

April 8, 2016

Louisiana House Insurance Committee Members
Louisiana State Capitol
Baton Rouge, Louisiana

Via email

RE: NAMIC opposition to HB 353

Members of the House Insurance Committee:

The National Association of Mutual Insurance Companies (NAMIC) appreciates the opportunity to register its opposition to HB 353.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. In Louisiana, 128 member companies do business here, comprising a market share of 40%.

We are not aware of any compelling reason to make the details of a liability insurance policy available to the plaintiff's attorney. NAMIC opposes this bill for the following reasons:

Having the liability policy details pre-suit is not necessary to prosecute the claim. A claim's merit or value is irrespective of any liability insurance which may be obligated to pay. Thus, the existence or details of a liability policy are not helpful in proving or disproving any fact at issue in the litigation – which is the very definition of relevancy.

A claimant is currently free to condition their pre-suit settlement demand on production of the details of the insurance policy. There is no prohibition against voluntary disclosure of the policy limits under current law. If the claimant feels they need to obtain proof of insurance and the limits of such insurance prior to settlement of a pre-suit claim, they can request it from the insurer or tortfeasor as part of the terms of settlement. We see no reason to make disclosure mandatory.

Insurance policies contain sensitive personal information, and disclosing such information outside the protection of the court increases the risk of inadvertent disclosure. Federal and state laws protect personal and financial information. This bill would require that such information be disclosed prior to any liability being established or any suit being filed. Anytime such information is disclosed to a third party, the risk of it being disclosed through inadvertent disclosure or data breach of the requesting party increases.

Further, we note on page 2, lines 23-25 that “the claimant, or his attorney, shall destroy all information received pursuant to this” legislation. However, the bill is silent as to what constitutes adequate destruction and what penalty can be assessed against a party for inadequate destruction or negligent disclosure.

Requiring insurers to determine when a policy “may provide” liability coverage, without sufficient data, will require the insurer to speculate as to coverage. Despite provisions in the bill which preserve the insurer’s rights to dispute coverage when policy information is disclosed, HB 353 requires insurers to make initial determinations of coverage without the benefit of an investigation. Requiring insurers to make such speculations as to whether they are required to disclose sensitive financial data, with no safe harbor provision, and incur penalties under the Insurance Code (as provided in subsection (G) of the bill) if the insurer in good faith believes the policy does not provide coverage and fails to disclose it creates a significant compliance burden on insurers.

Article 1423 of the Louisiana Code of Civil Procedure already permits parties to “obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.” Claimants and their attorneys already have adequate access to such information, which is provided under the protections afforded by the court system. We see no need to permit claimants and their attorneys to require disclosure of this information pre-suit.

Please contact me if you have questions or comments about our position.

Sincerely,

A handwritten signature in black ink that reads "Paul Martin". The signature is written in a cursive style with a large, stylized "P" and "M".

Paul Martin
Director – State Affairs
Southwest Region

CC: Rep. Katrina R. Jackson