

# HOUSE BILL REPORT

## HB 1492

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### As Reported by House Committee On:

Insurance, Financial Services & Consumer Protection

**Title:** An act relating to arbitration under certain insurance policies.

**Brief Description:** Using arbitration to resolve disputes regarding certain insurance policies.

**Sponsors:** Representatives Simpson, Campbell, Kirby, VanDeWege, Williams, Chase, Wood and Santos.

### Brief History:

#### Committee Activity:

Insurance, Financial Services & Consumer Protection: 2/1/07, 2/27/07 [DPS].

#### Brief Summary of Substitute Bill

- Requires all automobile liability policies that provide personal injury protection (PIP) coverage to have a binding arbitration clause that allows either the insurer or insured to request arbitration.
- Provides that the insurer must pay for the costs of the arbitrator.
- Requires the insurer to pay actual arbitration costs, including expert witness fees, incurred in establishing the insured's claim in a PIP claim arbitration if the insured receives additional benefits in the arbitration.

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### HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kirby, Chair; Kelley, Vice Chair; Hurst, Santos and Simpson.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member and Rodne.

**Staff:** Jon Hedegard (786-7127).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Personal Injury Protection Coverage

"Personal injury protection" (PIP) is a type of automobile insurance coverage obtained by most drivers as part of their comprehensive automobile insurance policy. The PIP insurance provides immediate benefits to an insured on a no-fault basis if he or she is injured in an automobile accident. The coverage generally provides limited financial compensation for injury, death, disability, wage loss, and other expenses incurred as the result of an accident. Automobile liability insurance companies must provide PIP coverage under non-business auto insurance policies unless the named insured rejects PIP coverage in writing. Insurers need not provide PIP coverage for motor homes or motorcycles.

### Mandatory Minimum PIP Coverage

An insurer must offer PIP benefits that cover medical and hospital expenses incurred within three years of the date of the insured's injury, up to a maximum of \$10,000. Funeral expenses must be covered up to \$2,000. A maximum of \$5,000 in coverage must be provided for loss of services, subject to a limitation of \$40 per day and \$200 per week. Loss of income benefits must also be provided, subject to the following conditions:

- income losses must be incurred within one year of injury;
- a total of \$10,000 in coverage must be offered, subject to a limit of \$200 per week or 85 percent of average weekly income, whichever is less; and
- weekly payments are limited to 85 percent of the insured's weekly income, and the calculation of the amount of the weekly payment must include the combined total of the insurance benefits and all other income loss benefits received by the insured.

### Optional Extended PIP Coverage

When explicitly requested by an insured, insurers are required to offer PIP benefits that are much more extensive than the mandatory minimums discussed above. Under the optional coverage provisions, the coverage limit for medical and hospital expenses is raised to \$35,000. Coverage for loss of services is set at \$40 per day for up to one year, and is not subject to a specified yearly limit. The limit on loss of income benefits is raised to \$35,000, subject to a limit of the lesser of \$700 per week or 85 percent of the insured's average weekly income prior to the injury.

### Arbitration

Arbitration is a nonjudicial method for resolving disputes in which a third party is given authority to decide the case. Arbitration is intended to be a less expensive and time-consuming way of settling problems than taking a dispute to court. Parties are generally free to agree between themselves to submit an issue to arbitration. If parties agree to arbitration, the decision of the arbitrator is binding and is appealable to a court only on very limited grounds. In some cases, however, arbitration is mandatory. That is, arbitration is required by a statute, and the parties have no choice in the matter.

### Binding Arbitration

A procedural framework for conducting the arbitration proceeding is provided in statute, including provisions relating to appointment of an arbitrator, attorney representation, witnesses, depositions, and awards. The arbitrator's decision is final and binding on the parties, and there is no general right of appeal. A court's review of an arbitration decision is limited to confirming the award, correction or modification of an award, or vacation of an award under limited circumstances.

### Mandatory Arbitration

Mandatory arbitration is required in the superior courts of counties of more than 100,000 population. It applies to cases in which the sole relief sought is a money judgment of \$15,000 or less. In smaller counties, either the superior court judges or the county legislative authority may adopt mandatory arbitration.

By a two-thirds vote, the judges of the superior court in any county with either the statutorily required or the self-imposed mandatory arbitration have the option to raise the ceiling for mandatory arbitration cases from \$15,000 to \$50,000. Superior court judges may also vote to use mandatory arbitration in child support cases, without limit as to the dollar amount of the support payments.

