The Washington Auto Insurance Policy Consumer Protection Act

This bill is being brought before the legislature to provide much needed modern Consumer Protection in the changing automobile insurance claims marketplace.

The Problem:

Consumers are at a huge economic and legal disadvantage when attempting to settle a claim for damages under an automobile Insurance policy. Currently, the laws and regulations in Washington State favor Insurance Companies over the consumer/policy holder. Consumers are vulnerable to being taken advantage of and that isn't right! The insurance industry can leverage its massive economic advantage and intimate knowledge of the legal system by strategically undervaluing a claim and force a low settlement on the policy holder. The policy holder must accept the low offer or face substantial out of pocket costs and invest huge amounts of personal time to dispute the insurers low ball settlement offer as **there is currently no economically viable and timely method to fight back.**

Only in egregious circumstances is there value in retaining legal counsel or a public adjuster to fight back however, these costs only further reduce the policy holder settlement in most cases. (In other words, it's not worth fighting back when the costs to recover what's due under the policy costs more than what is recovered)

Further, RCW 48.22.030 is ambiguous regarding the minimum scope of coverage an insurer must offer in the Underinsured Motorist Property damage coverage part. RCW 48.22.030(2) requires coverage for damages a policyholder suffers "because of" property damage. RCW 48.22.030(3) defines "property damage coverage" to include "physical damage to the insured vehicle, and no other form of property damage." "Physical damage" is the actual dent in a vehicle's fender or kink in its frame rail. "Coverage" for "physical damage" in a policy that only pays money creates an ambiguity. Insurers interpret the statute to include only a repair bill; policyholders interpret it to include diminished value and loss of use of their vehicle. The Court of Appeals recently explained the ambiguity (interpreting an auto policy with language that mirrored the statute) and resolved it in the policyholder's favor; however, ambiguity is never ideal. Removing the word "coverage" would clarify the statute: a UIM PD carrier would owe "damages" "because of" "physical damage" and therefore clearly owe (a) the collision repair bill; (b) diminished value; and (c) loss of use.

How is this happening:

Photo estimating & cell phone applications:

Most insurers have cell-phone based photo applications now as a cool new technology-based "service" to insureds and claimants. This has significantly reduced the insurance company's claims administration expenses allowing them to replace local field appraisers and the expenses incurred with local adjusters, including wages, benefits, taxes, vehicles, etc. Insurers are switching to 3rd party administrators for claims handling to reduce its expenses as well as perceived liability. Using 3rd party administrators appears to insulate an insurer from bad faith claims handling litigation by having a separation between the insurer and the 3rd party claims department.

Of course, consumers love the idea of a simple process of taking a few photos with their phone and submitting them and getting a check deposited in their account the next day. HOWEVER, Insurers are taking advantage of this new technology and claims handling process to undervalue claims and there's no solution currently available for consumers that is equitable or timely.

3rd party claims administrators:

The insurance industry has recently been making a shift to 3rd party claims administrators located in different states across the country. These 3rd party review companies simply perform desk audits via photos submitted through cell phone applications as opposed to actually inspecting the loss vehicle in person. Photos of damaged vehicles simply cannot convey what is obtained by an in person inspection.

In what area(s) is this circumstance happening?

1. **Total loss vehicle claims settlements:**

When a vehicle is declared a total loss by an insurer, a 3rd party review company provides an appraisal of value for the loss vehicle. These 3rd appraisal companies provide thousands of appraisal to the insurance industry every day. When the claimant believes their vehicle is not being valued correctly, they are met with a mountain of bureaucracy and miss-information from their insurer or the 3rd party appraisal company. Challenging the appraisal provided by the "insurers appraisal company "is nearly impossible and the 3rd party appraisal company and the insurer point the finger back to each other creating a circular sea of bureaucracy as well as claiming their methodology is "proprietary" and decline to provide basis for their calculations.

Only when a consumer reaches out to an attorney or public adjuster do they even become aware that there is a process to dispute the insurers offer as insurers are not informing claimants about their right to appraisal. The costs to invoke the contract right of appraisal to contest the low-ball claims settlement can easily range from $500 to $3500 (not including attorney's fees when a court must be petitioned for a mediator) which many times is as much or more than the difference from low offer from the insurance company.

2. **Repairable vehicle claims settlement:**

Quite a few insurers have recently reduced or eliminated their local field appraisers and started to hire 3rd party administrator such as Snapsheets or ASI as replacements. Snapsheets, for example, is a third-party administrator company that works as an online "claims adjusting" resource, using what appears to be untrained and inexperienced adjusters. Snapsheets does not perform physical inspections of damaged vehicles as their headquarters are located in Chicago and California. Instead of having the expense of performing a physical inspection, insurers and Snapsheets have shifted the burden of "investigating and documenting" the claim to the collision repair shop or the vehicle owner and then prepare low damage appraisals. When requested to address the shortfall in their repair estimates, Snapsheets refuses to respond and/or make written statements regarding the denial of benefits pursuant to WAC 284.30.390 (2)(b) or simply say they have paid what is owed based on "what's competitive in the market area" or some other baseless statement.

