

HOUSE No. 899

The Commonwealth of Massachusetts

PRESENTED BY:

Robert F. Fennell

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:

Robert F. Fennell

DISTRICT/ADDRESS:

10th Essex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 947 OF 2007-2008.]

The Commonwealth of Massachusetts

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 2000
2 Official Edition, is hereby amended by striking the second subparagraph of paragraph one thereof, and
3 inserting in its stead, the following:—
4 If the named insured, or the repairer chosen by the insured to make repairs to the vehicle, and the
5 company fails to agree as to the amount of loss, each shall, on the written demand of the other made
6 within ninety days after receipt of proof of loss by the company, submit to binding arbitration as to the
7 amount of the loss. The party demanding arbitration shall select a competent and disinterested licensed
8 auto damage appraiser as an arbitrator and shall identify the appraiser in its demand. The other party shall
9 thereafter 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 of the
11 demand for arbitration. The two chosen arbitrators shall choose another competent and disinterested
12 licensed auto damage appraiser, who shall then serve as an umpire. If the two arbitrators chosen by the
13 parties cannot agree upon an umpire within five working days after being appointed, then either party
14 may file a petition for appointment of the umpire with the division of the district court department of the
15 trial court for the district within which either the vehicle owner or the repair shop chosen to make repairs
16 is located. Such petition shall be accompanied by a filing fee in the amount of the usual filing fee for a
17 complaint, as well as a list of not less than three competent and disinterested licensed auto damage
18 appraisers and a summary of the qualifications of each such listed appraiser. At the time of filing such
19 petition, the court shall schedule same for hearing, such hearing to be held within seven days of the filing.

20 The petitioner shall forthwith serve notification of the date and time of hearing and a copy of the petition
21 and submitted list of appraisers upon the other chosen arbitrator by hand delivery or by certified mail.
22 Such other chosen arbitrator shall also submit a list of not less than three competent and disinterested
23 licensed auto damage appraisers and a summary of the qualifications of each such listed appraiser. At the
24 scheduled hearing, the court shall appoint an umpire from the lists submitted. Such hearing shall be held
25 on an informal basis, utilizing the rules of evidence applicable to cases heard under the procedure
26 established by section 21 of chapter 218. Within five working days of selecting the umpire, the two
27 initially chosen arbitrators shall also independently appraise the loss, such appraisals to be made at a
28 reasonable time and place. Each arbitrator shall itemize the cost of repair, or shall state in writing the
29 actual cash value of a vehicle appraised as a total loss. The arbitrators shall then attempt to agree as to the
30 amount of the loss. If the two chosen arbitrators shall fail to agree within five working days after making
31 their appraisals, they then shall submit their appraisals to the umpire within three working days of the
32 expiration of the said five day period. The umpire, within five working days of receiving the arbitrators'
33 appraisals, shall make an award, rendered by selecting one of the two appraisals as submitted by the
34 arbitrators. An award in writing of any two shall determine the amount of loss. Such decision shall be
35 binding upon the parties. Within five working days of the umpire's decision, the insurer shall make
36 payment on the award accordingly. The named insured and the company shall each pay their own chosen
37 arbitrator and shall bear equally the expenses of the umpire. An insurer that fails to comply with the
38 provisions of this section shall be deemed to have engaged in unfair claims settlement practices in
39 violation of section 3(9) of chapter 176D.