

February 13, 2015

Members of the House Business and Labor Standing Committee
Utah Capitol
Salt Lake City, Utah

Via email

RE: Opposition to House Bill 277

Committee Members:

The National Association of Mutual Insurance Companies (NAMIC) respectfully shares its concerns regarding HB 277, pertaining to the elimination of the statute of limitations for civil actions for child sexual abuse.

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.

First and foremost, we would like to convey that we are well aware of the sensitivities surrounding the topic of this legislation. NAMIC members – mainly mutual insurance companies, formed to protect the well-being of their policyholders – are leaders in national and local child safety initiatives around the country. Further, our members believe abuse of any kind is intolerable and should be punished, utilizing both the civil and criminal justice systems.

We would like to share concerns raised by some of our member companies who provide liability insurance for countless churches, schools, youth organizations and other community-minded entities who would be affected by this legislation. Insurers examine the various potential financial liabilities each of its policyholders creates to the insurer, through the underwriting process. In doing so, insurers look at the various legal remedies and causes of action a policyholder might face during the policy period in order to determine:

- a) Whether this is a risk the insurer should continue to insure; and
- b) If so, the appropriate amount of premium to charge that policyholder.

States have enacted a number of laws that regulate or prohibit insurers from engaging in certain underwriting practices. Beyond those limitations, insurers are generally free to evaluate risks and provide insurance to policyholders accordingly.

In evaluating those risks, one measure insurers consider is the various statutes of limitation for causes of action its policyholders might face. An expanded statute of limitations period will naturally mean a greater risk for claims being brought against a policyholder. That increased risk of claims would need to be factored into not only decisions on how much to charge in premium, but also whether the insurer can remain a good steward of policyholder funds by continuing to provide coverage to any policyholder facing an increased risk of claims for things like sexual abuse.

We have three concerns we would ask the committee to keep in mind when evaluating this legislation. These include:

1. *An unlimited statute of limitations serves as a disincentive to insurers to provide liability coverage for such claims.* Expanded statutes of limitation makes it more challenging for insurers to provide coverage at a price policyholders are willing to pay. We would anticipate insurers would begin to exclude such claims from being covered or raise their premiums on a large number of policyholders to ensure there are adequate funds available for the defense and indemnity of policyholders.
2. *Statutes of limitation provide an important balance between the ability of a victim to receive justice and a party to defend itself from claims.* Victims should have their day in court to seek justice. The accused should have the ability to prepare their defense without the inevitable loss of evidence and clear memories over time. This balancing act requires determining what's fair for both parties. Legislators must factor in the needs of various parties – the victims, the accused, and those organizations who may be found liable due to the actions of the accused – in determining the correct statute of limitations.
3. *The legislation is silent on whether the change in the statute of limitations would be prospective or retrospective.* Insurers have made agreements to accept liability based upon the law as written at the time the policy was in force. If the bill is designed to create causes of action for abuse that are currently barred by the statute of limitation, such a change in the law would have a dramatic effect on insurers writing these policies. Those insurers did not factor such liability into their premiums when entering into policy contracts with their policyholders.

NAMIC does not profess to have any expertise in the healing of those who have been sexually abused. Like Rep. Ivory, our members want to see abusers and those liable for their actions held accountable. We share our concerns in the spirit of discussing the various ramifications that can come about from eliminating statutes of limitations.

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

Sincerely,

A handwritten signature in black ink, consisting of the first name 'Paul' and the last name 'Martin' written in a cursive style.

Paul Martin
Director – State Affairs
Southwest Region

CC: Rep. Ken Ivory