

January 11, 2017

Montana State Legislature
House Judiciary Committee
P.O. Box 200400
Helena, MT 59620-0400

*sent via email to:
Sarah Fleming*

RE: HB 165 – Revised Punitive Damages - NAMIC’s written testimony IN SUPPORT of legislation

Dear Representative Doane, Chair; Representative Berglee, Vice-Chair; Representative Court, Vice-Chair; and honorable members of the House Judiciary Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the House Judiciary Committee for the January 12, 2017, public hearing.

The National Association of Mutual Insurance Companies (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. NAMIC has 134 members who write property/casualty in the State of Montana, which represents 40% of the insurance marketplace.

NAMIC is pleased to support this sound public policy legislation designed to promote a fair, balanced, and common-sense approach to the awarding of punitive damages, assist in the funding of the public defenders program, and bring thoughtful and necessary tort reform to the state of Montana.

The proposed legislation would add a qualifier to the current punitive damages cap to relate the calculation of these damages to the underlying actual damages in the case. HB 165 would add the provision, “or three times the total amount of compensatory damages awarded” language to the current punitive damages cap. This approach is consistent with the national trend on punitive damages caps. Of the states that even allow the awarding of punitive damages, the vast majority of those states have punitive damages caps, and most of those states have a provision in the law that relates the punitive damages award to the amount of the compensatory damages. These 18 states, along with the United States Supreme Court have recognized that it make sense and

promotes judicial fairness to consider the amount of the underlying actual damages of the plaintiff when calculating punitive damages awards.

Even pro-plaintiff attorney states like California require that the punitive damages awarded have a “reasonable relationship” to the other damages awarded in the underlying case.

NAMIC also supports the proposal in HB 165 to split the punitive damages award between the plaintiff, plaintiff’s attorney, and the public defender program. Such a pro-community benefit approach to using punitive damages awards to promote the general welfare of citizens of the state is not a unique idea and other states have adopted this sound public policy rationale.

The proposed splitting of the punitive damages award of 60% to go to the public welfare of citizens of the state, 35% to go to the plaintiff, and 5% to the plaintiff’s attorney makes sense and is consistent with the very purpose of punitive damages, i.e. as a form of exemplary damages to punish the defendant and deter future wrongful behavior. The concept of punitive damages was never intended nor designed to provide the plaintiff and his/her attorney with a huge economic windfall. Punitive damages awards should not be about creating a system of “jackpot justice” for plaintiffs and their legal counsel.

NAMIC is hopeful that the plaintiff’s bar will support this reasonable approach to sharing the punitive damages award since they frequent proclaim that they want to promote access to justice for indigent litigants which the 60% to the public defender provision in the bill promotes and the trial bar mantra that they want what is best for their clients/litigants, i.e. the second largest share (35%) of the punitive damages award. It must also be kept in mind that the legislative proposal doesn’t ignore the fact that plaintiff’s attorneys does invest additional time and effort into adding the punitive damages claim to their underlying litigation, because they are expressly allocated an additional 5% of the punitive damages award to be added to their customary tort contingency fee of 33.3%-40% of the compensatory damages in the underlying case.

When all public policy rationales are considered, HB 165 is reasonable, fair, and consistent with the interests and needs of *all* stakeholders.

For the aforementioned reasons, NAMIC respectfully requests that the House Judiciary Committee **VOTE YES on HB 165.**

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 of State Affairs
Western Region