

MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE: Thursday, January 26, 2023

TIME: 1:30 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Cook, Vice Chairman Lenney, Senators Lakey, Guthrie, Ricks, Foreman, Hartgen, Ward-Engelking, and Ruchti

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 Cook** called the meeting of the Senate Commerce and Human Resources Committee (Committee) to order at 1:30 p.m.

MINUTES APPROVAL: **Senator Foreman** moved to approve the Minutes of January 19, 2023. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Cook passed the gavel to Vice Chair Lenney.

DOCKET NO. 18-0202-2201 **Automobile Insurance Policies (ZBR Chapter Rewrite) - Proposed Rule.** **Dean Cameron, Director, Idaho Department of Insurance (IDOI)**, gave an in-depth overview of the changes in this docket. He stated the Underinsured Motorist (UIM) coverage provided uniform interpretation and implementation of Idaho Code §§ 41-2502, 41-2506, 41-2507, 41-2508, and 41-2509, relating to insurance cancellation, non-renewal, and under/uninsured motorist coverages. This rulemaking clarified language, removed duplicative language, and directed users to the IDOI website for certain information. It also improved transparency to consumers as to their underinsured motorist coverage. There were no changes to the pending rule (Attachment 1A).

Additionally, **Mr. Cameron** reported, the Idaho Supreme Court in a February 2022 decision, *Pena vs. Viking*, found that *Pena's* auto insurance policy provided "illusory" minimum limits of underinsured motorist coverage. He noted uninsured and underinsured motorist coverage was optional. **Mr. Cameron** explained the two types of UIM. Offset coverage meant a policy paid the difference between the policy limit and the other party's limit. The policy was reduced by the amount of the other person's coverage. Excess coverage, or sometimes referred to as stacking, paid in addition to the other party's coverage.

Mr. Cameron remarked a major concern was that consumers did not know what they purchased. The IDOI made three adjustments. He stated 1) insurers must disclose the type of UIM coverage in a form laid out the IDOI about underinsured motorist coverage at each issuance and at each renewal. The consumer must sign the form at issuance or at denial of UIM. 2) The IDOI, to improve transparency, insurers must list on the policy's declarations page as to whether the underinsured motorist coverage was offset. 3) The IDOI worked to make the form as consumer-friendly and easy to understand. **Mr. Cameron** indicated the rule eliminated what was determined by the courts to be illusory uninsured motorist coverage by disallowing a premium for offset UIM coverage at the minimum limits. He noted in previous years there was only one company selling excess coverage

and all others sold offset insurance. Currently, two other companies applied to sell excess coverage.

DISCUSSION: **Senator Lakey** praised Mr. Cameron and the IDOI. He remarked he liked the rule. He asked Mr. Cameron to describe the process of developing the form. **Mr. Cameron** reported the process was one of collaboration. Input was heard from the insurance industry and the State Bar. Many hearings were held. He pointed out the form was a work in progress, not in the rule, but located on the IDOI website. The goal was to simplify the form with input being taken from carriers.

Senator Ward-Engelking queried if there was a process in place to inform people who were renewing a policy. **Mr. Cameron** stated carriers were required to submit a form upon renewal of a policy, which was typically every six months.

Senator Guthrie and **Mr. Cameron** discussed how the insurance industry wanted to find a solution based on the Supreme Court decision to adequately respond that a charge could not be levied for something that was not being used to pay out a claim. The IDOI did not have the authority to mandate that everyone purchase excess coverage.

Senator Ruchti expressed a concern for Subsection 0.15, and quoted from Subsection c. "To avoid illusory coverage, insurers may offer "offset" UIM coverage at the state financial responsibility limits defined in § 49-117(20), Idaho Code, only if coverage is provided at no (\$0.00) premium." He noted the coverage was still illusory even though no money was exchanged, because the customer was not receiving any benefit. He remarked the reality was the reason the Supreme Court called this coverage illusory was because the customer received nothing in return. **Mr. Cameron** replied, the industry based policies on the risk. He stated the potentiality existed for consumers to drive across state lines, have an accident, with the insurance company having to pay a claim. The alternative was the carrier could charge a small amount for coverage, but now if they had to pay out \$25,000, everyone would be charged more. **Mr. Cameron** stated the IDOI wanted consumers to have the right to choose and be more informed. The Legislature set the public policy. This policy impacted those who had more than the minimum coverage with a higher likelihood the insurance company would have to pay. The IDOI had the approach to try to maintain choice for the consumers and keep the prices low.

