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Alaska State Legislature
Senate Labor and Commerce Committee
120 E. 4th St., Juneau, AK 99801

2/1/14

*Sent via electronic transmission to: Senator.Mike.Dunleavy@akleg.gov;
Senator.Peter.Micciche@akleg.gov; and Dana.Owen@akleg.gov*

RE: SB 58, Right to Cancel Entirely Abandoned Property that Increases a Hazard Insured Against - NAMIC's Written Testimony in Support of Proposed Legislation

Dear Senator Dunleavy, Chair; Senator Micciche, Vice-Chair; and members of the Senate Labor and Commerce Committee:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 4, 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 85 members who write property/casualty and workers' compensation insurance in the State of Alaska, which represents 41% 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.

SB 58 states:

Section 1. AS 21.36.210 (f) is amended to read: 5 (f) An insurer may not exercise its right to cancel a policy of personal insurance other than personal automobile insurance, except for the following reasons:

(6) entire abandonment of the property that increases a hazard insured against; if a policy is cancelled under this paragraph, in addition to the notice required under AS 21.36.220, the insurer shall give notice of cancellation of the policy to a lender on file with the insurer at the time of the cancellation; in this paragraph, "entire abandonment" means the property is no longer occupied by the insured as defined by the policy and does not have contents of substantial utility; however, property is not entirely abandoned if the insured or an agent for the insured demonstrates that the property is being reasonably maintained and monitored for a condition that might cause damage to the property.

On behalf of NAMIC's members, we respectfully **support** this pro-insurance consumer, pro-contractual rights, and pro-public safety legislation for the following reasons:

1) **SB 58 is pro-insurance consumer**, because current law prevents insurers from being able to engage in a common-sense underwriting practice that is necessary and beneficial to insurance consumers, i.e. to cancel homeowner's insurance coverage on property that has been entirely abandoned and no longer maintained. Insurers need to be able to cancel a policy on an entirely abandoned property when the abandonment increases the risk of loss exposure to the insurer and the insurer's policyholders. Insurance consumers benefit from reasonable underwriting guidelines that allow insurers to maintain a book of business that makes sense for its policyholders (as a collective group) and which promotes homeowner safety.

NAMIC's member companies are mutual insurance companies, so they have a specific legal duty to their policyholders, as individual insureds and as part of the collective of policyholders, to engage in reasonable and appropriate underwriting practices necessary to prevent the creation of needless liability exposure that could act as an insurance rate cost-driver. Therefore, insurers need to be able to cancel policies that create an unnecessary and unreasonable risk of loss exposure for the insurer and its policyholders.

In effect, all of the insurer's policyholders are forced to pay the cost of insuring an abandoned home, one that may have liability exposure concerns that exceed the standard underwriting guidelines of the insurer. Since policyholders, who haven't abandoned their homes have to comply with standard insurance underwriting guidelines, so should policyholders who abandon their home. People who entirely abandon their homes should *not* have greater legal and contractual rights than individuals, who continue possession of their home and are required to comply with the insurer's underwriting requirements in order to maintain their homeowner's insurance coverage.

2) **The proposed legislation is pro-contractual rights**, because it will provide insurers with the *option* of being able to cancel a homeowner's insurance policy on an entirely abandoned home if the abandonment increases the risk of loss exposure beyond what was agreed to by the insurer and policyholder at the time the insuring agreement was negotiated by the parties.

When a policyholder abandons property that was supposed to be, pursuant to the terms of the contract, actively occupied and properly maintained, there has been a material breach in the terms of the contract, and under standard contract law the non-breaching party has the right to terminate the contractual relationship.

When a policyholder entirely abandons the home, the homeowner has significantly increased the risk of loss exposure to the insurer, because there is no one around to properly safeguard the property and/or engage in standard risk of loss prevention activities that protect the home from damage. Since this new risk of loss exposure was never contemplated by the parties at the time they entered into the insurance contract, i.e. never considered for underwriting and insurance rating purposes, it is only fair that the insurer be afforded the right to cancel the policy on the basis of standard contractual rights. Otherwise, it creates a legal precedent for one party to a contract to unilaterally change the fundamental contractual liability exposure of the other contracting party and the non-breach of contract party has no contractual recourse.

3) **SB 58 is pro-public safety** – The proposed legislation will make it more difficult for policyholders to engage in the “moral hazard” of neglecting their abandoned property, because they have someone else (the insurer and its policyholders) footing the bill for the liability exposure created by the homeowner’s abandonment of the property.

Moreover, the proposed legislation is consistent with the basic notion that all personal actions have their costs – if one decides to abandon their property and no longer safeguard it from damage, the cost of this personal decision is that they shouldn’t be allowed to require someone else to be responsible for any damage to their home.

4) **NAMIC believes that SB 58 is fair, equitable, and balanced in its approach to the cancellation of abandoned property**, because it has a number of qualifiers that are designed to protect the homeowner of the abandoned property: a) the property must be entirely abandoned; b) the abandonment must increase the liability risk to the insurer; c) the insurer must provide notice of cancellation to the homeowner/policyholder and the mortgage lender of the pending cancellation; and d) the property will not be considered abandoned if the homeowner or his/her agent merely demonstrates that it is being properly maintained and monitored for risk exposure.

Almost every other state in the nation has a statute that allows for cancellation for property abandonment that increases risk of loss exposure to the insurer, so SB 58 is consistent with the national trend.

For the aforementioned reasons, NAMIC respectfully requests that committee members **VOTE YES on SB 58.**

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, with the first name "Christian" and last name "Rataj" being the most legible parts.

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