

HOUSE No. 899

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 2000 Official Edition, is hereby amended by striking the second subparagraph of paragraph one
3 thereof, and inserting in its stead, the following:—If the named insured, or the repairer chosen by
4 the insured to make repairs to the vehicle, and the company fails to agree as to the amount of
5 loss, each shall, on the written demand of the other made within ninety days after receipt of proof
6 of loss by the company, submit to binding arbitration as to the amount of the loss. The party
7 demanding arbitration shall select a competent and disinterested licensed auto damage appraiser
8 as an arbitrator and shall identify the appraiser in its demand. The other party shall thereafter
9 select a competent and disinterested licensed auto damage appraiser as a second arbitrator and
10 shall identify the appraiser to the party demanding arbitration within five working days of receipt
11 of the demand for arbitration. The two chosen arbitrators shall choose another competent and
12 disinterested licensed auto damage appraiser, who shall then serve as an umpire. If the two
13 arbitrators chosen by the parties cannot agree upon an umpire within five working days after
14 being appointed, then either party may file a petition for appointment of the umpire with the

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

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