Chairman Cook remarked an insurance company sold something to a consumer with no intention of paying the offset. He stated the rule really had not changed that concept. He said the offset was still available, but the consumer did not understand. He stated the IDOI was still doing what the Supreme Court said not to do. **Mr. Cameron** remarked the Supreme Court said at minimum limits, insurance was illusory, meaning the consumer was charged for something the company was most likely not going to pay. He noted offset coverage was allowed. The biggest issue for the IDOI was to inform the consumer and help them to understand what they were purchasing. Currently, consumers now had a true choice and differences would be explained by agents. In answer to a question posed by Chairman Cook, **Mr. Cameron** noted the hope was the consumer was better informed by the form. The coverage was also on the declaration page of the policy, and agents would do a better job of explaining offset and excess.

Senator Guthrie asked for clarification on informing the consumer if they opted for offset insurance, it had to be specified they were not being charged. How would that be addressed, he asked. **Mr. Cameron** specified companies all had to file rates and forms with the IDOI. However, he could not say when they could start charging after the \$25,000 limit had been reached.

MOTION: **Senator Lakey** moved to approve **Docket No. 18-0202-2201**. **Senator Foreman** seconded the motion.

DISCUSSION: **Senator Ruchti** stated the offset should be eliminated and cited a lengthy example. He said if the damages exceeded the policy, the insured lost money. He stated all policies should contain excess coverage.

Senator Lakey remarked the economy was one of a free market and consumers must have a choice. The State should not dictate to insurance companies or to any business as to what to provide. He noted there was an opportunity for offset coverage with the potential to have some payment from the insurance company. This was a legislative issue. The consumer needed to know what they were buying. He said the broader policy of whether what should be required or offered was a discussion for a bill.

Senator Foreman indicated he saw two issues. He said he was in support of both offset and excess coverage to give consumers a choice. Communication was what a customer needed to understand what they were buying. He stated he was in support of the docket.

Chairman Cook remarked he was not in support of red-tape. He asked if it would make sense to put the form as part of the rules.

Senator Ruchti remarked he had tried various things in an effort to solve this issue. He expressed a concern the insurance was complicated and hard to explain.

Senator Ward-Engelking stated she was not sure this rule went far enough, but it was better now than in the past. Legislation may have to be implemented, but she was in support of the docket.

Vice Chair Lenney remarked he was in support of the docket.

VOICE VOTE: The motion to approve **Docket No. 18-0202-2201** carried by **voice vote**. **Senator Ruchti** voted nay.

DOCKET NO. 18-0203-2201 **Certificate of Liability Insurance for Motor Vehicles (ZBR Chapter Rewrite) - Proposed Rule.** **Mr. Cameron** noted this rule identified requirements of Idaho Code §§ 49-1229, 49-1231, and 49-1608A, relating to the certificate of liability insurance for motor vehicles. This rulemaking clarified language and removed duplicative language. There were no changes to the pending rule, and it was being adopted as originally proposed (Attachment 1B).

DISCUSSION: **Senator Ricks** queried if a driver was required to carry proof of insurance in the vehicle or could it be digital. **Mr. Cameron** stated the proof of insurance must either be in the vehicle or digital.

MOTION: **Senator Ward-Engelking** moved to approve **Docket No. 18-0203-2201**. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0701-2201 **Rules for Acquiring Control, Insurance Holding Company Systems and Mutual Insurance Holding Companies (ZBR Chapter Rewrite) - Proposed Rule.** **Mr. Cameron** reported this rule set forth rules and procedural requirements necessary to administer the Idaho Acquisitions of Control and Insurance Holding Company Systems Regulatory Act, including provisions relating to Idaho Code § 41-3824, on mutual holding companies. This rulemaking clarified language and removed duplicative language (Attachment 1C).

DISCUSSION: **Senator Lakey** asked to confirm the status of a mutual holding company. **Mr. Cameron** stated it was defined in code.

MOTION: **Senator Foreman** moved to approve **Docket No. 18-0701-2201**. **Senator Ricks** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0702-2201 **Reserve Liabilities and Minimum Valuations for Annuities and Pure Endowment Contracts (ZBR Chapter Rewrite) - Proposed Rule.** **Mr. Cameron** stated this rule recognized mortality tables for use in determining minimum standard valuations for annuity and pure endowment contracts. This rulemaking clarified language, removed duplicative language, and directed to the IDOI website for certain information (Attachment 1D).

