

MINUTES  
**SENATE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Tuesday, March 08, 2022

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Patrick, Vice Chairman Souza, Senators Martin, Lakey, Guthrie, Agenbroad, Riggs, Ward-Engelking, and Burgoyne

**ABSENT/ EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Patrick** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:31 p.m.

**S 1269** **Chairman Patrick** announced no new testimony would be taken on **S 1269**. If anyone signed up to testify on March 3, 2022, only that testimony would be heard.

**TESTIMONY:** **Nick Sasso**, representing himself and his wife, Rene Gwin, testified remotely in support of the bill. He summarized their experience of being hit by a drunk driver. They had accumulated over \$1 million in medical bills and because of the mounting medical expenses and the offset clause in their insurance policy, they may have to file for bankruptcy. He stated Idahoans who purchased insurance intending to protect themselves and others should receive the benefit of the cost of the policy.

**DISCUSSION:** **Vice Chair Souza** queried if there was a thorough, clear, understandable explanation of the policy at the time of purchase. **Mr. Sasso** stated the policy was purchased online but they did not truly understand the concept of offset.

**TESTIMONY:** **Steven Thomas**, Farm Bureau Mutual of Idaho, testified in opposition to the bill. He identified two overarching concepts of economics and judicial economics contained in the bill. He stated elasticity of demand mattered. He noted this bill would make less insurance available. He referred to the recent Idaho Supreme Court decision of Pena versus Viking Insurance where it was found that Viking's minimum limits for Uninsured Motorists (UIM) coverage was illusory, but expressly limited that decision, and affirmed that offset coverage was legal. He stated the Idaho Supreme Court said Viking's standard UIM policy, including its limitations and exclusions, was fully enforceable when the limit exceeded \$25,000. Because the Legislature required insurers to issue liability limits of \$25,000, UIM coverage limits must exceed \$25,000 to avoid a finding they were illusory. He said that UIM had to be offered but need not be purchased as it was a choice of the customer. This excess coverage was the richer benefit which costs more.

**DISCUSSION:** **Chairman Patrick** and **Mr. Thomas** discussed the options for insurance based upon this bill.

**Senator Lakey** discussed with Mr. Thomas the issue of whether something illusory had now been addressed and would there be any more minimum policy for \$25,000 based on minimum coverage policies offered from this time forward. **Senator Lakey** inquired if most insurance companies offered a choice of either excess or offset. **Mr. Thomas** replied in the affirmative. They discussed the Idaho Supreme Court decision and the possible need to define illusory, as it was like an illusion that was not really there.

**Vice Chair Souza** and **Mr. Thomas** discussed the Idaho Supreme Court case and the conflict that appeared in the decision about illusory insurance versus offset insurance.

**Senator Ward-Engelking** asked about the requirement for an insurance company to supply a disclosure form for a renewed policy. **Mr. Thomas** indicated he did not know for a fact that renewals were governed by that notice.

**TESTIMONY:** **Dean Cameron**, Director, Idaho Department of Insurance (IDOI), clarified the disclosure form was used at the time of sale, but no signature was required. Many companies used the form at renewal. If a client chose not to purchase UIM coverage, there was a place on the form for a signature waiving the coverage.

**DISCUSSION:** **Senator Martin** and **Mr. Cameron** discussed the confusion about the Idaho Supreme Court ruling in the Pena case. They also discussed the idea there were multiple options on how the IDOI could pursue requiring that UIM coverage be included in the minimum limits without any additional charges. There was no responsibility for the insurance company to send the form in a renewal package, but it could be one additional step that could be taken. They discussed additional benefits to the consumer with an increase in costs. **Mr. Cameron** noted one of the concerns was that increased cost would discourage people from buying this optional coverage in order to keep prices down.

A discussion ensued among **Senator Riggs**, **Vice Chair Souza**, and **Mr. Cameron** about UIM coverage, did customers understand what they were paying for with an explanation of the offset and illusory coverage, the differences between offset and illusory, and if the minimum coverage could be included in a policy at no additional cost. They discussed whether there should be an option built into the base that UIM coverage would not be available except at a higher level. This could be accomplished in rule or a separate bill or both. **Mr. Cameron** noted many insurance products had an offset parameter.

**Senator Burgoyne** commented there was a remaining issue and asked **Director Cameron** to explain what he thought about the Idaho Supreme Court having to consider some other related case. **Mr. Cameron** noted the Idaho Supreme Court called offset coverage illusory at minimum limits. The court did allow for and indicated the law allowed for offset coverage. If offset coverage was allowed there would always be some potential issue where the customer was not receiving what they thought they were going to get. He noted this was a common issue with many insurance products and many insurance products had an offset program parameter. This was a common approach in order to hold costs down.

**TESTIMONY:** **Michael Kane**, American Casualty Insurance, testified in opposition and stated costs across-the-board for insurance were increasing. He cited statistics from a similar bill passed in Maryland and for a family of four the costs increased \$329 a year. **Mr. Kane** referred to Attachments 6 and 6A from the Meeting of March 3, 2022. He stated there was a potential for doubling the costs of insurance and for motorcycles it could be as high as three or four times the original amount.

**DISCUSSION:** **Senator Lakey** and **Mr. Kane** discussed insurance contracts, how UIM had to be offered as mandated by law, but the customer could refuse by signing the form.

**TESTIMONY:** **Brody Aston**, Enterprise Holdings, Enterprise Car Rental, National and other car rental companies, testified in opposition to the bills. He said **S 1269** and **S 1281** raised costs. He noted customers should not be mandated to purchase something and this legislation was not needed. He asked to have both bills held in Committee.

