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March 27, 2017

Colorado State Legislature
House State, Veterans, and Military Affairs Committee

sent via email to:
Amanda.King@state.co.us

RE: HB 1254, Eliminating non-economic damages cap on wrongful death of minors - NAMIC's written testimony IN OPPOSITION

Dear Representative Foote, Chair; Representative Lontine, Vice Chair; and honorable members of the House State, Veterans, and Military Affairs Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the House State, Veterans, and Military Affairs Committee for the March 29, 2017, public hearing.

The National Association of Mutual Insurance Companies (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. NAMIC has 163 members who write property/casualty in the State of Colorado, which represents 45% of the insurance market.

The proposed legislation would eliminate the cap on non-economic damages for the wrongful death of a minor child and would change the definition of a "minor child" to any person who has not attained the age of twenty-one years.

Although NAMIC and its members deeply appreciate the anguish parents must feel when they suffer the loss of a child, especially a minor child, we are respectfully concerned that the proposed legislation will likely have a detrimental impact upon the affordability of insurance for consumers and will lead to protracted litigation and delayed settlements that will only prolong the hurt felt by grieving parents after their personal loss.

Additionally, NAMIC is concerned that HB 1254 is rife with unintended adverse public policy implications, so we respectfully submit the following list of concerns:

1) There is no evidence to support the contention that the current cap on non-economic damages does not adequately address the legal needs and proven damages of litigants -

Unlike economic damages (lost wages, medical expense, property damages, etc.), which are influenced by inflationary changes in the economy, non-economic damages (like pain and suffering, emotional damages, hedonic damages, etc.) are not financially impacted by vacillations in the economy. There is no scientific data to support the belief that emotional, psychological, or physical pain today has a greater

economic value than it did last year or three years ago. Consequently, there is no clear economic justification for eliminating the non-economic damages cap for *any* wrongful death claims.

Although NAMIC appreciates that the proposed legislation applies only to wrongful death claims of minors, the aforementioned public policy problem of eliminating damages caps on non-economic damages still holds true and NAMIC is concerned that HB 1254 will lead to future legislation seeking to eliminate non-economic damages caps for all civil claims.

2) The proposed legislation will create an unnecessary insurance rate cost-driver, that could adversely impact the cost of insurance to the consumer –

It is an inevitable and unavoidable fact that when statutory civil damages caps are raised, plaintiff attorneys raise their settlement demands to match the increased damages caps, because lawyers are duty bound to their client to try and recover as much in damages as possible. This is acutely so in wrongful death cases, especially wrongful death cases involving minor children, because basic human-nature leads one to be extra-sensitive and compassionate in cases where there has been a loss of life, particularly a child's life, so trial attorneys will use this sensitivity and the statutory elimination of the non-economic damages cap to justify asking juries for extremely high non-economic damages awards.

Further, with the elimination of the non-economic damages cap, plaintiffs will be encouraged to “build up” the economic damages in the case, so as to support an award from the trier of fact for their higher non-economic damages claim. Consequently, the alleged amount of economic damages will also increase.

As the amount of settlement demands increase, so to do the legal defense costs associated with litigating disputed claims and the amount of money paid to litigants in inflated damages settlements. These increased claims costs act as an insurance-rate cost driver that could adversely impact affordability of insurance for consumers.

3) HB 1254 could expose insurance policyholders to greater *out of pocket* financial liability exposure

The proposed legislation would eliminate the non-economic damages cap, which means that liability insurance coverage limits will more likely be exhausted quicker; thereby, exposing policyholders to greater out of pocket financial liability exposure. Most consumers do not purchase \$1million in liability coverage, so the proposed legislation will have a significant economic impact on insurance consumers, who will have to either purchase dramatically higher insurance liability coverage limits or expose themselves to greater out of pocket financial liability. This could have a significant detrimental impact upon small businesses that may have high liability deductibles and/or low coverage limits, and financially challenged consumers unable to afford higher liability insurance coverage limits.

4) The proposed legislation will lead to more litigation, which will burden trial court dockets with cases that should have been settled –

Since HB 1254 would eliminate the non-economic damages caps on subjective damages (damages not easily subject to quantification), plaintiffs will be incentivized to inflate their damages claims and “roll the dice” at trial hoping that the sympathies of a wrongful death case relating to a child will lead to higher non-economic damages awards. By increasing the damages cap, many defendants will have no choice but to legally contest these extremely high plaintiff settlement demands, especially since non-economic damages claims, by their very nature, are difficult to prove and quantify, and easily manipulated by rapacious litigants. Consequently, there will be more lawsuits going to trial, which will congest court trial dockets and delay the adjudication of meritorious legal claims.

NAMIC is also concerned that the proposed legislation defines a “minor child” as anyone under the age of twenty-one years of age, when state law allows for the emancipation of a minor at a much younger age

and state statutory child support guidelines define a “minor child” as nineteen years of age and younger. NAMIC does not understand why a “minor child” should be defined differently for civil litigation purposes.

For the aforementioned reasons, NAMIC respectfully requests that you **VOTE NO on HB 1254, because eliminating non-economic damages caps is unsound from a public policy standpoint, even when it applied to wrongful death claims involving minor children.**

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,



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