

ARIZONA HOUSE OF REPRESENTATIVES  
Fiftieth Legislature – Second Regular Session

**COMMITTEE ON BANKING AND INSURANCE**

Minutes of Meeting  
Monday, March 12, 2012  
House Hearing Room 5 -- 2:00 p.m.

Chairman McLain called the meeting to order at 2:24 p.m. and attendance was noted by the secretary.

**Members Present**

Ms. McCune Davis  
Mr. Quezada  
Mr. Seel

Mr. Smith D  
Mr. Williams

Mr. Dial, Vice-Chairman  
Mrs. McLain, Chairman

**Members Absent**

None

**Committee Action**

SB1036 - DPA S/E (6-1-0-0)

SB1286 - ~~DP~~ FAILED (2-5-0-0)

**CONSIDERATION OF BILLS:**

**SB1036 - release of records; medical; payment - DO PASS AMENDED S/E**  
**S/E: eye care services; health insurance**

Traci Long, Majority Intern, explained that the proposed Smith two-page strike-everything amendment dated 3/8/12 (Attachment 1) to SB1036 modifies the requirements by which eye care services are offered under group disability and blanket disability insurance contracts (Attachment 2). She reviewed the provisions of the strike-everything amendment:

- States that if any group disability insurance contract or blanket disability insurance contract provides for or offers eye medical care services, whether by a network of health care providers or by the selection of a health care provider by the subscriber, the subscriber has the freedom of choice to select either an optometrist or a physician and surgeon skilled in diseases of the eye.
- Prohibits any specific optometrist or physician, or number or percentage of optometrists or physicians, be included on an insurer's provider network if the network provides reasonable access to subscribers to choose the type of eye medical care provider in the service area of the insurer.

- States that an insurer is not mandated to provide medical care coverage.
- Prohibits an insurer from requiring any optometrist or physician, as a condition of being included on the insurer's network of health care providers, to join a plan used by the insurer to provide to subscribers ophthalmic materials, lenses, spectacles, eyeglasses or appurtenances thereto.
- Makes technical changes.

**Vice-Chairman Dial moved that SB1036 do pass.**

**Vice-Chairman Dial moved that the Smith two-page strike-everything amendment dated 3/8/12 be adopted (Attachment 1).**

Norman Moore, Attorney, Arizona Optometric Association, testified in favor of the strike-everything amendment to SB1036. He explained that Arizona law contains anti-discrimination language that states a person has the freedom to choose different health care providers. This proposal has to do with getting medical care services from an optometrist or an ophthalmologist. For the last ten years, group health insurers have not included optometrists in any of their networks. This legislation clarifies existing law that patients are free to choose their eye medical services from either an optometrist or an ophthalmologist. He noted that the Department of Insurance (DOI) has concerns about the language relating to reasonable access and the ability of the Department to enforce that provision. The proponents of the bill are still working with DOI on that language.

In reply to Mr. Williams' query whether this is considered a mandate, Mr. Moore opined that this is not. He said a mandate requires that an insurer provide an additional service. This legislation is simply an extension and clarification of statute that has been in place since 1968 to ensure that patients can exercise their freedom of choice.

In answer to Mr. Smith, Mr. Moore further explained that this proposal does not mandate that an insurance company must provide eye care service.

Mr. Seel asked whether complaints have been received that optometrists are being precluded by the insurance companies. Mr. Moore said that a number of patients have written to their health care providers on this issue. He advised that there are over 1,000 optometrists in the state and they do not perform surgery. There are 325 ophthalmologists in the state who do perform surgery.

Mr. Moore reiterated, in answer to Mr. Williams, that this legislation says that if medical care coverage is offered, the patient has the option to select either an optometrist or an ophthalmologist.

Mr. Williams asked what the current statute allows for. Mr. Moore explained that the current statute stipulates that a patient has the right to choose either; however, it does not refer to their ability to choose within a particular network. Mr. Williams wondered what this bill tries to fix if the patient already has the right to choose. Mr. Moore explained that the problem is that many group health insurers have a network of providers, but they do not include optometrists within their particular network.

