

STATEMENT OF PURPOSE

RS19849

Idaho law requires insurance companies to treat their insureds fairly. To prevent insurance companies from unreasonably delaying payment on claims by their insureds, they are required under section 41-1839, Idaho Code, to pay losses justly due to insureds within 30 days after proof of loss has been submitted. In the event the amount justly due is not paid and an action for payment required, the section provides that the insured shall also recover attorney fees.

Almost all insurance contracts require arbitration to resolve a dispute between the insurance company and its insured. In 1991, the Idaho Supreme Court held in *Emery v. United Pacific Insurance Company*, 120 Idaho 244, 815 P.2d 442 (1991), that section 41-1839, Idaho Code applied to require attorney fees incurred in arbitration proceedings to recover amounts justly due, but not paid by the insurance company. The Idaho Supreme Court recently changed the law in *The Greasespot, Inc. v. Hanes*, 2010 Slip Opinion No. 10 (February 1, 2010) reversing the *Emery* decision in a case in which section 41-1839, Idaho Code was not directly at issue.

This bill restores the law as it has been interpreted and applied since 1991. Without this change, insurance companies are able to side-step the requirement of prompt payment of amounts justly due contained in section 41-1839, Idaho Code, by the contractual requirement that disputes be resolved through arbitration rather than in court. The attorney fee provision at issue only applies to claims by first party insureds (direct customers) of the insurance company, and not to third party claimants who have claims against insureds.

FISCAL NOTE

No fiscal impact to the general fund.

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