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February 23, 2016

Colorado State Legislature
House Committee on Public Health Care and Human Services
200 East Colfax Ave.
Denver, CO 80203

sent via email to:
anne.wallace@state.co.us

RE: HB 1165, Child Support Interception - NAMIC's Written Testimony

Dear Representative Dianne Primavera, Chair; Representative Jonathan Singer, Vice Chair; and honorable members of the committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the Committee on Public Health Care and Human Services for the February 23rd public hearing on HB 1165, Child Support Attachments.

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 160 members who write property/casualty and workers' compensation insurance in the State of Colorado, which represents 44% of the insurance marketplace.

NAMIC and its members appreciate Representative Becker's and Representative Landgraf's laudable desire to improve the system for collecting child support arrearages. Promoting the welfare of children is something NAMIC believes is of great importance to society, and the societal problem of parents failing to comply with their legal duty to support their children is a serious public policy problem that should be addressed by the government. Any proposed solution to the child support collections problem should be designed in a way that *maximizes* the state's ability to attach the assets of these legally irresponsible parents and *minimizes* the state's interference with private businesses.

Consequently, NAMIC recommends that the Colorado State Legislature should fundamentally revise its legislative proposal that focuses merely upon attaching insurance claim payments, awards, and settlements. A figurative "bandage on a gaping wound" is not a real solution to the problem.

NAMIC is concerned that the proposed insurance attachment provision of the bill would merely implement a quick and partial fix, not an appropriate and effective fix to the broad systemic problem of parents being legally irresponsible for the financial needs of their children. A more comprehensive approach is needed; one that enhances contempt of court sanctions and strengthens enforcement of child support orders, and attaches a broad swath of the legally irresponsible parent's assets. Going after insurance claims payments, awards, and settlements really won't accomplish that much, because the vast majority of insurance consumers rarely ever have an insurance claim. Therefore, the proposed legislation will create an unnecessary cost-driver for insurance consumers without creating any appreciable positive impact upon the societal problem of parents disregarding their child support obligations.

If the Colorado State Legislature believes that it needs to find new ways to attach the assets of legally irresponsible parents to collect past-due child support, NAMIC recommends that the policy-makers "think bigger" and go after all of the non-exempted money and assets of these individuals, especially since few of these legally irresponsible parents will ever have an insurance claim or have insurance claim damages that are not exempt from attachment. Additionally, since domestic relations law is rife with examples of parents who intentionally under-employ themselves or hide assets to reduce or avoid paying their child support obligation, these individuals will merely forgo asserting an insurance claim if it will be subject to attachment to pay past-due child support.

Insurance claim settlements, like the vast majority of other forms of financial payment, are paid via a third-party draft (a paper check given to an individual to be cashed by a bank or an electronic transfer of funds to the individual's bank or financial lender). Therefore, if the state really wants to collect past-due child support, the proposed legislation should be focused upon requiring banks to attach all third-party drafts and deposits over "x" dollars payable to someone listed on a child support lien network and then let the child support enforcement agency pursue those funds. This is a better potential solution to the problem for the following reasons: 1) Unless an individual is being paid "under the table" they are going to need to go to a bank or licensed money lender to cash the check (including an insurance claim settlement check) in order to access the funds, so the child support collection agency will have a broader pool of assets to collect from; 2) Banks and financial institutions already have administrative procedures in place to process court ordered garnishments and attachments so they have extensive experience and expertise in this area, unlike insurers; 3) Banks and financial institutions already have to comply with state and federal law pertaining to deposits that could be related to the funding of terrorism, so the proposed reporting and attachment of assets process required pursuant to this legislative proposal would impose less of a financial burden on these institutions than it would on insurers; and 4) By focusing upon collecting the past-due child support at the time of "actual" payment of the funds or transfer of the individual's assets, the state will have an easier time making these legally irresponsible parents pay for the administrative cost of collecting the past-due child support. Banks and financial institutions could be statutorily authorized to recover the cost of the child-support attachment process from the individual at the time of the collection. In contrast, insurance consumers who have no connection to the child support attachment will end up having

to pay for the insurer's implementation and administration of this child support collections process.

Insurance companies are in the business of providing consumers with risk-based insurance protection. Insurers endeavor to provide their consumers with affordable insurance options, so they engage in reasonable and appropriate cost containment practices. Imposing a new administrative burden and cost on insurers is tantamount to imposing a new financial burden on insurance consumers. From a public policy standpoint, why should only insurance consumers be forced to pay the cost of fixing a societal problem that pertains to the general welfare of society, not just insurance consumers?

