

Oregon State Legislature  
House Committee on Consumer Protection & Government Efficiency  
Oregon State Capitol  
900 Court Street NE, Room 453  
Salem, OR 97301

February 10, 2014

*Filed via electronic transmission to committee at: nick.herrera@state.or.us*

**RE: HB 4140 - NAMIC's Written Testimony for Committee Hearing**

Dear Representative Paul Holvey, Chair; Representative John Lively, Vice Chair; Representative Dennis Richardson, Vice Chair; and members of the House Committee on Consumer Protection and Government Efficiency:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 11, 2014, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

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 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 143 members who write property/casualty and workers' compensation insurance in the State of Oregon, which represents 45% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC's members appreciate the importance of protecting consumers from waivers that are void as against public policy, but HB 4140 is quite troubling, because of the legal scope and breadth of its approach and terminology. In effect, it creates an absolute ban on contractual waivers voluntarily agreed to by a consumer, if the contractual waiver is not expressly allowed for in a "law, rule, ordinance or other regulation of this state, or a political subdivision of this state." Of particular concern to NAMIC is the requirement that the *consumer health, safety or*

*welfare* law, rule, ordinance or regulation (whatever that language may actually legally mean) must *specifically permit* the waiver.

NAMIC is concerned that this proposed legislation is overly-broad and is rife with potential for unintended adverse consequences for consumers, who may legitimately believe that it is in the consumer's personal best interest to negotiate and execute a particular waiver. HB 4140 would prevent the consumer from being able to enter into this type of contractual relationship unless there is a consumer protection law specifically on point with the waived legal right *and* that consumer protection law, rule, ordinance or regulation *specifically permits* the waiver. The scope and practical implications of this proposed consumer protection legislation seems to be anti-consumer choice and anti-contractual rights.

NAMIC is also concerned that this proposed legislation is unnecessary, because the judicial system already possess the legal power to invalidate any contract or contractual provision, including waivers, which are determined to be void as against public policy. As part of the court's determination as to the validity of a waiver in dispute, the court would look at laws, rules, ordinances and regulations pertinent to the underlying legal rights and responsibilities of the contractual parties, so HB 4140 doesn't add any new consumer protections. The only thing HB 4140 does is create legal uncertainty for contracting parties, which could have serious implications for consumers and businesses, which need to enter into contractual relationships, including the execution of waivers, to effectuate standard business transactions.

The potential scope of the problem that would be created by HB 4140 is significant, because it could arguably be the legal basis for challenging any and all provisions in a contract. All one would need to assert is that a provision in the contract results in some direct or indirect waiver of a consumer protection right and that there is no law, rule, ordinance, or regulation clearly on point that specifically permits said waiver. Moreover, since the proposed legislation is unclear as to what a law, rule, ordinance, or regulation must state in order to be determined to "specifically permit" the waiver, this issue will become a "hot bed" for litigation, which will congest court trial dockets and create needless litigation costs for businesses and their consumers.

NAMIC is particularly concerned about the practical and legal ramifications of this proposed legislation for insurance consumers, because insuring agreements and claims settlement agreements are contracts that directly relate to contractual rights and consumer protections. HB 4140 could become the legal basis for challenging just about any provision in an insurance agreement or claims settlement. Specifically, one could argue that the insurance coverage exclusion and/or claims settlement effectuates a waiver of a consumer's legal rights. If there is no law, rule, ordinance, or regulation clearly on point that "specifically permits" said contractual provision or waiver, the contractual provision, maybe even the whole insuring agreement, could be held to be void. This type of legislative proposal will lead to expensive contractual chaos that will act as an inappropriate and unnecessary insurance rate cost driver that could adversely impact both the affordability and availability of insurance for consumers.

Insurance consumers and businesses benefit from the amicable and timely resolution of disputed insurance claims in advance of litigation. In fact, there is a long history of public policy in support of settling disputes outside of the litigation arena. HB 4140 would have a detrimental

impact upon claims settlements, because it would leave the question of whether the settlement did in fact effectuate a final resolve of the dispute. HB 4140 would arguably allow a party to negotiate a settlement, accept payment, and then contest the settlement as being void if there is no clear law, rule, ordinance, or regulation on point specifically permitting the settlement.

In conclusion, although NAMIC appreciates the fact that the bill sponsor desires to enhance consumer protection, HB 4140 is plagued with legal ramifications and practical application implications that would be harmful, not helpful to citizens of the State of Oregon.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you would like to discuss NAMIC's written testimony.

Respectfully,

A handwritten signature in cursive script, appearing to read "Christian John Rataj".

Christian John Rataj, Esq.  
NAMIC Senior Director – State Affairs, Western Region