**DISCUSSION:** A discussion ensued between **Senator Burgoyne** and **Mr. Aston** relating to liability insurance on vehicles where the car rental employee was driving cars around from location to location. They discussed additional expenses for the consumer and the company.

**Chairman Patrick** announced no new testimony would be taken on **S 1281**. If anyone signed up to testify on March 3, 2022, only that testimony would be heard.

**S 1281**

**INSURANCE - Amends existing law to provide for a certain presumption regarding underinsured motor vehicle coverage.** **Senator Guthrie** introduced **Jeff Neumeyer**, General Counsel, United Heritage Financial Group, indicated this proposed legislation would modify and bring more clarity to coverage limits available to consumers with respect to underinsured motor vehicle coverage. The proposed legislation provided that any underinsured motor vehicle coverage with limits of liability less than two times the Idaho minimum limits for bodily injury or death would be construed to provide coverage in excess of the liability coverage of any underinsured motor vehicle involved in an accident.

**Mr. Neumeyer** cited the *Pena versus Viking Insurance* Idaho Supreme Court decision that said that at the minimum of \$25,000 limits, the UIM was illusory and not allowed. The intent was excess coverage could be at the minimum limits and that was not illusory. **Mr. Neumeyer** said as outlined in this bill, coverage was only illusory if it was offset coverage at the minimum limits. He cited a Missouri law that worked very successfully. This bill addressed offset coverage above \$25,000, which was acceptable. Minimum limits were \$25,000 per person and \$50,000 per accident. In this bill any policy less than two times the minimum limits of \$25,000 per person, \$50,000 per accident must be excess coverage. **Mr. Neumeyer** reported the Idaho Supreme Court said that offset underinsured motorist coverage above \$25,000 was acceptable. Some carriers had their lowest coverage limits above \$25,000 per person and \$50,000 per accident. He referred to Exhibit A of his handout attached to the Minutes of March 3, 2022 as Attachment 3. He reiterated if there was no change on a renewal, no form was required. He pointed out United Heritage sent the form to all of their clients for the first six months of renewals, even though there was no requirement to do so. **Mr. Neumeyer** stated the largest difference between the two bills was price. He said with **S 1269** the price would increase significantly. People had to make a decision from a pricing perspective. With **S 1281**, the increase in price was much more modest.

**DISCUSSION:** **Senator Riggs** and **Mr. Neumeyer** discussed the basis for price increases in the two bills. **Mr. Neumeyer** stated rates had to be approved by the IDOI. He noted with every carrier there would be a different claims experience. They discussed the increase in premium would not be on the whole policy.

A discussion ensued between **Senator Burgoyne** and **Mr. Neumeyer** about the mandated requirements in **S 1269** as opposed to **S 1281** and the potential costs associated with both bills. They discussed where most of the UIM policies existed within the \$25,000 to \$50,000 range in terms of limits and if an insurance company was a non-standard carrier providing non-standard policies, that made the policy illusory, as in the Pena versus Viking Insurance case.

**Senator Lakey** and **Mr. Neumeyer** discussed the freedom of the insurer to decide whether to purchase excess UIM coverage or a more affordable policy. They discussed if a policy was provided with a \$45,000 limit that would be excess, but if it was \$55,000 then it was offset.

**Vice Chair Souza** queried what the overall percentage of increase was between **S 1269** and **S 1281**. **Mr. Neumeyer** indicated the increase could be excess or offset depending on what the insurance company was selling. He noted the Pena decision was going to force an increase in minimum limits up to a 100 percent increase for the underinsured motorist portion.

In response to a question from **Senator Burgoyne** about cost shifting that occurred when a driver was involved in a collision and the driver or the tortfeasor was unable to pay all of the financial consequences, **Mr. Neumeyer** responded that as long as people were being clearly told what they were purchasing and they understood what offset was, and that sometimes there was not enough insurance coverage to cover the worst of accidents.

**TESTIMONY:** **Russell Johnson**, an attorney representing himself, testified in opposition to **S 1281**, and stated with offset coverage it was always going to be dependent on what someone else's coverage was and this was a weakness. Many of his clients had no understanding of UIM coverage or how the offset coverage applied.

**Thomas Lyons**, Farm Bureau Insurance Vice President, Claims and Legal Affairs, testified in support of **S 1281**. He explained clients received what they paid for and offset coverage was offered by his company because it was more affordable. There should not be a mandate about coverage.

**Representative Ruchti**, representing himself, testified in opposition to the bill. He noted coverage was about an increase of \$1 to \$1.50 per month between the two bills, which was not an extraordinary amount. He explained the Pena decision increased costs because it said these policies were illusory as clients received nothing real for the money. He referred to the bulletin issued by the IDOI in 2019, which made it very clear and explained the difference between offset versus excess coverage. He referred to Attachment 2 from the Meeting of March 3, 2022.

**Michael Kane**, American Casualty Insurance, testified in support of **S 1281**. He offered an explanation and clarification of the situation of an UIM payment when a person had a \$100,000 policy. An individual would lose \$25,000 and \$25,000 would come from the tortfeasor with the remaining \$75,000 from the insurance company.

**Chairman Patrick** announced the next two testimonies, summaries, voting on the two bills, and the hearing for **S 1368** would be held until the next meeting.

**ADJOURNED:** There being no further business at this time, **Chairman Patrick** adjourned the meeting at 2:59 p.m.

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Senator Patrick  
Chair

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Linda Kambeitz  
Secretary