

HOUSE No. 856

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce J. Ayers

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to arbitration for automobile insurance property damage.

PETITION OF:

NAME:

Bruce J. Ayers

DISTRICT/ADDRESS:

1st Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION

SEE HOUSE, NO. 900 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and 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 2004 Official Edition, is
2 hereby amended by striking the second subparagraph of paragraph one thereof, and inserting in its stead, the
3 following:—

4 If the named insured, or the repairer chosen by the insured to make repairs to the vehicle, and the company fails to
5 agree as to the amount of loss, each shall, on the written demand of the other made within 90 days after receipt of
6 proof of loss by the company, submit to binding arbitration as to the amount of the loss. The party demanding
7 arbitration shall select a competent and disinterested licensed auto damage appraiser as an arbitrator and shall
8 identify the appraiser in its demand. The other party shall thereafter select a competent and disinterested licensed
9 auto damage appraiser as a second arbitrator and shall identify the appraiser to the party demanding arbitration
10 within 5 working days of receipt of the demand for arbitration. The 2 chosen arbitrators shall choose another
11 competent and disinterested licensed auto damage appraiser, who shall then serve as an umpire. If the 2 arbitrators
12 chosen by the parties cannot agree upon an umpire within 5 working days after being appointed, then either party
13 may file a petition for appointment of the umpire with the division of the district court department of the trial court
14 for the district within which either the vehicle owner or the repair shop chosen to make repairs is located. Such
15 petition shall be accompanied by a filing fee in the amount of the usual filing fee for a complaint, as well as a list of
16 not less than 3 competent and disinterested licensed auto damage appraisers and a summary of the qualifications of
17 each such listed appraiser. At the time of filing such petition, the court shall schedule same for hearing, such hearing
18 to be held within 7 days of the filing. The petitioner shall forthwith serve notification of the date and time of hearing
19 and a copy of the petition and submitted list of appraisers upon the other chosen arbitrator by hand delivery or by
20 certified mail. Such other chosen arbitrator shall also submit a list of not less than 3 competent and disinterested
21 licensed auto damage appraisers and a summary of the qualifications of each such listed appraiser. At the scheduled
22 hearing, the court shall appoint an umpire from the lists submitted. Such hearing shall be held on an informal basis,
23 utilizing the rules of evidence applicable to cases heard under the procedure established by section 21 of chapter
24 218. Within 5 working days of selecting the umpire, the 2 initially chosen arbitrators shall also independently
25 appraise the loss, such appraisals to be made at a reasonable time and place. Each arbitrator shall itemize the cost of
26 repair, or shall state in writing the actual cash value of a vehicle appraised as a total loss. The arbitrators shall then
27 attempt to agree as to the amount of the loss. If the 2 chosen arbitrators shall fail to agree within 5 working days
28 after making their appraisals, they then shall submit their appraisals to the umpire within three working days of the
29 expiration of the said 5 day period. The umpire, within 5 working days of receiving the arbitrators' appraisals, shall
30 make an award, rendered by selecting one of the 2 appraisals as submitted by the arbitrators. An award in writing of

31 any 2 shall determine the amount of loss. Such decision shall be binding upon the parties. Within 5 working days of
32 the umpire's decision, the insurer shall make payment on the award accordingly. The named insured and the
33 company shall each pay their own chosen arbitrator and shall bear equally the expenses of the umpire. An insurer
34 that fails to comply with the provisions of this section shall be deemed to have engaged in unfair claims settlement
35 practices in violation of section 3(9) of chapter 176D.