



NW Insurance Council



NAMIC
NATIONAL ASSOCIATION OF
MUTUAL INSURANCE COMPANIES



American Property Casualty
Insurance Association
INSURING AMERICA apci.org

Correspondence Sent via Email

March 2, 2022

The Hon. Sen. Jim Patrick, Chair
The Hon. Sen. Mary Souza, Vice Chair
Members, Senate Commerce & Human Resources Committee
PO Box 83720
Boise, Idaho 83720-0081

RE: Underinsured Motorist Legislation – Please OPPOSE SB 1269 and SUPPORT SB 1281

Dear Chairman Patrick, Vice-Chair Souza and Committee Members,

On behalf of the member insurance companies of the Northwest Insurance Council, the American Property Casualty Insurance Association and the National Association of Mutual Insurance Companies (hereafter, “the trades,”) who underwrite the vast majority of auto policies in force for Idaho drivers today, we write to express our opposition to proposed SB 1269. We urge the committee to reject this legislation and instead approve a compromise measure supported by the trades and our members, SB 1281.

Committee members may be aware of a recent and important ruling made by the Idaho Supreme Court, in Pena v. Viking Insurance. A key finding of the Court, which reversed a lower court ruling in favor of the insurance company, was that the Underinsured Motorist (UIM) Coverage purchased by the plaintiff was “illusory,” because the coverage provided was “offset” by payments made to the plaintiff by the at-fault party’s liability policy.

Both SB 1269 and SB 1281 are efforts to update Idaho statutes to reflect the Court’s decision. However, while SB 1281 is intended to specifically protect Idaho drivers from what the Court called “illusory coverage,” SB 1269 is a bill that expands the theory embodied in the Supreme Court’s decision, by requiring all UIM policies to provide “excess-only” coverage, which eliminates the ability of insurers to offer consumers the more affordable option of “offset coverage.” We believe this violates free market principles while needlessly raising insurance costs for Idaho consumers.

Here is some background on UIM policy coverage that we hope committee members will consider as you debate the legislation now before you.

There are two UIM policy products currently available in the Idaho insurance market today:

- **“Offset” coverage:** The maximum compensation for the UIM policyholder is the difference (offset) between the victim’s UIM-BI (bodily injury) limit and the at-fault driver’s liability limit. For example, if the injured party’s UIM-BI limit is \$100,000 and the at-fault driver’s liability limit is \$25,000, the victim could collect the difference between \$25,000 from the at-fault driver and injured party’s UIM limit of \$100,000 (i.e., up to \$75,000 in excess of the at-fault driver’s \$25,000 limit).
- **“Excess” coverage:** the maximum compensation is equal to the injured party’s UIM-BI coverage limit plus the amount of liability coverage from the at-fault driver. Using the same example as above, the injured party could collect \$25,000 from the at-fault driver, plus an additional

\$100,000 from the injured driver's own UIM-BI coverage (i.e., \$100,000 + \$25,000), for a total of \$125,000.

Insurers have long argued two key points about UIM coverage in Idaho. First, that in and of itself, "offset" coverage is NOT illusory. We believe this for two reasons:

1. "Offset" coverage is priced more affordably because the coverage it provides may be less robust than "excess" coverage, depending on the limits of the at-fault party's liability coverage. It would only be "illusory" if the cost were the same for less coverage - but that is not how the product is offered, or priced.
2. Under ID 41-2502 and regulations approved by the Legislature and the Idaho Department of Insurance (IDAPA 18.02.02.015), insurers are required to offer UIM coverage to all insureds purchasing auto liability insurance, and to provide an explanatory statement to consumers at the point of purchase so they understand and acknowledge - by accepting or rejecting the coverage - the differences between "offset" and "excess" coverage policies.

It is also important to note that in the Idaho insurance market, some insurers offer UIM as "excess;" some offer it as "offset;" and some may offer both options to policyholders. Idaho's insurance consumers benefit from a highly competitive market that helps drivers find affordable, accessible coverage that meets their individual needs.

