



317.875.5250 | [F] 317.879.8408
3601 Vincennes Road, Indianapolis, Indiana 46268
202.628.1558 | [F] 202.628.1601
20 F Street N.W., Suite 510 | Washington, D.C. 20001

TO: Members of the Committee on Health Coverage,
Insurance and Financial Services
FROM: Rory Whelan, Regional Vice President, NAMIC
DATE: April 27, 2023 --- Public Hearing
RE: **Opposition to LD 1546** --- Insurance Underwriting
Restrictions & Constraints on Financial Institutions

The National Association of Mutual Insurance Companies (NAMIC)¹ and its members, thank you for the opportunity to express strong opposition to LD 1546 and urge you vote *ought not to pass*.

This bill would place certain undue, impractical, and burdensome restrictions on property & casualty insurers (“P&C”) as it relates to providing accurate risk-based liability insurance to Maine’s residents and businesses.

I. Concerns about bill drafting and appropriate statute application.

LD 1546 amends 9-B, Maine’s “Banking law” which does not apply to insurance companies. Title-24 is Maine’s Insurance Code, which directs the Bureau of Insurance (“Bureau”) to regulate every aspect of insurers and insurance products.² While the bill text of LD 1546 refers to Title-24, requirements for insurance belong in the Insurance Code. This inconsistency will lead to confusion among regulators, insurers, insurance producers and consumers. **Accordingly, all references to Title-24 insurers, and insurance should be removed from the bill.**

II. Questions about the public policy purpose of LD 1546.

It is not at all clear what current market behaviors justify the enactment of new laws, especially what is proposed in LD 1546. According to the most recent Bureau Annual Report to the Legislature (2021)³ there were just 209 consumer complaints against Maine’s more than 1,200 P&C insurers. The Bureau also administers hearings when a policyholder believes his/her homeowners or auto policy was unfairly cancelled/non-renewed. In 2021,

¹ The National Association of Mutual Insurance Companies consists of more than 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. NAMIC member companies write \$357 billion in annual premiums and represent 69 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets.

² [Title 24-A: MAINE INSURANCE CODE](#)

³ [2021 Annual Report from the Superintendent of the Bureau of Insurance \(digitalmaine.com\)](#)

there were 55 hearings scheduled, 17 decisions issued and just 5 findings for the policyholder.⁴ The Bureau is not aware that any of those cases involved issues related to environmental, social and governance scores; or diversity, equity, and inclusion matters.

The old idiom “making a mountain out of a molehill” comes to mind – but, in this case there is simply no molehill.

III. **Current law prohibits insurers from engaging in unfair discriminatory practices.**

Property/casualty insurers are in the business of protecting individuals, families, businesses, and employees in Maine and across the nation. A bedrock principle of NAMIC’s advocacy, on behalf of our members, is to safeguard the ability of carriers to price and underwrite to risk based on actuarially sound considerations and data.

Insurance is already heavily regulated by the Maine Bureau of Insurance, including that rates and eligibility determinations may not be unfairly discriminatory.⁵

In other words, these determinations are made based on projected risk of loss determined through actuarial standards of practice. If the data demonstrates that certain properties have a higher risk of loss, they should be priced accordingly. This is core to what insurance is.

Underwriting and ratemaking depend on an insurers’ ability to collect and use accurate information about the entity seeking to buy coverage. Part of this information takes the form of underwriting or rating variables, known as factors. Every company uses varied factors and evaluates them differently, but there is broad agreement that factors should be objective, actuarially sound, and have a credible, statistically significant correlation to expected losses and expenses. Because factors are correlative, the more information an insurer has and can use, the more accurately it will be able to assess the likelihood of a loss; the inverse is also true: less information makes accurately assessing the likelihood of loss more difficult.