Chairman McLain announced the names of those who signed up in support of the strike-everything amendment to SB1036 but did not speak:

Stacey Meier, Optometrist, representing self

Annette Hanian, Complete Vision Care Center

Gilbert Wong, Optometrist, representing self

Shannon Steinhauser, President, Arizona Optometric Association, representing self

Arthur Epstein, Optometrist, representing self

Kelsey Lundy, R & R Partners, representing United HealthCare of Arizona, spoke in opposition to the strike-everything amendment to SB1036. She disagreed with the previous comments that this is not a mandate. She said that current law allows access to optometrists, so if a network chooses to only contract with ophthalmologists, patients still have access to optometrists as guaranteed by the law. She advised that the Department of Insurance was contacted to find out whether there were any complaints the law was being violated and patients were not having access, and the answer was that there had been no complaints. She said health plans view this as a bill that mandates who they can or cannot contract with. She said that United does have optometrists in its network; she is not aware of any specific health plan that does not have optometrists in their network of providers.

Mr. Seel asked whether United is already doing what this bill purports to do. Ms. Lundy replied in the affirmative. She pointed out that the marketplace already does this, so she is not sure why this legislation is necessary.

Don Isaacson, representing Arizona Optometric Association, expressed support of the strike-everything amendment to SB1036. He said the Department of Insurance was contacted several years ago and they responded that they did not have the resources to investigate this issue; however, the Department said an optometric patient has the right to access care independently. He countered the statement made by Ms. Lundy that this is a mandate, and explained that a mandate, as it relates to health insurance, is the addition of a benefit. He stressed that there is no mandate here; however, it is a requirement. The bill is a clarification of existing law. It provides for the following: a patient has the right to choose whether or not there is a network, and there is a notification process. He said that is all this bill addresses.

Chairman McLain asked whether there will be additional out-of-pocket cost if a patient goes out of network to an optometrist, instead of an ophthalmologist. Mr. Isaacson replied that generally there will be an additional cost, depending on the plan. He said there is always the incentive to stay within the network.

Vice-Chairman Dial asked whether there is an overwhelming need for this and whether government can stay out of this. Mr. Isaacson encouraged government to get involved in this. He stated that clarification of the nondiscrimination section is very important; coverage must continue, whether or not there is a network.

Mr. Smith recapped the purpose of the bill: if a health plan offers eye coverage, and it does not mandate, the network must provide optometrist and ophthalmologist care. Mr. Isaacson said it does not even go that far. It says that if eye care is in the plan, either through the network or outside of the network, a patient must have the choice, either through the network, outside the network, or a combination of both. It is totally flexible on the insurer.

David Childers, America's Health Insurance Plans, testified in opposition to the strike-everything amendment to SB1036. He said this is not a mandate in the legal sense, but he argued that it actually is a mandate because it requires carriers to do something. If this is talking about people within the network and their right to reasonable access, he submitted that means inclusion of optometrists within the network. He claimed the nondiscrimination provisions apply inside and outside the network already without this change. His listed concerns: a direct challenge to the basic principle of free enterprise; it is the job of the carriers to decide who they want in their networks, and the issue of "reasonable access to subscribers." He believes the Legislature's purview should be limited on this subject and he asked Members to vote against this proposal.

Mr. Smith commented that this seems to him like a patient bill because of the greater number of optometrists in the state. Mr. Childers said that if a person wants to see a particular optometrist who is out of network, the patient has that option. He said that could result in a higher co-pay; however, the nondiscrimination provision would still apply.

Chairman McLain announced the names of those who signed up in opposition to the strike-everything amendment to SB1036 but did not speak:

Jim Norton, President, United HealthCare of Arizona

Jaime Molera, Lobbyist, Aetna

Genevra Richardson, President, GovGroup LLC, United HealthCare of Arizona

Kathi Beranek, Government Relations Coordinator, Blue Cross Blue Shield of Arizona

Gretchen Conger, Director of Government Relations, Arizona Chamber of Commerce and Industry

Wendy Briggs, Lobbyist, Cigna

Chairman McLain announced the names of those who signed up as neutral on the strike-everything amendment to SB1036 but did not speak:

Andrew Carlson, Executive Assistant for Policy Affairs, Arizona Department of Insurance

**Question was called on the motion that the Smith two-page strike-everything amendment dated 3/8/12 be adopted (Attachment 1). The motion carried.**