In effect, the proposed legislation is a form of hidden taxation imposed on only insurance consumers to address a problem that should be funded with state tax resources. The proposed legislation creates a classic "slippery-slope" public policy problem, i.e. if a private business sector and its consumers are forced to pay the cost of addressing the child support collections problem, what will be the next general welfare and public safety problem that the private sector will be burdened with having to pay the cost of solving? One can see the "mission creep" already in this proposed child support collection proposal, when one notes that the proposed attachment is to apply to "past-due child support *or* past-due maintenance" (spousal support that relates to division of marital assets) owed to a parent.

In addition to the aforementioned public policy arguments against the concept of an insurance claims settlement lien, NAMIC respectfully submits the following comments and suggested revisions to the proposed legislation:

1) NAMIC believes that the proposal should be voluntary not mandatory for insurers – The insurance industry has a well-documented history of being socially responsible members of the community. One need only look at all of the charitable activities and community investment programs insurers are voluntarily involved in to see the insurance industry's commitment to improving their community. The proposed administrative costs and burdens associated with the legislative proposal will have a disproportionately greater adverse impact on smaller insurers, who are more directly affected by new administrative costs. Thus, insurers should have the right to individually determine whether the legislative proposal may be accomplished in a manner that does not unreasonably hinder their ability to address their insurance consumers' needs. Insurance consumers should not be harmed by the proposed legislation, and individual insurers are in the best position to determine what the likely impact of the proposed legislation will be for their insurance consumer book of business.

Only 4 states in the nation have a mandatory compliance requirement. Why shouldn't voluntary participation be the first step in the evolving process? If the State Legislature determines, after a few years, that the voluntary approach isn't working, the state can then propose mandatory compliance.

2) NAMIC respectfully requests that the proposed legislation be amended to eliminate legal liability exposure for insurers associated with compliance – One of NAMIC’s major concerns with the proposed legislation is that it arguably exposes insurers to civil liability from the insurance claimant and also the parent owed past-due child support as a result of their good faith compliance with the proposed legislation. Additionally, since child support obligations and arrearages are frequently contested in family law cases, NAMIC is concerned that a party to the child support dispute could attempt to force an insurer to provide testimony at the child support hearing on statements made by the claimant during the claims adjusting and settlement process that allegedly pertinent to the child support dispute. Consequently, NAMIC suggests the following revisions to the proposed legislation (underlined sections are suggested additions to the current language):

26-13-122.7 (2): AN INSURANCE COMPANY, AGENCY, OR CENTRAL REPORTING ORGANIZATION, OR THE DIRECTORS, AGENTS, OR EMPLOYEES OF AN INSURER, INSURANCE COMPANY, OR CENTRAL REPORTING ORGANIZATION ARE NOT LIABLE, AND NO CAUSE OF ACTION SHALL ACCRUE, FOR DAMAGES BASED UPON ANY ACTION OR INACTION TAKEN IN GOOD FAITH PURSUANT TO THIS SECTION. AN INSURER COMPLYING WITH THIS SECTION SHALL NOT BE REQUIRED OR COMPELLED TO PARTICIPATE IN ANY DISPUTE PERTAINING TO THE UNDERLYING CHILD SUPPORT ORDER.

3) NAMIC recommends that the proposed legislation be amended to assist insurers in procuring information necessary for them to comply with the attachment process.

Therefore, NAMIC respectfully requests the following additions:

26-13-122.7 (1)(b)(III (A): UPON THE REQUEST OF AN INSURANCE COMPANY, AN INDIVIDUAL WITH AN INSURANCE CLAIM, PAYMENT, OR AWARD, OR SETTLEMENT GOVERNED BY THIS SECTION SHALL PROVIDE TO THE INSURER THE INDIVIDUAL’S CURRENT ADDRESS, DATE OF BIRTH, AND SOCIAL SECURITY NUMBER.

(B) THE INSURANCE COMPANY MAY INFORM THE CLAIMANT THAT THE REQUEST IS BEING MADE IN ACCORDANCE WITH THIS SECTION FOR THE PURPOSE OF ASSISTING THE STATE CHILD SUPPORT ENFORCEMENT AGENCY IN ENFORCING CHILD SUPPORT LIENS ARISING PURSUANT TO SECTION 14-10-122 (1.5).

