

March 28, 2016

Louisiana Senate Labor and Industrial Relations Committee Members
Louisiana State Capitol
Baton Rouge, Louisiana

Via email

RE: NAMIC opposition to SB 44

Members of the Senate Labor and Industrial Relations Committee:

The National Association of Mutual Insurance Companies (NAMIC) appreciates the opportunity to register its opposition to SB 44.

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 44 represents a significant departure from the laws of other states regarding how rating modifications would be altered by subrogation recoveries. Under the bill, if an insurer or group self-insurance fund (collectively, the "insurer") recovers at least 40% of the workers' compensation benefits paid due to the negligence of a third party, the insurer would have to completely eliminate any changes to the experience rating stemming from that accident.¹

The bill would further subject the insurer to specified penalties if it fails to return the employer to its pre-accident "premium rating" or refund all increased premiums paid as a result of the accident within 30 days of receipt of the recouped funds from the third person.

¹ The bill refers to "premium rating." We believe this is synonymous with "experience rating," a method insurers use to differentiate between employers/insureds within the same class of employers. This rating is largely a factor of the unique risk profile that insured presents. The experience rating is generally calculated using prior claims data, which is largely driven by the insured's use of loss mitigation practices.

These provisions present difficult challenges for the insurance industry. Some of those challenges include:

- *As benefits are often paid out over an extended period of time, the 40 percent threshold could be met one day, only to have future benefits cause the recovery to drop below the 40% threshold.* A workers' compensation claim can stay open for a period of time, during which multiple payments to the injured worker are made. If an insurer recovers 40 percent of payments made to date, only to make subsequent payments so that the recovery becomes less than 40 percent of the claim payment. This bill does not address how the insurer would handle that situation.
- *We know of no reason to set the threshold at 40 percent.* In speaking with our members who write workers' compensation insurance, it's not clear to us why the threshold of 40 percent was chosen for this bill.
- *Many times, the carrier who has the claim on which subrogation is sought is no longer the carrier for the employer when recovery is made.* Consider the following scenario:
 - Company A insures employer on date of loss and pays benefits to employee.
 - Six months later, employer changes to Company B for its workers' compensation coverage.
 - A year after the loss, Company A successfully collects more than 40 percent of its benefit payments from the at fault third party.

In this scenario, Company A cannot remove the loss from employer's experience rating, since Company A no longer insures employer. This is a very common scenario; the bill does not address how it would be addressed.

- *Returning an employer to its pre-loss "premium rating" and refunding any increased premiums within a 30 day window is unrealistic.* A number of tasks must be completed by the insurer prior to modifying an employer's experience rating. The insurer would have to calculate and submit data to National Council on Compensation Insurance (NCCI), waiting for NCCI to complete its necessary research and revised modifications, and then re-calculating the correct premium to be charged as a result of the subrogation recovery. It would be challenging for insurers to complete these tasks within a 30 day window.

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 word "Paul" is written in a cursive style with a large initial 'P', and "Martin" is written in a similar cursive style.

Paul Martin
Director – State Affairs
Southwest Region