⁴ [2021 Annual Report from the Superintendent of the Bureau of Insurance \(digitalmaine.com\)](#)

“When an insurance company issues a notice of cancellation or nonrenewal of a homeowners or personal auto policy, the company must advise the insured of the right to request a hearing contesting the action. There is also a statutory right to request a hearing when a commercial property or liability policy is cancelled prior to its expiration date. The hearing provides a forum to dispute the reason(s) and requires the Bureau to determine whether the cancellation or nonrenewal was done in accordance with Maine law. The following graph and table show the number of hearings scheduled and those resulting in decisions. In some cases, the insurance company or the insured may cancel the proceeding prior to hearing, which results in no issued decision. The policy will continue if the insurer cancels the hearing and the policyholder chooses to keep the policy. The policy ends if the policyholder cancels the hearing. In most cases where a policyholder cancels a hearing it is because replacement coverage has been obtained.”

⁵ [title24-Ach25.pdf \(maine.gov\)](#)

“The purpose of this chapter is to promote the public welfare by regulating insurance rates, in accordance with the intent of Congress as expressed in Public Law 15 -- 79th Congress, to the end that they shall not be excessive, inadequate or unfairly discriminatory...”

IV. Prohibitions on geographic flexibility *should not apply to P&C insurers.*

Sect.245(2) in LD 1546 requires financial institutions (including P& C insurers) to “*make each financial service it offers available to each person in the geographic market served by the financial institution on a nondiscriminatory basis.*”⁶ The bill does not define “geographic market” nor is the legislative intent clear.

Thus, a primary concern for NAMIC and P&C insurers relates to coastal issues, areas where the likelihood of loss is different. With more than 3,500 miles of tidal shoreline and thousands of islands in Maine, risks of loss may be higher due to a peril inherent in one location that is not inherent in others. Therefore, insurers should be permitted to rate, underwrite, and decline to write business in places with significant peril.

An example is a house built near the ocean presents a higher risk of wind and water surge than a house that is two or three miles inland. The two houses are different risks, and their price and eligibility should reflect that. It is common, therefore, for standard market admitted insurers to institute coastal setbacks such that the higher risk properties are ineligible. Insurance for these homes is then available through higher risk insurers or the non-admitted market.

Prohibiting the use of geography in P&C insurance raises serious concerns about diminishing an insurer’s access to the reinsurance market and potential insolvency.

V. The terms “nonfinancial, nontraditional or subjective criteria” are not defined.

The absence of clear definitions around this key component of the bill will lead to unnecessary confusion and arbitrary, uneven, and capricious application in enforcement.

NAMIC believes the bill will inappropriately impose untested and vague statutory requirements onto a time-tested process of identifying, pricing, and contracting for the transfer of risk as accurately as possible between insurers and consumers, thereby potentially destabilizing the state’s insurance market.

VI. The bill’s penalties are capricious, unnecessary, and onerous.

LD 1546 includes these penalty provisions:⁷

- *A private right of action* --- this is unnecessary and would only create another profit center for the plaintiff’s bar and encourage frivolous lawsuits. The Bureau has the experience and expertise to effectively regulate the insurance industry.

⁶ [getPDF.asp \(maine.gov\)](#) Sect 245(2)

⁷ [getPDF.asp \(maine.gov\)](#) Sect 245(4)

- *Class D crime for 5 violations within one year and \$10,000+ fine per violation* --- considering that under Maine's laws, a Class D crime includes assault, violations of a protective order and certain DWI crimes, punishable by up to 364 days in jail and a fine of up to \$2,000,⁸ these penalties are egregious.

VII. Conclusion

Maine has a well-documented history of providing a robust healthy competitive P&C commercial environment where business and innovation can flourish, and where regulations are carefully defined to address specific concerns. These policies helped make Maine the 4th least expensive state for auto insurance⁹ and despite severe weather conditions, the 10th least expensive for homeowners' insurance.¹⁰ This proposed measure runs counter to these achievements by creating uncertainty and disrupting Maine's competitive marketplace for P&C insurance services.

For these reasons, NAMIC and its member companies respectfully ask that you oppose LD 1546 and vote *ought not to pass*. Thank you for your consideration.

⁸ [Office of the Maine AG: Crime and Victims: Criminal Justice System](#)

⁹ [Car insurance rates by state for 2023 – Forbes Advisor](#)

¹⁰ [These States Have the Cheapest Home Insurance Premiums \(2020\) \(insurify.com\)](#)