

SENATE BILL REPORT

ESB 5721

As Amended by House, April 14, 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, 2/20/25 [DP, DNP, w/oRec].

Floor Activity: Passed Senate: 3/7/25, 29-20.

Passed House: 4/14/25, 96-1.

Brief Summary of Engrossed 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 and appoint such an umpire upon request.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

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.

Majority Report: Do pass.

Signed by Senators Kauffman, Chair; Cortes, Vice Chair; Hasegawa, Lovick and Stanford.

Minority Report: Do not pass.

Signed by Senators Dozier, Ranking Member; Fortunato and McCune.

Minority Report: That it be referred without recommendation.

Signed by Senator Wilson, J..

Staff: John Kim (786-7453)

Background: Appraisal Clauses in Motor Vehicle Insurance Policies. According to the 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 Engrossed 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 the insurer certifies is at least as favorable to the insured.

Timeframes for Invoking Appraisal, Requirements for Selecting Appraisers, and Appraisals. 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 appraisers must then each appraise the actual cash value and the amount of loss, make separate findings regarding the amount of loss for each element of loss, and exchange their completed appraisals. The appraisers must make their appraisals within 30 calendar days of selection. If an appraiser needs more than 30 days, the appraiser must provide a reasonable basis to the other appraiser before 25 days has passed. The appraiser must document the reason or reasons for the extension in their file.

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 and Determination. 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.

If the appraisers are unable to agree on the losses, they must appoint a competent and disinterested umpire and submit their differences to the umpire. If the appraisers do not appoint a competent and disinterested umpire within 15 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.

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: Available.

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

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

Staff Summary of Public Testimony: PRO: In recent years, we've seen a large increase in complaints around auto insurance claims. This has coincided with the use of virtual appraisals or estimates based only on photographic evidence. The point of this bill to make sure that consumers can actually get a fair appraisal of the damages and a fair settlement of the claim.

The OIC strongly supports the bill. It will allow folks who have fallen through the cracks in the auto claim environment to have a dispute resolution pathway that does not involve hiring an attorney or contacting the regulator. Consumers will be provided a way to timely resolve their auto claim.

The right to appraisal is essential. It provides an unbiased way to resolve disputes without costly litigation. Without appraisal, consumers are vulnerable to unfair settlements. Protecting this right ensures fairness, financial security, and accountability.

Over the past few years, a lot of insurance estimates are either written by artificial intelligence or an experienced person who's merely looking at a picture. Day in and day out, Modern Collision Rebuilding & Service receives insurance estimates that are grossly shy with the actual repair costs, typically 50 to 75 percent less than our initial estimate. This

discrepancy can leave the customer in a bad position. Do they pay additional cost to have it fixed correctly at their shop of choice or are they willing to find a shop to cut corners?

The Washington State Association for Justice encourages the passage of the bill for two big reasons. The bill requires appraisers to be competent and disinterested, which is a huge benefit for consumers. Second, the bill requires insurers to come within \$500 of the final appraised amount. If you can't come within \$500 of the proper appraised amount of the damages on a claim like this, then somebody's not doing a very good job and the adjusters are not doing their job.

A few years ago, when my vehicle sustained damage and I submitted photos, I was given an estimate of approximately \$3,700. However, after insisting that an insurance company appraiser physically inspect the vehicle, the estimate rose dramatically to over \$15,000. This bill is about ensuring every consumer has access to a transparent, equitable, and efficient appraisal process.

Last year I was involved in an incident with my motorcycle and my insurance company totaled it. My insurance company offered me only \$3,500. I was forced to invoke the appraisal clause and hired a public adjuster. Five months later I was able to secure the valuation I had sent them previously of \$7,500. I had to pay my adjuster out of pocket of about \$500 to \$600. I urge you to support this bill.

Hiring an attorney would have been impractical in my case. I would have paid \$5,000 to \$10,000 to pursue \$5,000 to \$10,000. This bill will help consumers to fight back if their insurance company is acting inappropriately.

I'm a licensed public insurance adjuster and public appraiser. Every day, I see auto insurers undervalue repair or replacement costs. Consumers are paying appraisal expenses like a second deductible that's undisclosed. Insurers use these costs as leverage over the policyholder to force a lower settlement if they fight back. This bill is modeled after existing Oregon law. It's been around for seven-plus years. Oregon premiums are similar to Washington.

The cost of labor, materials, and equipment have skyrocketed. With insurers underpaying claims more than ever, shops have to either pass that cost onto our customers, or shut our doors.

CON: The Northwest Insurance Council has enough concerns to oppose the bill. Current law already requires insurers to make policyholders whole and return the vehicle to preloss condition. If there are errors in the initial estimate, they often make additional payments when the final estimate is made. The problem with the bill is that it requires a dispute resolution process in every auto policy in Washington and if the final estimate is more than \$500 above the insurer's last estimate, the insurer has to pay for the appraisal process including attorney's fees and costs. We think this will incentivize more processes being

invoked, slowing down the repair process and raising costs over time, at a time when Washington insureds are already receiving significant premium increases due to the cost of repairing vehicles and treating injuries.

The American Property Casualty Insurance Association opposes the bill for mandating a rigid, one-size-fits-all appraisal process that will make disputes more common, repairs more expensive, and the process less objective. We would do it differently. Specifically, in the language, there's references to things like the opinion of the OIC commissioner when deciding if the policy language is legally sufficient. We would prefer something more objective. There's a reference to actual cash value - that seems borrowed improperly from the total loss adjudication section of the code. The OIC commissioner's involvement in the selection of an umpire if the two parties cannot agree seems to transition from a regulatory posture to involvement in the appraisal. Most fundamentally, the cost shift to insurers, including attorney fees, is deeply concerning to us.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Pat LePley, Washington State Association for Justice; David Forte, Office of the Insurance Commissioner; Bradley Vagt; Jeremiah Gitchel; Justin Morgan, JBM Law PLLC; Justin Morgan, JBM Law PLLC; Jeff Butler, Collision Consulting; Justin Lewis, Accurate Auto Body; Micah Strom, Modern collision rebuild & service; Donnie Martin, INDUSTRIAL FINISHES.

CON: Kenton Brine, Northwest Insurance Council; Kris Tefft, American Property Casualty Insurance Association.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Removes a provision that requires an insurer to reimburse the policyholder for appraisal costs if the amount of loss determined through appraisal is greater than the amount of loss initially adjusted by the insurer by \$500 or more.
- Removes a provision requiring a ten-day period after the insurer receives notification of the claim before appraisal may be invoked by either party.
- Specifies that the amount of loss determined through appraisal is binding.