
HOUSE BILL 3239

State of Washington

59th Legislature

2006 Regular Session

By Representative Kirby

Read first time 01/27/2006. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to arbitration under certain insurance policies;
2 and amending RCW 48.22.030 and 48.22.085.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 48.22.030 and 2004 c 90 s 1 are each amended to read
5 as follows:

6 (1) "Underinsured motor vehicle" means a motor vehicle with respect
7 to the ownership, maintenance, or use of which either no bodily injury
8 or property damage liability bond or insurance policy applies at the
9 time of an accident, or with respect to which the sum of the limits of
10 liability under all bodily injury or property damage liability bonds
11 and insurance policies applicable to a covered person after an accident
12 is less than the applicable damages which the covered person is legally
13 entitled to recover.

14 (2) No new policy or renewal of an existing policy insuring against
15 loss resulting from liability imposed by law for bodily injury, death,
16 or property damage, suffered by any person arising out of the
17 ownership, maintenance, or use of a motor vehicle shall be issued with
18 respect to any motor vehicle registered or principally garaged in this
19 state unless coverage is provided therein or supplemental thereto for

1 the protection of persons insured thereunder who are legally entitled
2 to recover damages from owners or operators of underinsured motor
3 vehicles, hit-and-run motor vehicles, and phantom vehicles because of
4 bodily injury, death, or property damage, resulting therefrom, except
5 while operating or occupying a motorcycle or motor-driven cycle, and
6 except while operating or occupying a motor vehicle owned or available
7 for the regular use by the named insured or any family member, and
8 which is not insured under the liability coverage of the policy. The
9 coverage required to be offered under this chapter is not applicable to
10 general liability policies, commonly known as umbrella policies, or
11 other policies which apply only as excess to the insurance directly
12 applicable to the vehicle insured.

13 (3) Except as to property damage, coverage required under
14 subsection (2) of this section shall be in the same amount as the
15 insured's third party liability coverage unless the insured rejects all
16 or part of the coverage as provided in subsection (4) of this section.
17 Coverage for property damage need only be issued in conjunction with
18 coverage for bodily injury or death. Property damage coverage required
19 under subsection (2) of this section shall mean physical damage to the
20 insured motor vehicle unless the policy specifically provides coverage
21 for the contents thereof or other forms of property damage.

22 (4) A named insured or spouse may reject, in writing, underinsured
23 coverage for bodily injury or death, or property damage, and the
24 requirements of subsections (2) and (3) of this section shall not
25 apply. If a named insured or spouse has rejected underinsured
26 coverage, such coverage shall not be included in any supplemental or
27 renewal policy unless a named insured or spouse subsequently requests
28 such coverage in writing. The requirement of a written rejection under
29 this subsection shall apply only to the original issuance of policies
30 issued after July 24, 1983, and not to any renewal or replacement
31 policy.

32 (5) The limit of liability under the policy coverage may be defined
33 as the maximum limits of liability for all damages resulting from any
34 one accident regardless of the number of covered persons, claims made,
35 or vehicles or premiums shown on the policy, or premiums paid, or
36 vehicles involved in an accident.

37 (6) The policy may provide that if an injured person has other

1 similar insurance available to him under other policies, the total
2 limits of liability of all coverages shall not exceed the higher of the
3 applicable limits of the respective coverages.

4 (7)(a) The policy may provide for a deductible of not more than
5 three hundred dollars for payment for property damage when the damage
6 is caused by a hit-and-run driver or a phantom vehicle.

7 (b) In all other cases of underinsured property damage coverage,
8 the policy may provide for a deductible of not more than one hundred
9 dollars.

10 (8) For the purposes of this chapter, a "phantom vehicle" shall
11 mean a motor vehicle which causes bodily injury, death, or property
12 damage to an insured and has no physical contact with the insured or
13 the vehicle which the insured is occupying at the time of the accident
14 if:

15 (a) The facts of the accident can be corroborated by competent
16 evidence other than the testimony of the insured or any person having
17 an underinsured motorist claim resulting from the accident; and

18 (b) The accident has been reported to the appropriate law
19 enforcement agency within seventy-two hours of the accident.

20 (9) An insurer who elects to write motorcycle or motor-driven cycle
21 insurance in this state must provide information to prospective
22 insureds about the coverage.

23 (10) An insurer that does not include in its policy of underinsured
24 motorist coverage a binding arbitration clause is subject to a civil
25 suit at the option of the insured in superior court when a dispute
26 arises regarding whether the insured is entitled to damages or the
27 amount of those damages.

28 If prior to the insured filing a civil suit against the insurer
29 seeking damages under the policy of underinsured motorist coverage,
30 either the insurer or the insured provides written notice to the other
31 that binding arbitration of the dispute is requested, the party
32 receiving such notice shall have twenty days from the receipt of such
33 notice to either accept or refuse such request. If the request for
34 binding arbitration is refused, or if no timely response is made, the
35 insured may then file a civil suit in superior court to recover
36 damages. In the event that a civil suit is so filed, and the request
37 for binding arbitration has not been withdrawn, the prevailing party or
38 parties in such action shall be entitled to recover all litigation

1 costs, including expert witness fees, and reasonable attorneys' fees,
2 provided that, prior to filing suit, the prevailing party had submitted
3 to the other party a written request for binding arbitration of the
4 claim for damages and the other party refused such request or failed to
5 respond in a timely manner, as set forth herein.

6 **Sec. 2.** RCW 48.22.085 and 2003 c 115 s 2 are each amended to read
7 as follows:

8 (1) No new automobile liability insurance policy or renewal of such
9 an existing policy may be issued unless personal injury protection
10 coverage is offered as an optional coverage.

11 (2) A named insured may reject, in writing, personal injury
12 protection coverage and the requirements of subsection (1) of this
13 section shall not apply. If a named insured rejects personal injury
14 protection coverage:

15 (a) That rejection is valid and binding as to all levels of
16 coverage and on all persons who might have otherwise been insured under
17 such coverage; and

18 (b) The insurer is not required to include personal injury
19 protection coverage in any supplemental, renewal, or replacement policy
20 unless a named insured subsequently requests such coverage in writing.

21 (3) All automobile liability insurance policies sold in this state
22 that contain personal injury protection coverage benefits shall contain
23 binding arbitration clauses to resolve disputes between the insured and
24 the insurer regarding the amount of medical and hospital expenses,
25 funeral expenses, income continuation, and loss of services sustained
26 by an insured because of bodily injury caused by an automobile
27 accident.

28 When a dispute regarding the amount of personal injury protection
29 coverage benefits arises, arbitration may be requested by either the
30 insurer or insured. In any event, a request for arbitration must be
31 made in writing and the parties shall select an arbitrator to hear the
32 dispute within thirty days of a written request. The failure to agree
33 on an arbitrator within the required time is resolved under RCW
34 7.04.050. When arbitration results in additional benefits to the
35 insured, the costs of the arbitrator shall be paid by the insurer,

1 along with the reasonable costs and attorneys' fees incurred in
2 establishing the insured's claim to additional benefits.

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