**Vice-Chairman Dial moved that SB1036 as amended do pass. The motion carried by a roll call vote of 6-1-0-0 (Attachment 3).**

### **SB1286 - rental car companies; liability insurance - DO PASS FAILED**

**Vice-Chairman Dial moved that SB1286 do pass.**

**Vice-Chairman Dial moved that the Seel 14-line amendment dated 3/9/12 be adopted (Attachment 4).**

Sarah Wharton, Majority Research Analyst, stated that SB1286 modifies the public liability insurance obligations for rental car company owners and renters (Attachment 5). She reviewed the provisions of the bill:

- Defines *excess* as the public liability insurance or obligation of a self-insured owner that must not exceed the limits prescribed in statute and is secondary to the renter's available insurance.
- Requires public liability insurance or the obligation of a self-insured rental car company owner excess to any other insurance coverage for any damages and injury caused by a renter.
- Stipulates that a rental car company owner must respond to a third-party claim and provide financial responsibility and defense for all claims for damages for liability arising out of the ownership, maintenance or use of a vehicle if there is an accident and the renter does not have other liability coverage available.
- Clarifies that the public liability insurance or the obligation of a self-insured owner is primary if no other insurance is available to the renter.
- Makes technical and conforming changes.

Senator John McComish, sponsor, advised that he is sponsoring SB1286 because he believes it is a matter of fundamental fairness, personal responsibility and good public policy. He believes that when a person rents a car and causes damage or injury to another person, that renter should be responsible to pay for the damage and injury he causes. He related that when this issue was discussed at the first stakeholders meeting, auto insurance lobbyists said that premiums would increase if this bill passes. He asked each of the lobbyists to go back to the insurance companies and provide documentation for that claim. To date, he has not seen any documentation and he surmises the reason he has not received any data is because premiums will not increase. He hopes Members will conclude there are excellent reasons to support this equitable change in law to bring Arizona into alignment with a majority of other states. He asked Members for a yes vote on this proposal.

Senator McComish related that the Seel amendment will take away some of the things the bill is trying to accomplish. He asked that it be voted down to allow stakeholders to work on the amendment further.

Ms. McCune Davis noted that under Arizona's mandatory auto insurance laws, the owner of the car pays the insurance and assumes responsibility. She questioned the public policy reason for making an exception for the rental car industry. Senator McComish opined that current law is not good public policy. He does not see why the owner should be responsible if someone borrows a car and has an accident in that vehicle. He pointed out existing law that if someone rents a car for two weeks and causes an accident, it is the car owner's responsibility, i.e., the rental car company. If someone leases a car for two years, an accident is the driver's responsibility. The only difference in responsibility is the time the person has rented that car. He said there is plenty of logic behind the idea of personal responsibility.

Mr. Seel brought up state law that if a person owns a vehicle, that person must have liability insurance. To that point, he believes the best solution is to grant rental car companies the right of subrogation. Senator McComish said he prefers the language of the bill.

Steve Barclay, Lobbyist, American Car Rental Association, expressed support of SB1286. He said the bill is about personal responsibility, fairness and equity, making it clear that when a person rents a car and causes damage or injury to a third party, that renter and his auto insurer

should be responsible to pay for any damages he causes. Under current Arizona law, the rental car companies have to pay first but cannot collect back or subrogate, i.e., have the right of recovery. This bill brings Arizona into alignment with the majority of states that make the rental car driver responsible to pay first. It further protects third parties, i.e., the accident victims, by requiring the rental car company to assume liability if the renter or his insurer are not available. Rental car companies are the second layer of coverage if there is primary coverage. If there is no primary coverage, rental car companies assume the primary coverage. He distributed data published by the Insurance Information Institute that does not support the insurers' argument that higher premiums will result by passage of this change as well as information on selling more policies at the rental car company counters (Attachment 6).

Mr. Seel asked whether the amendment which offers subrogation rights to the rental car companies addresses the concern of recovery. Mr. Barclay acknowledged that is an option; however, he does not believe it will reduce opposition to the bill. He said the auto insurance lobbyists have made it clear there is no compromise on this bill.

In response to Mr. Smith, Mr. Barclay said that if the amendment is adopted, it will put the rental car companies back to a primary position, with full right of recovery. It gives a broad-based right of subrogation against the negligent renter.