Impact of SB 1269: This bill would expand the Idaho Supreme Court's ruling, by requiring all UIM policies in Idaho provide "excess" coverage. In essence, the bill requires insurers writing UIM to allow insureds to "stack" the coverage limits on top of their claims against the at-fault party's liability insurance. This is a public policy decision that rests in the hands of the Idaho Legislature. But before voting, members should know:

- ✓ A similar bill has been proposed in Maryland. An independent insurance agency in that state researched "real time" insurance quotes for different policyholders and found that a 51-year-old single female could see an annual increase in her *UIM premium alone* of \$154 per year, while a household with four drivers (two in their 50's and two in their 20's) could see an increase in UIM premium of \$329 per year.
- ✓ A recent study provided to APCIA by the respected Milliman Research firm on proposed Virginia legislation mandating "excess" UIM coverage in that state predicted - based on actuarial data - that both claims frequency and claims severity would increase in Virginia if the legislation were enacted, resulting in UIM premium increases ranging between 43 percent on the low end to 64 percent on the high end.
- ✓ Similarly, another study showed that states with "excess-only" UIM policies had higher UIM claims costs - 68% higher, on average - than states that allowed UIM to be offered as "offset."
- ✓ Leading insurers that underwrite UIM coverage in Idaho believe the increase in claims frequency and severity will lead to higher UIM costs here as well, which are ultimately reflected in UIM premiums. Insurers have reported they anticipate UIM premiums - particularly those purchased at minimum limits (\$25,000/\$50,000) - to double under an "excess-only" statute. Under that scenario, an "offset" policy that is offered today for \$25,000 would become an "excess" policy for \$50,000 (per policy). That might result in fewer drivers "opting-in" for UIM coverage.
- ✓ For motorcycle UIM coverage, the costs could go even higher, with premiums rising three or four times what insured riders pay today, insurers believe, based on anticipated increases in claims costs.

Impact of SB 1281: By contrast, this bill attempts to align Idaho statutes more closely with the Court's finding of illusory coverage at the minimum limits (\$25,000/\$50,000) level of UIM coverage, while still providing insurers and consumers with freedom of choice in the marketplace.

- ✓ For UIM policies with limits less than two times the state's mandatory minimum liability limits for bodily injury/death (currently \$25,000/\$50,000), UIM coverage would be provided as "excess" by the insurer, allowing claims for UIM to be paid in addition to any claims paid under the at-fault party's liability insurance coverage.
- ✓ For UIM policies with higher limits, the coverage could continue to be offered either as "excess" or "offset" coverage.
- ✓ The statute would continue to require insurers to offer UIM coverage to all insureds, provide notice/explanatory statement and acknowledgement from the insured at the point of purchase.
- ✓ While insurers writing in Idaho would still experience an increase in claims costs, it would be less dramatic than legislation requiring "excess-only" coverage for all UIM policies. Premiums could still be impacted for minimum limits under UIM policies but would likely not be as dramatic for consumers.
- ✓ The bill would allow consumers additional choice in the insurance marketplace and result in less disruption in the market.

The insurance industry is aware of a long history of debate in the Idaho Legislature over the issue of adequate UIM coverage for Idaho drivers. We believe SB 1281 is a reasonable compromise on the issue that protects Idaho consumers and preserves longstanding underwriting and rating freedoms cherished in the Idaho marketplace. We urge you to reject the overreach of SB 1269 and approve the compromise embodied in SB 1281.

Thank you for your consideration on this important issue. Please contact us if we can provide any additional information.

Sincerely,

Lyn Darrington Elliott
Assistant Vice President, APCI
720-610-9473 mobile
Lyn.Elliott@apci.org

Chelsea Chaney
Regional Vice President - Midwest, NAMIC
913-201-6161 direct
cchaney@namic.org

Kenton Brine
President, Northwest Insurance Council
206-624-3330 office
360-481-6539 mobile
kenton.brine@nwinsurance.org