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Oregon State Legislature
Oregon State Capitol
Senate Committee on Judiciary
900 Court Street NE
Salem, OR 97301

March 24, 2015

Sent via email to: mike.reiley@state.or.us

Re: SB 601 - NAMIC's Written Testimony

Dear Senator Prozanski, Chair; Senator Kruse, Vice-Chair; and members of the Senate Committee on Judiciary:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the committee for the March 26, 2015 public hearing. Unfortunately, I will be in another state at a previously scheduled legislative meeting at the time of this hearing, so I will be unavailable to attend. Please accept these written comments in lieu of my testimony at the hearing. This letter need not be formally read into the committee hearing record, but please reference the letter as a submission to the committee at the hearing.

We are 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 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market. NAMIC has 153 members who write property/casualty insurance in the State of Oregon, which represents 46 percent of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC member companies and the policyholders they exist to serve. Our educational programs enable members to become better leaders in their companies and the industry.

NAMIC appreciates and shares the legislature's commitment to protecting consumers from identity theft, and NAMIC's members are vigilant in their efforts to properly safeguard confidential information of insurance consumers that could be used by criminals to cause financial harm to the public. Consequently, NAMIC supports the intent of the legislation, and respectfully tenders the following concerns and suggested revisions to eliminate unintended adverse consequences of the bill and reduce the unnecessary administrative costs and burdens posed by the legislation for insurers and their consumers:

1. Section 646A.602, subsection (11). NAMIC is concerned that subsection (a)(F) far exceeds the scope of data security breach legislation in other states by classifying an "insurance policy number" as "personal information" subject to data breach notification requirements. NAMIC is unaware of any incidents in Oregon or other jurisdictions where criminals have targeted "insurance policy numbers" as a

means by which to effectuate identity theft. An “insurance policy number” cannot be used to procure a fraudulent credit card or line of credit, or be used to authenticate a person’s identity for a financial transaction. Therefore, NAMIC believes that this provision should be removed from the proposed legislation as being an unnecessary and overly-restrictive consumer protection, that will only do harm to insurance consumers. Insurers and consumers use the “insurance policy number” in conjunction with claims information to tract and organize insurance information necessary for the timely and accurate handling of consumers’ insurance needs. SB 601 could hinder insurers in their use of “insurance policy numbers” and create new administrative costs and burdens, when there is no evidence to support the contention that “insurance policy numbers” are being used to commit identity theft.

Additionally, considering the accidental disclosure of an “insurance policy number” to be a data breach could likely result in a much higher reporting of “false hits” as data breaches. Pursuant to the current language of the bill, a simple miss-delivery of a routine policy correspondence to a third party could be considered a data breach, even though the “insurance policy number” cannot be used to actually harm the policyholder.

From a logical construct standpoint, if this provision is maintained in the proposed legislation, shouldn’t all library card numbers, book club membership numbers, gym membership numbers, and *all* other non-financial account numbers used to organize and expedite business transactions for the benefit of the consumer be subject to similar data breach requirements? The “slippery slope” public policy problem here is that the proposed requirement could lead to a deluge of data breach notices being sent to consumers that will unnecessarily confuse and alarm consumers. Data breach notifications need to be judiciously utilized to inform consumers of meaningful identity theft threats, so that consumers don’t become desensitized to the receipt of a data breach notice. We all know the implications of the parable of “crying wolf” too many times.

NAMIC believes that relying on the term "financial account", which is already part of the existing law should appropriately address data breach concerns, because it would include products with a cash value such as annuities, and other financial instruments that could be targeted by criminals because of their inherent financial value and connection to personal data typically used to commit identity theft.

2. Section 646A.604, subsection (1)(b). The proposed legislation requires notice to the AG when the number of impacted consumers exceeds 100. NAMIC is concerned that the data breach notification threshold number should be consistent with the 1000 number specified for notifying consumer reporting agencies in subsection (6). NAMIC doesn’t understand why two different data breach notification threshold numbers should be utilized. Since the 1000 data breach number is sufficient for notification to consumer reporting agencies, who are directly involved in detecting, preventing, and resolving identity theft problems for consumers, it makes sense to use the same data breach threshold number for notification to the AG. Uniformity as to the data breach notification threshold number makes sense and has practical value. Therefore, NAMIC requests that the data breach notification threshold number for notification to the AG be amended to 1000.

3. Section 646A.604, subsection (3). This section of the proposed legislation requires requests by a law enforcement agency to temporarily hold consumer notification of a breach be in writing in order to delay the insurer’s required consumer data breach notification. NAMIC is concerned that this requirement sounds reasonable, but is impractical in light of staffing constraints of law enforcement agencies, who are struggling to maintain an appropriate number of officers “on the street” to deal with violent criminal activities. NAMIC recommends that all requests by law enforcement, including documented phone calls and electronic communications (e.g. emails) be considered acceptable for this section, so that the timely needs of law enforcement may be addressed in an administratively efficient manner.

4. Section 646A.604, subsection (9). NAMIC is concerned that this subsection could be misinterpreted to support a legal argument that the proposed legislation creates a new private right of action against companies which does not currently exist in law. NAMIC respectfully suggests that the language of this subsection should be revised to make it clear that no private right of action is being created by SB 601. Since there is no need for a private cause of action, it is important to make sure that this provision in the bill is clear, because unnecessary litigation is an avoidable insurance rate cost-driver that could adversely impact affordability of insurance for consumers.

Thank you for your time and consideration of NAMIC's written testimony. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you have any questions pertaining to my written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian J. Rataj". The signature is fluid and cursive, written in a professional style.

Christian J. Rataj, Esq.
NAMIC's Senior Director State Affairs -Western Region