Discussion ensued on coverage and who pays.

Mr. Smith said the bill says that the rental car company shall respond to the third-party claim and provide financial responsibility. This provision stipulates that if the driver does not have sufficient insurance, the rental car company must have sufficient insurance to cover all damages, therefore, the accident victim will not only have coverage of the driver's insurance but also coverage of the rental car company. Mr. Barclay said that is correct up to the point where it says "excess," which is up to the state minimum limit; however, it is not unlimited coverage. He said the accident victim will have the right to access the limit of the primary auto insurance coverage of the renter, and when that coverage has been used up, the auto rental company covers.

Mr. Seel asked whether the excess is only up to the state minimum coverage. He stated his understanding that in the absence or deficiency of the renter's coverage, coverage is up to the state minimums. Mr. Barclay referred to language on page 1 that reads: "excess means public liability insurance or obligation of the self-insured owner shall not exceed the limits prescribed by subsection B of this section."

To that point, Mr. Seel said "excess" only means up to the state-required minimums, so this is not in excess of the state minimums. Mr. Barclay asserted that it is in excess because rental car insurance coverage is stacked over and above primary coverage.

Don Isaacson, State Farm Insurance, in opposition to SB1286, advised that this issue has been considered by the Legislature over the last 15 to 20 years and has always been rejected. He pointed out the effect of claims and the harm this bill causes Arizona residents hit by cars driven by renters. Under this bill, rental car companies are the "big winners." They no longer will be responsible for \$7 million in claims; those claim costs will be passed on to private passenger auto owners. Additionally, rental car companies will be able to sell liability coverage to the unknowing out-of-state customer because they will no longer have to provide coverage. He

contended that the people who will be hurt by this proposal are the Arizona drivers hit by a car renter. Currently, it is easy to pursue a claim; one only has to go to the rental car company and make a claim. If this bill passes, the Arizona claimant has to pursue the out-of-state driver to get information about coverage. He maintained that consumer protections are minimal in this bill.

Ms. McCune Davis asked whether there is data available documenting that the cost shifts to the consumers. Mr. Isaacson said he does not have numbers because costs cannot be isolated; however, the amount is significant.

Ms. McCune Davis said her concern is whether a person involved in an accident can get what is needed to be made whole. Mr. Isaacson noted that in this economy, a lot of people have dropped comprehensive coverage. When those people are hit by a renter, they are going to depend on a claims process that will pay them to repair their vehicle to get it back on the road. Also, the claims process will be more difficult to pursue under this legislation.

Craig McCarthy, Attorney, American Car Rental Association, expressed support of SB1286. He related that a survey of other states shows that 39 states either designate the renter's insurance as being primary or they allow the rental car companies to shift the liability to the renter's insurer. Six more states provide for reimbursement, i.e., subrogation mechanism. Only four states have a similar statutory framework as Arizona. Arizona is the only state where, if a negligent renter causes damages to a third party, the rental car company is obligated to provide first-party coverage for that claim to the injured party, without having any way of seeking reimbursement or shifting that obligation to the renter. He brought up the concept, common around the country, that insurance should follow the vehicle. He asked Members to consider this concept.

Mr. Seel asked for agreement that his amendment offering subrogation is a move in the right direction. Mr. McCarthy answered that it would move in a better direction in giving rental car companies the ability to pursue the responsible renter, if they have insurance, but it still puts the initial burden on the rental car company, instead of putting the burden on the negligent renter.

Mr. Seel again brought up the language relating to "excess" and asked whether his interpretation of that language is correct. Mr. McCarthy disagreed. Mr. Seel insisted that his interpretation of that provision is very clear.

Chairman McLain brought up the following situation where damage to a vehicle is \$15,000. The renter has minimum insurance of \$10,000, the rental car company has the statutory minimum of \$10,000 and would pay \$5,000; therefore, the coverage is complete, and the rental car company would not have to pay the full \$10,000. Mr. McCarthy said that is correct.

Mr. Smith queried whether the \$10,000 is only for property damage, not personal injury. Mr. McCarthy answered that the \$10,000 represents the liability obligation for property damage as opposed to a separate figure for personal injury.

In reply to Mr. Seel, Mr. McCarthy advised that the total amount of liability for rental car companies would not exceed the state minimum coverage amounts but it could be in addition to what the renter's insurance company provides if the claim warrants the additional coverage.