Anyone agreed to by the parties may be an arbitrator. If agreement is not reached, the court will appoint an arbitrator, who must be a retired judge or a lawyer with at least five years membership in the bar. Arbitrators are paid at the same rate as judges pro tem of the superior court.

An award by an arbitrator may be appealed to the superior court. The superior court will hear the appeal "de novo." That is, the court on appeal will conduct a trial on all issues of fact and law essentially as though the arbitration had not occurred. Amounts awarded on appeal are not subject to any dollar limits. The mandatory arbitration statute provides that Washington Supreme Court rules will establish the procedures to be used in mandatory arbitration and that such rules may provide for the recovery of costs and "reasonable" attorney fees from a party who appeals and fails to improve his or her position. The rules make the award of costs and fees mandatory when an appealing party fails to improve his or her position, but make such awards discretionary when an appealing party withdraws the appeal. The determination of whether or not the appealing party's position has been improved is based on the amount awarded in arbitration compared to the amount awarded at the trial de novo.

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### **Summary of Substitute Bill:**

All automobile liability insurance policies sold in this state that contain PIP coverage must also contain a binding arbitration clause. The clause is to resolve disputes between the insured and the insurer regarding the amount of medical and hospital expenses, funeral expenses,

income continuation, and loss of services sustained by an insured because of bodily injury caused by an automobile accident.

Either the insurer or insured may request arbitration to resolve a dispute regarding the amount of PIP benefits. A request for arbitration must be made in writing. The parties must select an arbitrator to hear the dispute within 30 days of a written request. The failure to agree on an arbitrator within the required time is resolved under RCW 7.04A.110.

The cost of the arbitrator must be paid by the insurer. If an arbitration results in additional benefits to the insured, the insurer must pay the actual arbitration costs, including expert witness fees, incurred in establishing the insured's claim.

**Substitute Bill Compared to Original Bill:**

An intent section is added. The cost of the arbitrator must be paid by the insurer. Previous language concerning costs of the arbitration is modified when the arbitration results in additional benefits for the insured. Language requiring reasonable attorneys' fees is removed. Language requiring the insurer to pay actual arbitration costs, including expert witness fees, is included.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) We have a suggestion. The PIP benefits are an excellent candidate for binding arbitration. The Insurance Services Office (ISO) offers standard forms that include binding arbitration. The standard ISO form does not include the last sentence of the bill that requires insurers to pay for certain arbitrations. We suggest following underinsured motorist (UIM) case law which requires the insured to pay for an arbitrator when the result is a higher claim; the insured and the insurers are responsible for their own fees and expenses. There is a need for a mechanism to resolve PIP disputes quickly. Today, health treatment can be suspended if there is a dispute. A suit can take quite some time and the insured may have to cover their bills for needed care during that time. The insured can't access their health care until PIP coverage is exhausted. The insured is stuck in limbo even though they have auto coverage that may pay for the medical bills and they have health insurance that will step in if the PIP benefits do not apply. You can appeal a health coverage decision but not PIP. The Insurance Commissioner has suggested that the UIM model should be used for attorney fees and arbitration costs. We can live with that. The fees are not the main issue. The focus of the bill is to get the PIP issues resolved quickly. If an insured loses their PIP arbitration, they can access their health insurance once the PIP issue is resolved. The UIM model is one where the insurer pays for arbitrator and the parties pay for the fees. We would ask for one modification

to the UIM system though to allow that a medical report should be paid for by the insurer also. In a dispute over UIM coverage, you are seeking considerable damages. In PIP, you are seeking for the payment of a few medical bills so it may not be cost effective to pay for a medical report.

(Opposed) The insurance industry opposes the bill. An insurer may have thousands of PIP cases a year. Almost all of those are handled routinely and there is no dispute. Occasionally, there may be factual issues or billing issues or causation issues. The concern is that binding arbitration will lead to increased litigation and increased delays and costs. Currently, issues like medical necessity may be reviewed. In a review, they may amicably resolve a dispute. The current bill is not reciprocal in its treatment of arbitration costs. It is "loser pay" if the insurer loses but not if the insurer wins. The bill is not balanced and it is unnecessary.

**Persons Testifying:** (In support) Mary Clogston, Office of the Insurance Commissioner; and Larry Shannon and Steve Toole, Washington Trial Lawyers Association.

(Opposed) Mel Sorensen, Property Casualty Insurers Association; Elizabeth Mocerri, Allstate; Jean Leonard, State Farm Insurance; and Mike Kappahn, Farmers Insurance.

**Persons Signed In To Testify But Not Testifying:** None.