

March 29, 2016

Louisiana Senate Insurance Committee Members
Louisiana State Capitol
Baton Rouge, Louisiana

Via email

RE: NAMIC opposition to SB 34

Members of the Senate Insurance Committee:

The National Association of Mutual Insurance Companies (NAMIC) appreciates the opportunity to register its opposition to SB 34.

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. In Louisiana, 128 member companies do business here, comprising a market share of 40%.

SB 34 would prohibit insurers from increasing the premium rate or implementing a surcharge when a policyholder asserts the "no pay, no play" affirmative defense found in R.S. 32:866(B). It would also impose treble damages and an award of attorney's fees for claims against insurers violating the provisions of the bill. We have three significant concerns with this proposal.

First, this bill allows negligent drivers to escape financial consequences when they are in accidents with uninsured motorists. Perhaps the easiest way to explain these concerns is through comparing two examples in which the policyholder asserts the "no pay, no play" affirmative defense in a lawsuit where the court determined the injured party's bodily injury damages total \$40,000:

Example A: Policyholder causes an accident with an **uninsured** motorist

Example B: Policyholder causes accident with an **insured** motorist.

In Example A, the uninsured motorist could recover their damages, less the first \$15,000, netting a recovery of \$25,000. Because the policyholder raised the affirmative defense, the provisions of this bill would mean the insurance company could not consider this claim in determining the proper rate or surcharge to assess against this policyholder. **Bear in mind – the policyholder was found to be negligent and to have caused the accident in this example.**

In Example B, the policyholder could not assert the affirmative defense, and the insurance company would pay \$40,000 as a result of the court judgement. In this scenario, the insurance company could apply any premium rate or surcharge changes that are actuarially justified.

The different premium result for these two accidents is dramatic:

- The policyholder incurs no increased premium or surcharge for causing an accident with an uninsured motorist.
- But if the policyholder's negligence results in a payment to an injured party meeting the financial responsibility requirements, the insurer can increase the premiums or surcharge.

We do not believe this is a logical result.

Second, the bill prevents insurers from assessing the risks of its policyholders with new information. If enacted, SB 34 would prevent insurers from using actual loss data in determining the correct premium to charge a policyholder. Loss data is a critical piece of information for insurers in their ongoing efforts to properly price insurance products.

In the examples above, suppose the policyholder was engaged in imprudent driving practices – speeding, distracted driving – at the time of the accident. This bill would prevent insurers from using that information for premium purposes in Example A, despite the fact this information may lead to actuarially justified changes to the policyholder's rates and surcharges. If such rate changes are prohibited, that increased risk may be subsidized by the remaining policyholders for that insurance company.

Finally, we can foresee an increased risk of litigation over the propriety of rate increases as a result of this bill. It's not inconceivable that litigation – spurred on by the promise of treble damages and attorney's fees in subsection B of the bill – would increase. We are concerned that insurers who increase premiums for reasons unrelated to the pleading of an affirmative defense will have their premium change decisions challenged in court. While insurers may be able to aptly defend their decisions, litigation expenses related to such challenges will increase.

Given these concerns, NAMIC respectfully opposes this bill. We appreciate the Committee's consideration of this issue. Please contact me if you have questions or comments about our position.

Sincerely,

A handwritten signature in black ink that reads "Paul Martin". The signature is written in a cursive style with a large, stylized "P" and "M".

Paul Martin
Director – State Affairs
Southwest Region