

HOUSE No. 856

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to arbitration for automobile insurance property damage..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 191A of Chapter 175 of the General Laws, as so appearing in the
2 2004 Official Edition, is hereby amended by striking the second subparagraph of paragraph one
3 thereof, and inserting in its stead, the following:—

4 If the named insured, or the repairer chosen by the insured to make repairs to the vehicle,
5 and the company fails to agree as to the amount of loss, each shall, on the written demand of the
6 other made within 90 days after receipt of proof of loss by the company, submit to binding
7 arbitration as to the amount of the loss. The party demanding arbitration shall select a competent
8 and disinterested licensed auto damage appraiser as an arbitrator and shall identify the appraiser
9 in its demand. The other party shall thereafter select a competent and disinterested licensed auto
10 damage appraiser as a second arbitrator and shall identify the appraiser to the party demanding
11 arbitration within 5 working days of receipt of the demand for arbitration. The 2 chosen
12 arbitrators shall choose another competent and disinterested licensed auto damage appraiser, who
13 shall then serve as an umpire. If the 2 arbitrators chosen by the parties cannot agree upon an
14 umpire within 5 working days after being appointed, then either party may file a petition for

15 appointment of the umpire with the division of the district court department of the trial court for
16 the district within which either the vehicle owner or the repair shop chosen to make repairs is
17 located. Such petition shall be accompanied by a filing fee in the amount of the usual filing fee
18 for a complaint, as well as a list of not less than 3 competent and disinterested licensed auto
19 damage appraisers and a summary of the qualifications of each such listed appraiser. At the time
20 of filing such petition, the court shall schedule same for hearing, such hearing to be held within 7
21 days of the filing. The petitioner shall forthwith serve notification of the date and time of hearing
22 and a copy of the petition and submitted list of appraisers upon the other chosen arbitrator by
23 hand delivery or by certified mail. Such other chosen arbitrator shall also submit a list of not less
24 than 3 competent and disinterested licensed auto damage appraisers and a summary of the
25 qualifications of each such listed appraiser. At the scheduled hearing, the court shall appoint an
26 umpire from the lists submitted. Such hearing shall be held on an informal basis, utilizing the
27 rules of evidence applicable to cases heard under the procedure established by section 21 of
28 chapter 218. Within 5 working days of selecting the umpire, the 2 initially chosen arbitrators
29 shall also independently appraise the loss, such appraisals to be made at a reasonable time and
30 place. Each arbitrator shall itemize the cost of repair, or shall state in writing the actual cash
31 value of a vehicle appraised as a total loss. The arbitrators shall then attempt to agree as to the
32 amount of the loss. If the 2 chosen arbitrators shall fail to agree within 5 working days after
33 making their appraisals, they then shall submit their appraisals to the umpire within three
34 working days of the expiration of the said 5 day period. The umpire, within 5 working days of
35 receiving the arbitrators' appraisals, shall make an award, rendered by selecting one of the 2
36 appraisals as submitted by the arbitrators. An award in writing of any 2 shall determine the
37 amount of loss. Such decision shall be binding upon the parties. Within 5 working days of the

38 umpire's decision, the insurer shall make payment on the award accordingly. The named insured
39 and the company shall each pay their own chosen arbitrator and shall bear equally the expenses
40 of the umpire. An insurer that fails to comply with the provisions of this section shall be deemed
41 to have engaged in unfair claims settlement practices in violation of section 3(9) of chapter
42 176D.