
**Insurance, Financial Services &
Consumer Protection Committee**

HB 1492

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

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

Brief Summary of 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 and the reasonable costs and attorneys' fees incurred in establishing the insured's claim in a PIP claim arbitration if the insured receives additional benefits in the arbitration.

Hearing Date: 2/1/07

Staff: Jon Hedegard (786-7127).

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. 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

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.

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.

Summary of 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 thirty days of a written request. The failure to agree on an arbitrator within the required time is resolved under RCW 7.04A.110.

If an arbitration results in additional benefits to the insured, the insurer must pay the costs of the arbitrator and the reasonable costs and attorneys' fees incurred in establishing the insured's claim.

Appropriation: None.

Fiscal Note: Available.

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