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Oregon State Legislature
Oregon State Capitol
House Committee on Business and Labor
900 Court Street NE
Salem, OR 97301

2/26/15

Sent via email to: jan.nordlund@state.or.us

**Re: HB 2797, WC Temporary Disability Compensation First Installment Payment - NAMIC's
Written Testimony in Opposition**

Dear Representative Holvey, Chair; Representative Barton, Vice-Chair; Representative Kennemer, Vice-Chair; and members of the House Committee on Business and Labor:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the committee for the February 27, 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.

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 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 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 is opposed to HB 2797, because it creates legal ambiguity as to when the employer needs to pay its first installment payment of temporary disability benefits (TDB). Legal ambiguity is detrimental to employers, injured workers, and the workers' compensation system, because it could create legal liability exposure for employers and would be harmful to injured workers, who need to know when to expect the first installment payment of TDB.

The current law requires an employer to issue payment within 14 days of having notice or knowledge of *the claim*, **if** the attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 authorizes the payment of temporary disability compensation.

The proposed law requires an employer to issue payment within 14 days of having notice or knowledge of *the claim or of the worker's disability, whichever is later*, **and** the attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 authorizes the payment of temporary disability compensation.

NAMIC is concerned that the proposed revisions could lead to costly and protracted legal disputes over: a) when the 14 days payment deadline starts to run; and b) the legal significance of the change in the language from “**if**” authorized by the physician ... (which is a qualifying term and a legal condition-precident to the creation of the employer's duty to issue TDB payment to the injured worker) to “**and**” authorized by the physician ... (which is a conjunction and may or may not be legally interpreted to be a condition-precident to the creation of the employer's duty to issue TDB payment to the injured worker).

In regard to the issue of adding a second standard for determining when the 14 day payment deadline commences, NAMIC is concerned that the proposed language is seriously ambiguous. When does an employer have notice or knowledge “*of the worker's disability*”? Determining when an employer has notice or knowledge “*of the claim*” is readily determinable and subject to being proven by objective evidence, i.e. the date the notice of the claim (a formal administrative law document) was filed and delivered to the employer or the date the employer is provided with WC information about the pending claim.

In contrast, the proposed language adds a subjective evidence consideration to the equation, what does the employer have to actually know or have knowledge of in regard to the worker's disability? If the injured worker merely says that he is disabled to the employer is that enough to constitute notice or knowledge of the disability? There is a significant legal and medical distinction between an injured worker *claiming* to have an *alleged* disability and a third-party medical expert *certifying* that there is an *actual* disability. Does the 14 day payment timeline commence upon the injured worker making a claim of an alleged disability or does it commence only after a physician certifies that there is an actual disability? This convoluted analysis of whether the employer had notice or knowledge of the disability is made even more complicated by the fact that the proposed legislation changes the “if” authorized by the physician to “and” authorized by the physician.

NAMIC is concerned that the ambiguity created by the proposed changes to the statute will lead to unnecessary legal disputes that will act as an insurance rate cost-driver and delay the timely resolution of TDB claims and the first installment payment to the injured worker.

Unless there is clear evidence to support the contention that the current “TDB payment trigger” (employer has knowledge or notice of claim) is not adequately addressing injured worker's practical needs, NAMIC is opposed to any proposed modification to the law that will make it more difficult and costly for employers to determine when to issue the 14 days payment and more confusing for injured workers to determine when their first installment payment should be expected.

For the aforementioned reasons, NAMIC respectfully requests that the committee **VOTE NO on HB 2797 – legal ambiguity is not in the best interest of employers or injured workers.**

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 a large initial "C" and "R".

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