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Nevada State Legislature
Senate Committee on Judiciary
401 S. Carson Street
Carson City, NV 89701-4747

April 7, 2015

Sent via electronic transmission to committee at:
SenJUD@sen.state.nv.us

RE: SB 300, Comparative Fault - NAMIC's Letter *in Support* of Proposed Legislation

Dear Senator Brower, Chair; Senator Harris, Vice-Chair, and members of the Senate Committee on Judiciary:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the April 8, 2015, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is 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 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market. NAMIC has 139 members who write property/casualty and workers' compensation insurance in the State of Nevada, which represents 40% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

On behalf of NAMIC's members, I respectfully submit the following comments *in support of* the proposed legislation, because SB 300 will promote and facilitate fair and equitable damages awards and settlements.

NAMIC's members appreciate and value the legal and societal importance of making sure that tort damages awards and settlements are fair and appropriate for *all* plaintiffs and defendants. In light of this reasonable public policy objective, NAMIC supports SB 300 as being a well-

reasoned and well-balanced legislative measure designed to restore common-sense and logical integrity to the tort system.

Specifically, SB 300 would directly restrict a defendant's "financial liability" to a plaintiff to the defendant's personal "legal liability" (percentage of fault) for causing the tortious harm to the plaintiff.

The proposed legislation states, "each defendant is liable to the plaintiff for the amount of damages and losses severally only, and not jointly, for that portion of the judgment which represents the percentage of responsibility assigned to that defendant ..."

NAMIC supports this proposed revision to the law, because it will clarify the law and eliminate legal loop-holes used by crafty plaintiff attorney to argue that joint and several liability should be applied to the case. As pointed out by the American Tort Reform Association (ATRA), "the rule of joint and several liability is neither fair nor rational, because it fails to equitably distribute liability. The rule allows a defendant only minimally liable for a given harm to be forced to pay the entire judgment, where the co-defendants are unable to pay their share."

For example, in a joint and several liability system, a defendant that is adjudicated to be only 1% at fault could end up paying 100% of the plaintiff's claim merely because the defendant has "deeper pockets" or more easily accessible resources, and the 99% at-fault defendant could walk away from the case without paying anything merely because he/she has limited resources and is not subject to post-judgment collections. How is such a result fair and just?

SB 300 will also eliminate the "moral hazard" created by the "loop-hole" joint and several liability regime that encourages and rewards individuals and businesses not to engage in sound risk management practices, because the defendant's exposure ends up not being tied to the extent of his/her "legal liability" (fault), but instead is tied to the extent of his/her financial resources. If the defendant has limited finances to be pursued in litigation, he/she has little economic incentive to be legally responsible.

"Rules of liability should provide incentives to those who are most capable of preventing harm. The current rule of joint and several liability minimizes accountability, because there is no direct relationship between actual responsibility and potential liability." Heartland Institute.

NAMIC also supports SB 300, because it requires the trier of facts to consider the "totality of the factual circumstances" of the case and evaluate the comparative fault of *all* parties who contributed to the accident or tortious incident. The proposed legislation specifically states, "the trier of fact shall determine the percentage of responsibility assigned to the following persons for causing the harm for which recovery is being sought: (a) Each plaintiff; (b) Each defendant; (c) Any person who has entered into a settlement agreement with a plaintiff; and (d) Any third party, including, without limitation, any person immune from suit ..."

Additionally, SB 300 is pro-insurance consumer and pro-business, because joint and several liability is an insurance rate cost-driver, because it exposes insurance policyholders, in multiple defendant cases, to 100% of the "financial liability" for a case, even if the policyholder is only

1% at-fault for the accident/incident. Consequently, insurers have to factor in this higher insurance liability exposure and the increased legal defense costs associated with having to defend small “legal liability” exposure claims because they could become big “financial liability” exposure payouts.

Joint and several liability exposure make it more difficult for insurers to provide consumers with risk-based underwriting, because an insurer’s “financial liability” exposure won’t just be tied to the “legal liability” of the policyholder, but it will also be tied to the unforeseeable financial circumstances of the other defendants involved in the incident, which are not underwriting variables that can be accurately considered.

For the aforementioned reasons, NAMIC respectfully requests that the Senate Committee on Judiciary **VOTE YES on SB 300**, and restore balance and fairness to tort liability law.

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,



Christian John Rataj, Esq.
NAMIC Senior Director – State Affairs, Western Region