(C) ANY CLAIMANT WHO REFUSES TO PROVIDE THE INFORMATION REQUIRED BY THIS SECTION SHALL NOT RECEIVE PAYMENT ON THE CLAIM, AND THE INSURER THAT DECLINES PAYMENT ON THIS BASIS SHALL BE EXEMPT FROM SUIT AND IMMUNE FROM LIABILITY UNDER THIS SECTION AND ANY OTHER SECTION OR IN ANY COMMON LAW ACTION IN LAW OR EQUITY.

4) NAMIC believes that the proposed legislation needs to be revised to address the practical realities of the insurance claims adjusting and settlement process – Insurance claimants typically submit a settlement demand amount that is based upon an assessment of all the various legal claims the person is legally entitled to assert (property damages, lost wages, diminished

earning capacity, pain and suffering, hedonic damages, etc.) so the proposed legislation needs to take into consideration the fact that in most situations the asserted claim and the eventual claim payment/settlement do not distinguish between the elements of total damages claim. Consequently, it may be difficult to determine which portion of the claims settlement is subject to the lien.

NAMIC is also concerned that the proposed legislation would apply to all insurance claims, even claims where the amount of the damages are quite small. From an administrative efficiency standpoint, small claims should be exempt from the attachment requirement, because the administrative burden and cost for the insurer and its consumers outweighs the financial benefit of the attachment. Reasonable and appropriate “cost v. benefit” assessments should not be disregarded from consideration, because meaningful state and insurance company resources will have to be expended on claims attachments. Consequently, NAMIC recommends the following revisions to the proposed legislation (underlined sections are suggested additions to the current language):

26-13-122.7 (1)(b)(I): FOR THE PURPOSES OF THIS SECTION, AN INSURANCE CLAIM PAYMENT, AWARD, OR SETTLEMENT IS LIMITED TO AN INDIVIDUAL WHO IS ENTITLED TO RECEIVE MONEYS IN EXCESS OF \$5,000.00 AFTER MAKING . . .

NAMIC is also concerned about the potential conflict that may arise when a claims settlement payment is legally due and owing jointly to multiple parties. Therefore, NAMIC recommends the following revision to the proposed legislation to avoid unnecessary disputes over which joint party is legally entitled to the damages (underlined sections are suggested additions to the current language):

26-13-122.7 (1)(b)(II)(A): ONLY INCLUDES THE PORTION OF THE CLAIM, AWARD, OR SETTLEMENT PAYABLE SOLELY TO THE OBLIGOR . . .

5) NAMIC respectfully requests that the proposed legislation be limited to only child support obligations or maintenance when combined with child support obligations – As previously stated, there are many societal problems that need to be addressed in today’s world, so the State Legislature should be judicious in imposing burdens on the private sector to help resolve a public sector general welfare and public safety issue. Protecting innocent minor children is at a different level of social importance and necessity than helping an adult ex-spouse collect maintenance, which may be awarded to the party for life.

6) NAMIC believes that the proposed legislation should be revised so as to minimize the adverse financial impact of the child support attachment process on insurance consumers - As stated earlier, NAMIC is ideologically opposed to legislation that forces insurance consumers to pay for the enforcement of laws unrelated to the insurance transaction. However, if the State Legislature believes that insurance consumers should be required to pay for this governmental function, NAMIC respectfully requests that the State Legislature expressly authorize insurers to

recover the cost of complying with the child support attachment process. Section 6 of the proposed legislation specifies that the State Child Support Enforcement Agency “may recover from the moneys collected any fees assessed upon the State Child Support Enforcement Agency in its efforts to attach insurance claim payments, awards and settlements.” NAMIC believes that the same right should apply to insurers, so that they may be able to offset the cost of compliance with the insurance claims attachment process. Legally irresponsible parents who ignore a child support order should be forced to pay the cost of the attachment process not innocent insurance consumers.

NAMIC also respectfully requests that insurers be provided with a reasonable period of time to comply with any new law. Insurers will need to implement IT changes, create new internal claims adjusting procedures, and train claims staff on how to handle claims that may be subject to a child support lien. Providing insurers with less than a year to implement this insurance claims settlement attachment law is unnecessary and unreasonable. NAMIC recommends an implementation date of January 1, 2018.

Thank you for your time and consideration of NAMIC’s written testimony. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you have any questions pertaining to my written testimony.

Respectfully,



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