DISCUSSION: **Chairman Cook** queried where were the mortality formulas located. **Mr. Cameron** pointed out they were on the website. The mortality tables were set nationally.

MOTION: **Senator Guthrie** moved to approve **Docket No. 18-0702-2201**. **Senator Hartgen** seconded the motion.

DISCUSSION: **Senator Ricks** stated he was in support of the docket. He pointed out that some examples were removed from the website. **Mr. Cameron** remarked the mortality tables were standard across the country and it seemed cumbersome to place the tables as part of the rule. Those tables cannot be changed.

VOICE VOTE: The motion to approve **Docket No. 18-0702-2201** The motion carried by **voice vote**.

DOCKET NO. 18-0703-2201 **Valuation of Life Insurance Policies Including the Use of Select Mortality Factors (ZBR Chapter Rewrite) - Proposed Rule.** **Mr. Cameron** remarked this rule provided tables of select mortality factors and rules for their use; and, minimum standard rules for valuations of plans with non-level premiums or benefits and for valuation of plans with secondary guarantees. This rulemaking clarified language and removed duplicative language. There were no changes to the pending rule, and it was being adopted as originally proposed (Attachment 1E).

MOTION: **Senator Foreman** moved to approve **Docket No. 18-0703-2201**. **Senator Hartgen** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0708-2201 **Property and Casualty Actuarial Opinion Rule (ZBR Chapter Rewrite) - Proposed Rule.** **Mr. Cameron** commented this rule provided the Director of the IDOI with additional means to monitor insurer's loss reserves in accordance with Idaho Code § 41-610. This rulemaking clarified language and removed duplicative language. There were no changes to the pending rule, and it was being adopted as originally proposed (Attachment 1F).

DISCUSSION: **Senator Lakey** noted he was in support of the rule.

MOTION: **Senator Lakey** moved to approve **Docket No. 18-0708-2201**. **Chairman Cook** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0709-2201 **Life and Health Actuarial Opinion and Memorandum Rule (ZBR Chapter Rewrite) - Proposed Rule.** **Mr. Cameron** outlined the changes in the rule. He indicated this rule allowed the appointed actuary to use professional judgement and opinion in asset analysis and supporting communication. Also, the rule provided the IDOI Director with authority to specify methods and assumptions of actuarial analysis in order to render adequacy of reserves and related items. This rulemaking clarified language and removed duplicative language. There were no changes to the pending rule, and it was being adopted as originally proposed (Attachment 1G).

MOTION: **Senator Lakey** moved to approve **Docket No. 18-0709-2201**. **Chairman Cook** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 18-0802-2201F **Fire Protection Sprinkler Contractors (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule.** **Mr. Cameron** noted this rule specified requirements of fire sprinkler systems by qualified personnel. This included all facets of fire sprinklers and bonding of personnel and organizations. This rulemaking clarified language and removed duplicative or unnecessary language (Attachment 2).

MOTION: **Chairman Cook** moved to approve **Docket No. 18-0802-2201F**. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chair Lenney passed the gavel back to Chairman Cook.

PRESENTATION: **Mr. Cameron** gave a PowerPoint presentation about the IDOI (Attachment 3). He outlined funding and contributions, IDOI operations, key statistics for FY 2021, 2022 highlights, a 1332 waiver, the importance of the National Association of Insurance Commissioners (NAIC) accreditation, the 2023 legislative session, and how the IDOI benefited Idaho residents.

In summary, **Mr. Cameron** referred to the mission of the IDOI, to serve and protect Idahoans by equitably, effectively, and fairly administering the Idaho Insurance Code and the International Fire Code. He cited several examples, such as contributions to the General Fund, education of seniors about Medicare, assist local fire departments with investigations and prevention, and to work to reduce insurance premiums. **Mr. Cameron** noted the IDOI advocated for healthy insurance markets to ensure Idahoans had access to affordable insurance, and insurance companies comply with the IDOI rules and regulations and stay solvent.

ADJOURNED: There being no further business at this time, **Chairman Cook** adjourned the meeting at 2:58 p.m.

Senator Cook
Chair

Linda Kambeitz
Secretary