

# SENATE BILL REPORT

## SB 5721

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As of February 17, 2025

**Title:** An act relating to enhancing consumer protections for automobile insurance coverage.

**Brief Description:** Enhancing consumer protections for automobile insurance coverage.

**Sponsors:** Senators Stanford, Valdez, Hasegawa, Riccelli, Alvarado, Nobles, Orwall, Slatter, Trudeau and Wellman.

**Brief History:**

**Committee Activity:** Business, Financial Services & Trade: 2/19/25.

### Brief Summary of Bill

- Creates a right to an appraisal in automobile insurance policies with first-party coverage for physical damage, which are issued or renewed on or after January 1, 2026.
- Specifies requirements and procedures for appraisal, including timeframes for invoking appraisal, selecting appraisers, and appointing umpires, and determining the amount of loss.
- Specifies the bearing of appraisal costs, but requires an insurer to reimburse the policyholder for appraisal costs under certain circumstances.
- Requires the Office of the Insurance Commissioner to register competent and disinterested umpires.

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### SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

**Staff:** John Kim (786-7453)

**Background:** Appraisal Clauses in Motor Vehicle Insurance Policies. According to the

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Washington Motor Vehicle Accident Insurance Deskbook published by the Washington State Bar Association, most collision and comprehensive coverages in motor vehicle insurance policies provide for appraisal in the event that the insurer and the insured cannot agree on the value of a loss in first-party insurance coverage claims for automobile damage.

Washington courts have generally held appraisal provisions in insurance contracts to be valid and enforceable, and have found appraisal awards to be conclusive as to the amount of loss except in cases of bias, prejudice, or lack of disinterestedness on the part of either an appraiser or the umpire. For example, *Montler v. Belfor USA Grp., Inc.* (2023), citing *Goldstein v. Nat'l Fire Ins. Co. of Hartford, Conn.* (1919); *Bainter v. United Pac. Ins. Co.* (1988).

Current state law does not require or prohibit the use of, or specify requirements for, appraisal provisions in motor vehicle insurance policies. A rule adopted in 2009 by the Office of the Insurance Commissioner (OIC) specifies methods and standards of practice for the settlement of total loss vehicle claims, but does not require, prohibit, or specify requirements for appraisal.

According to the OIC, it is experiencing a historic rise of complaints relating to auto insurance, with 88 percent of auto insurance complaints relating to valuation disputes and claims handling disagreements.

Fee Shifting Statutes. According to the American Bar Association, the general rule in the United States is that each party must bear its own attorney fees in litigation absent a statutory or contractual exception. Fee-shifting provisions are an exception to this rule.

A unilateral or one-way fee shifting statute provides that only one party can recover their legal fees, which is usually the prevailing plaintiff or claimant. One example of a one-way fee shifting statute in the Washington Insurance Code relates to the unreasonable denial of a claim for coverage or payment of benefits, which allows a claimant to recover attorney fees and litigation costs from an insurer, among other remedies.

**Summary of Bill:** Right to Appraisal in Automobile Insurance Policies with First-Party Coverage for Physical Damage. The bill requires every automobile insurance policy that includes first-party coverage for physical damage issued or renewed effective on or after January 1, 2026, to include a provision for the right to an appraisal to resolve disputes between the insurer and the insured regarding the actual cash value and amount of loss on the damaged automobile.

The bill specifies language to be included in the appraisal clause, but authorizes corresponding language that, in the OIC's opinion, is at least as favorable to the insured.

Timeframes for Invoking Appraisal and Requirements for Selecting Appraisers. The bill provides that neither party may demand an appraisal until ten days after the insurer receives

notification of the claim.

If the insurer and the policyholder are unable to agree as to the amount of loss, either party may make a written demand for an appraisal, and within ten days, each party must select a competent and disinterested appraiser and notify the other party of its selection.

The bill defines the following:

- the term appraiser means a person selected by the insurer or the insured to place a value on or estimate the amount of loss under an appraisal clause in an insurance contract;
- the term competent means the person has subject matter expertise, relevant training, and experience to make decisions and valuations relating to the amount of loss; and
- the term disinterested means the person does not have a direct financial interest in the outcome of the appraisal process.

Appointment of an Umpire. An umpire is defined as a person selected by the appraisers representing the insurer and the insured, or, if the appraisers cannot agree, by the OIC, who is charged with resolving issues that the appraisers are unable to agree upon during the course of an appraisal.

The selected appraisers must appoint a competent and disinterested umpire. If the appraisers do not appoint a competent and disinterested umpire within ten days, either appraiser may notify the OIC, which must identify a registered competent and disinterested umpire that will be used according to the process that the OIC specifies by rule.

Appraisals and Agreement. After an umpire is appointed, the appraisers must then each appraise the loss, make separate findings regarding the amount of loss for each element of loss, and exchange their completed appraisals. If the appraisers are unable to agree on the losses, they must submit their differences to the umpire.

The amount of loss must be determined either by agreement of the appraisers or by agreement of one appraiser and the umpire.

Bearing of Appraisal Costs and One-Way Cost-Shifting Provision. Each party is responsible for their appraisal expenses, and each party is equally responsible for the cost of the umpire.

If the amount of loss determined through the appraisal process is greater than the amount of loss the insurer adjusted before the appraisal process was invoked by an amount of \$500 or more, the insurer must reimburse the policyholder for the costs incurred for the appraisal process.

The appraisal process costs include reasonable appraiser professional charges, reasonable attorney fees, and other necessary actual costs.

Rulemaking. The OIC may adopt implementing rules.

**Appropriation:** None.

**Fiscal Note:** Requested on February 14, 2025.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.