Mr. Smith brought up underinsured coverage. Mr. McCarthy related that would be the third source of recovery in an extensive or catastrophic claims situation.

In answer to Mr. Seel about subrogation in underinsured and uninsured coverage, Mr. McCarthy said there is a subrogation provision in the uninsured motorist situation.

J. Michael Low, Attorney, Allstate Auto Insurance, American Family Insurance and MetLife Insurance, opposed to SB1286, testified that the key issue here is public policy as referred to by Ms. McCune Davis. He said there are two competing economic interests: the insurance industry and the rental car industry. He thinks the only way to judge this bill, from a public policy standpoint, is whether it is fair to Arizona residents. Currently, the system is fairly easy: when struck by a rental vehicle, submit a claim, and the rental car company will adjust that claim. To the extent that the damages exceed the minimum limits, the driver's insurance company will then provide that coverage. He maintained that is simple, straightforward and fair to the injured Arizona resident who has incurred damage. This proposal changes that concept drastically. He said there are no standards in the bill that require rental car companies to obtain, verify and maintain information on the renter's insurance coverage and make it available to the injured party. He stated that it puts Arizona residents at a complete disadvantage in trying to collect an out-of-state judgment and opined that it will be very expensive and time-consuming.

In reply to Ms. McCune Davis, Mr. Low related that the injured party's insurance company will attempt to collect on an out-of-state claim; however, there will be a cost to the Arizona resident. Ms. McCune Davis expressed skepticism that this will be beneficial to Arizona residents.

Mr. Smith wondered if concerns will be satisfied if the rental car company gets all the information about a renter's insurance. Mr. Low replied in the negative. He said there would have to be the obligation to verify the information.

Kelsey Lundy, R & R Partners, representing Enterprise Holdings, testified in favor of SB1286. She said that when an out-of-state driver causes an accident involving an Arizona resident, the two parties exchange contact information and the Arizona resident's insurance company contacts the out-of-state driver's insurance company to get the issue resolved. She submitted that situation will not change if the out-of-state driver is in a rental car; however, an added benefit is that if the out-of-state driver's insurance company does not respond to the claim, the rental car company is available as a back-up. The idea that a third party will have no recovery or have no one to respond to their claim is not true, because Arizona law already protects people with legitimate claims. She pointed out that currently, every rental car in Arizona is insured with the minimum financial limits as required by law and if this legislation passes, all those cars are still going to be insured as required by law. If the renter's auto insurance company does not respond to a claim, or if damage or injury exceeds the renter's policy limits, the rental car company's insurance then steps in as primary up to the state minimum financial limits.

Mr. Smith said he believes an amendment should be added stating that the rental car company should be required to verify the renter's insurance information. Ms. Lundy said she would be glad to discuss an amendment. She related that today, rental car companies already provide that type of information to third parties when it is requested.



Dave Childers, Property Casualty Insurers Association of America, Farmers Insurance, Liberty Mutual Insurance, expressed opposition to SB1286. He said the renter is the person responsible for paying for damages sustained as a result of an accident. The legislation addresses two issues:

- Whether that responsibility should be transferred to Arizona policyholders. His position is that obligation should not be passed on to Arizonans who do not rent cars.
- He agreed with Ms. McCune Davis' comments that tracking down the tortfeasor will not be easy.

Mr. Childers stated that the proposed amendment transfers the responsibility back to where it was with the rental car company's responsibility first and the renter's insurance company as second. Additionally, it expands the subrogation rights that already exist under statute from bringing a claim against an unauthorized driver to bringing a claim against any driver, authorized or not. Under the amendment, there would be little incentive on the part of the rental car company to be conservative in settling claims if they can recover all their damages, including administrative costs, from the renter.

Kevin DeMenna, Avis Car Rentals, Budget Car Rentals, spoke in support of SB1286. He disclosed that Arizona's system is different from other systems in the country, where the costs are product-based. When a driver drives a car, that person is responsible for his actions, except if driving a rental car in Arizona. Under current law, property and liability costs are the responsibility of the rental car company, not the renter. Not only must rental car companies pay for damages but they are not able to recover costs through subrogation. He encouraged Members to pass this bill along with the Seel amendment, if necessary.

