NAMIC
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

PCI
Property Casualty Insurers
Association of America
Advocacy. Leadership. Results.

March 16, 2017

Nevada State Legislature
Assembly Commerce and Labor Committee

E-filed to:
AsmCL@asm.state.nv.us

RE: AB 83, DOI Omnibus Bill - NAMIC's and PCI's written testimony in opposition to Proposed Section 86 of bill

Dear Assembly Member Irene Bustamante Adams, Chair; and Assembly Member Maggie Carlton, Vice-Chair; and honorable committee members:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) and the Property Casualty Insurers Association of America (PCI), whose members write the vast majority of automobile, homeowners', commercial and workers' compensation insurance in the State of Nevada, an opportunity to submit written testimony on the above captioned proposed legislation.

Although the trades truly appreciate the bill sponsor's laudable desire to make sure that past insurance claims are fairly and appropriately considered by insurers in their rating and underwriting decisions, we are concerned that Proposed Section 86 is premised upon an unfounded supposition, i.e. that *payment* of a claim is the controlling variable in determining an insurance consumer's risk of loss exposure.

Insurance is an actuarial science involving risk of loss sharing and transfer, where the policyholder pays an insurance premium to share and transfer certain risk of loss exposure to an insurance company. As part of the insurer's decision to enter into the insuring agreement with the consumer, the insurer decides which insurance risks to accept or reject, and considers the consumer's risk of loss exposure, i.e. probability and likely severity of claims potential, in determining whether the proposed risk of loss transfer at issue is appropriate for the insurer's book of aggregate business, i.e. whether it could adversely impact the insurer's ability to address the coverage needs of its other policyholders. Insurers also use this consideration of the consumer's potential risk of loss exposure to calculate an insurance rate that is fair and commensurate with the consumer's personal risk of loss exposure.

Whether a policyholder's claim is paid or not by the insurer, does not necessarily change the policyholder's underlying risk of loss exposure. For example, assume that a policyholder has structural damage to the entryway staircase of their home and they submit an insurance claim, but it is not paid by the insurer because it was not caused by a covered insurance peril enumerated in the homeowner's insurance policy. If the policyholder does not fix the damaged

staircase, he has now created an unreasonable and serious hazard for third-parties entering and exiting the home. This creates a possible liability exposure for the policyholder, which would likely be a covered insurance peril that the insurer would have to contractually cover.

The proposed legislation would prevent the insurer from being able to consider this zero payment claims history in their rating and underwriting decision, even though it contains information that is clearly relevant to the consumer's ongoing risk of loss exposure. This is fundamentally counter to the very concept and purpose of property and casualty insurance, creates the moral hazard of rewarding consumers for not resolving or remediating their risk of loss exposure, and could adversely impact affordability of insurance coverage for consumers.

Additionally, the trades are also concerned that the Proposed Section 86 would prevent an insurer from considering for rating and underwriting purposes claims where the insurer "recovered the entirety of insurer's payment on the claim by means of salvage, subrogation or another mechanism." The trades are concerned that the proposed provision fails to take into consideration that insurer's sell total loss vehicles for salvage and subrogate against at-fault parties as part of their legal duty to mitigate damages and as a reasonable insurance rate cost-containment mechanism. An insurer's use of legal subrogation or the sale of total loss vehicles has no logical connection to the policyholder's underlying risk of loss exposure.

For example: Policyholder "x" gets involved in an at-fault auto accident which results in $8k in damage to the vehicle. Policyholder "x's" vehicle had a fair market value of $50k at the time of the accident, so the vehicle is repaired by the insurer. The insurer may use this at-fault accident in their rating and underwriting of policyholder "x".

Now compare the first scenario to one where policyholder "y" gets involved in an at-fault auto accident which results in $8k in damage to the vehicle. Policyholder "y's" vehicle had a fair market value of $10k at the time of the accident, so the vehicle is sold for salvage after being determined to be a constructive total loss. Pursuant to Proposed Section 86, the insurer may *only* consider this at-fault accident in their rating and underwriting of policyholder "y", if the insurer's salvage recovery is less than $8k. So if the salvage recovery is $7,999 the at-fault accident may be considered in evaluating the policyholder's risk of loss exposure, but at $8k in salvage recovery it may not be considered. This makes no sense, because the policyholder's risk of loss exposure is really the same, i.e. they were both involved in an at-fault accident, which in and of itself, is relevant and probative to the issue of what is the likelihood that policyholder "x" and policyholder "y" will be in another at-fault accident.

The trades are also concerned about the prohibition against considering for rating and underwriting purposes policyholder "inquiries made regarding an actual or potential claim under any policy of insurance…" Once again, this proposed prohibition totally misses the point that insurance at its most basic fundamental level is about risk of loss assessment. A policyholder's inquiry about an actual or potential claim is clearly information that an insurer should be able to consider in assessing risk of loss exposure.

For example: A homeowner's insurance policyholder calls his insurer and asks if he has coverage for his leaking roof. The insurer asks the policyholder whether the roof had been

recently damaged by a wind storm or a hail storm, the policyholder says no, the roof is just old. Pursuant to Proposed Section 86, the insurer would not be able to consider this clearly relevant information about a risk of loss exposure in their ongoing relationship with the policyholder, even though it is informative of the fact that the policyholder has a damaged roof and water penetration damage. This is entirely inconsistent with the very principle of risk based underwriting and rating.

Additionally, the trades believe that a substantive change to the current law on rating and underwriting, like the one proposed in Section 86 should really be offered as a stand-alone bill, because omnibus bills are supposed to address technical, noncontroversial regulatory issues.

For the aforementioned reasons, the trades respectfully requests that the Assembly Commerce and Labor Committee **amend AB 83 to remove Proposed Section 86.**

Respectfully,

Christian Rataj, NAMIC
Mark Sektnan, PCI