

March 1, 2015

Members of the House Transportation Committee
Utah Capitol
Salt Lake City, Utah

Via email

RE: Opposition to House Bill 370

Committee Members:

The National Association of Mutual Insurance Companies (NAMIC) respectfully shares its concerns regarding HB 370, pertaining to collection of accident fees.

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.

HB 370 is in essence a "crash tax," giving the government recovery rights not currently available to the private sector. Specifically, our concerns are:

1. *The proposed 41-6a-409 (3) permits a vendor contracted by UDOT to "impose and collect a fee from a liable third party to pay the independent contractor's administrative costs for administering the claim."* Collection agencies generally receive compensation as a portion of the overall recovery, rather than by fees charged above and beyond the amount of the claim. When insurance companies engage in subrogation, they may only recover the damages it paid to their insured. They are not allowed to recover "administrative costs for administering the claim." A governmental agency should not have special recovery rights which are not available to the private sector for similar damages.

Further, the bill provides no provision for limitations on the "administrative costs for administering the claim." As such, UDOT and the vendor would have no incentive to

resolve the claim with the least expensive means.

2. *The proposed amendment allows for the recovery of estimated costs rather than actual costs incurred.* If you consider the current language in section 41-6a-409 (1)(b), you will note the government “may only charge the individual for **actual** cost of services provided in responding to the motor vehicle accident....” (emphasis added). This includes, under current subsections (b)(ii) and (iii), repair costs to damaged public property and costs of materials used in clean up materials.

The proposed language would allow UDOT to charge “for the reasonable estimated cost to repair or recover property.” Note the government would not be limited to the **actual** cost of repair like it is for the other portions of this statute; the permitted recovery would be based on an estimate. Again, this would create little incentive to perform the repair work in a cost effective manner.

3. *Other governmental entities who have resorted to using collection vendors for such fees have had limited recoveries while facing loss of goodwill from citizens.* Consider the experience of the city of Shaker Heights, Ohio. The vendor the city hired to collect accident response fees billed \$120,839 on the city’s behalf and only collected \$22,486. That represents a billed to collected ratio of over 5 to 1. Also, the Village of Sheffield, Ohio has given up on collecting the fees altogether because it was realizing only a fraction of what was being billed. “It’s a PR nightmare... It’s really not worth the time and trouble,” said the village mayor, Darlene Ondercin.¹

In the past several years, at least 35 municipalities have rescinded or voted down accident response fee ordinances. The nation’s largest municipality can be added to the list of cities and towns that have adopted or considered an accident response fee program only to abandon plans in the face of complaints and criticism. In April 2011, New York Mayor Michael Bloomberg dropped an accident response fee ordinance from consideration following an outcry of opposition from citizens, city council members, NAMIC, and others.

4. *In the end, automobile insurance insurers wind up paying these fees, while uninsured motorists who cause accidents do not.* The proposed amendment to the statute would allow the government to pursue “subrogation,” implying that the state has been indemnified for the loss. Since the state receives tax dollars to maintain the roadways and provide essential services, it is effectively indemnified with tax revenues for such losses throughout the year. NAMIC believes such fees are a form of double taxation applied only to those responsible drivers carrying auto insurance. As a practical matter, insurance companies will end up being the target of such collection efforts,

¹ “Ominous Trend: Growth of Municipal Accident Response Fees.” NAMIC Issue Brief, April 2006. A copy of this paper is attached to the transmittal email of this letter.

even if their policyholders were not the ones at fault or had minimal fault for the accident. Is it fair to penalize drivers who follow state law and carry insurance?

NAMIC believes the current law provides ample recovery opportunities for accident losses. We 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