Bert Alanko, President, MBA Insurance, representing self, spoke on behalf of SB1286. He said his company insures recreational vehicles (RV) and motorcycle rental dealers across the country. He advised that after an accident, the insurance company will step in and protect the person who is injured. If a person rents a car, there is rental coverage under the person's personal insurance policy that will protect the renter. He said the proposed amendment to allow subrogation to make the company whole could be considered. Arizona is the only state in the country where rental dealers have no rights. He maintained that if a renter causes damages, their insurance company should pay the state limits and, if damages go over the state limits, the rental car company's insurance would be available.

Chairman McLain queried whether MBA Insurance pays claims for the cost of damages caused by a renter who is responsible for an accident. Mr. Alanko replied in the affirmative. He related that motorcycles, 15-passenger vans and RVs are covered under Arizona statutes. He clarified his statement that Arizona's laws differ from the laws of all other states and said there are variations in different states, but none as severe as in Arizona.

Kerry Hayden, Government Affairs Representative, Farmers Insurance Group of Companies, stated opposition to SB1286 and the amendment. She enumerated concerns: out-of-state drivers not having their insurance card with them, different mandatory liability limits in other states, changing rental companies to secondary instead of primary on covering damages, renters not carrying insurance, the insurance company not responding to a claim, etc. She expressed opposition to the amendment and advised that subrogation occurs in property damage, not liability. If the liability subrogation idea were to move forward, it would be breaking new

ground, a lot of problems would result and there would be increased costs with having to hire lawyers on both sides.

Chairman McLain announced the names of those who signed up in support of SB1286 but did not speak:

Gibson McKay, Sherpa Public Affairs, American Car Rental Association  
Jim Norton, President, Enterprise Holdings  
Steve Patience, Attorney, Arizona Trial Lawyers Association  
Janice Goldstein, Arizona Trial Lawyers Association  
Susie Stevens, Lobbyist, Arizona Recreational Vehicle Dealers Association  
Ryan DeMenna, Associate, Avis Car Rentals & Budget Car Rentals  
Maggie Howard, representing self  
Laura Hakel, representing self  
Kendall Bielinski, representing self  
Gitau Kungu, representing self  
Matthew Barneburg, representing self  
Timothy Wynne, representing self  
Tyler Hall, representing self  
Chad Montgomery, representing self  
Bryan Jurich, representing self  
Naseem Khayami, representing self  
Candace Minarchin, representing self  
Derrick Mittenzwei, representing self  
Margaret Brown, representing self  
Dana Kasten, representing self  
Kurt Peltzer, representing self  
James Fenech, representing self  
Christina Martinez, American Car Rental Association  
Scott Smith, City Manager, Fox Rent A Car  
Marcel Burks, Senior Station Manager, Fox Rent A Car  
Scott Bengogullari, City Manager, Payless Car Rental

Chairman McLain announced the names of those who signed up in opposition to SB1286 but did not speak:

Russell Reiten, Government Affairs, Independent Insurance Agents & Brokers of Arizona  
Wendy Briggs, Lobbyist, American Insurance Association  
Debby Woodruff, representing self  
Lanny Hair, Executive Vice President, Independent Insurance Agents & Brokers of Arizona  
Norman Moore, Attorney, State Farm Insurance  
Stuart Goodman, Lobbyist, AAA Arizona  
Jason Barraza, Associate Director, American Insurance Association  
Ellen Poole, Executive Director, South West Region Government Relations, USAA

Chairman McLain announced the names of those who signed up as neutral on SB1286 but did not speak:

Andrew Carlson, Executive Assistant for Policy Affairs, Arizona Department of Insurance

**Question was called on the motion that the Seel 14-line amendment dated 3/9/12 be adopted (Attachment 4). The voice vote was inconclusive; the Chair was in doubt and requested a show of hands. The motion failed by a hand vote of 3 to 3.**

**Question was called on the motion that SB1286 do pass. The motion failed by a roll call vote of 2-5-0-0 (Attachment 7).**

Without objection, the meeting adjourned at 5:05 p.m.

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Joanne Bell, Committee Secretary  
April 2, 2012

(Original minutes, attachments and audio on file in the Chief Clerk's Office; video archives available at <http://www.azleg.gov>)