of the “dangerous” dog was negligent in control of the animal, plaintiff attorneys will be able to file frivolous and inflated damages lawsuits as a potent negotiations strategy to coerce defendants into paying “nuisance settlements” on inappropriate or excessive damages claims.

4) The proposed “strict liability” provision in HB 525 is inconsistent with the national trend on civil liability law and is incompatible with the traditional doctrine of “strict liability” - The “strict liability” legal doctrine has been historically restricted to liability exposure created by certain defective products and for activities that pose serious risk of harm not normal to the locality in question, i.e. demolition work, and creation and transportation of hazardous chemicals. Ownership of a dog, even a “dangerous” dog does not rise to the level of creating an extraordinary or abnormal risk of harm to the local community.

The American Law Institute (ALI) Restatement (Third) of Torts states that “the traditional strict liability doctrine applies to liability for *abnormally* dangerous activities, for wild animals, for *abnormally* dangerous animals, and for intruding livestock . . .” [Emphasis added]

Even the ALI, an association comprised of legal scholars and plaintiff attorneys, narrowly limits application of the “strict liability” legal doctrine to “abnormally” dangerous animals, not domesticated animals like dogs, even if the dog is labeled as “dangerous”.

For the aforementioned reasons, NAMIC respectfully request that you **VOTE NO on HB 525, as amended by the House.**

Thank you for your time and consideration of NAMIC’s written testimony. NAMIC looks forward to our continued participation in this collaborative endeavor. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you have any questions pertaining to my written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian J. Rataj". The signature is fluid and cursive, written in a professional style.

Christian J. Rataj, Esq.
NAMIC’s Senior Director - State Affairs
Western Region