There are two scenarios this plays out in:

1. The vehicle owner uses an online "app" to submit photos, no physical inspection of the vehicle is performed. Snapsheets then prepares a damage appraisal based on a deficient inspection. Often, these appraisals are devoid of the OE Manufacturers repair instructions that are contained in the body repair manual and repair industry best practices, however payment is often limited by the deficient damage estimate. Evidence will be provided for the committee hearings to show where Snap sheet estimates are between 250% to 1000% lower than what is required to restore the vehicle to pre-loss condition. Convenience of the photo app is a trade off for inaccuracy and a shortfall in the claims payment. When the claimant tries to dispute the low ball offer that will not cover the reasonable and necessary costs to repair the vehicle to its pre-loss condition based on OE Manufacturers repair instructions, the claimant is faced with "out of pocket expenses" and a battle with the insurer that can cost more than the value of the shortfall.

2. The insured or claimant has their vehicle towed to an independent Collision Center for repairs. The shop will send a notice to the insurer with an estimate of the damage. The insurer will refuse the notice and estimate and instead require the shop to contact Snapsheets. Snapsheets then demands the repair facility to supply estimates and photos to them. Snapsheets disregareds the repair shops

estimate and prepares a new estimate for substantially less leaving out critical repair operations, procedures, changing parts replacement to repair work where repairing is inappropriate. Snapsheets then demands the repair facility utilize the Snapsheets deficient estimate to repair the vehicle instead of the independent shops estimate as required by Washington law (RCW 46.71. Automotive Repair Act). When the policy holder or repair shop attempts to engage with Snapsheets about their deficient estimate, they don't respond, refuse to put any communication in writing, and will only talk on the phone about supplemental damages avoiding documentation. Snapsheets and their insurance partners have shifted the burden of performing the physical inspection of the vehicle, documenting damage, repairs, researching repair procedures to establish the correct methods to the repair facility.

This outcome appears to put a repair facility in the position acting as an "adjuster" as well since shops are effectively investigating and reporting back to the insurers designated representative.

Modern Automobiles require very specific repairs to maintain their safety rating:
The NHTSA (National Highway Transportation and Safety Administration) has worked with OE Manufacturers to develop vehicles that are safer than ever before. New technologies, safety systems, vehicle construction methods and materials have improved the crash ratings on new vehicles all contribute to the new, higher level for occupancy safety. However, currently there is no law or regulation to ensure these vehicles are repaired based on the OE Manufacturers body repair manuals such that the safety ratings are maintained. Insurers are failing to acknowledge and pay for the repairs outlined in the vehicle manufacturers body repair manuals by arguing that current insurance regulations only require an insurer pay the lowest amount to which a local repair shop will perform repairs even when these shops do not make repairs consistent with the OE Manufacturers body repair manual.

In either situation, policy holders are being pressured to accept the low-ball settlement offers by their insurer or face substantial out of pocket costs to dispute the insurers low ball settlement offer as **there is currently no economically viable or timely method for consumers to fight back.**

The Solution:

There is a simple solution that would mirror existing Washington State law with regards to insurance policies, references existing law from our neighboring state Oregon regarding dispute resolution and is in sync with the pending legislation from the Office of Insurance Commissioner regarding patient surprise medical billing.

- This bill will create a new law pursuant to WAC 284.20.010 (Standard Fire Policies) however addressing automobile insurance rather than home owner's insurance (fire casualty policies).
    - Washington State currently has little to no standards with regards to the language utilized in Automobile Insurance Policies therefore it is wide open with regards to how insurance companies are writing auto policies.
    - New standards for policy language are created requiring insurers adhere to the OE Manufacturers documented repair procedures and specifications.
    - Some insurers have even removed the policy holders appraisal right to dispute a low ball offer from the policy language leaving the only available option to fight back being hiring a lawyer and spending thousands of dollars filing a law suit.

- The State of Oregon has a consumer-friendly dispute resolution law with regards to the Right to Appraisal found in an automobile Insurance policy. This law requires the insurer to pay the cost of the appraisal ONLY if the policy holder wins more in the appraisal process than what the insurer offered prior to appraisal dispute resolution process.

- These remedies are fundamentally aligned with the current legislation being proposed by The Office of Insurance Commissioner with regards to medial surprise billing (See link to proposed legislation)

The legislature was intentional and diligent in protecting insurance consumers with regards to property casualty insurance (fire insurance), Its time Washington State put modern consumer protections in place with regards to Automobile Insurance claims settlement practices.

The Bill:

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #:	H-3308.1/20
ATTY/TYPIST:	AV:lel
BRIEF DESCRIPTION:	Concerning automobile insurance policies.

AN ACT Relating to automobile insurance policies; amending RCW 48.22.030; and adding a new section to chapter 48.22 RCW.

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

Sec. 1. RCW 48.22.030 and 2015 c 236 s 7 are each amended to read as follows:

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

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or physical damage to the insured motor vehicle, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this

section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy.

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

(6) The policy may provide that if an injured person has other similar insurance available to him or her under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

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

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

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

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

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

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

(10) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide an opportunity for named insureds, who have purchased liability coverage

for a motorcycle or motor-driven cycle, to reject underinsured coverage for that motorcycle or motor-driven cycle in writing.

(11) If the covered person seeking underinsured motorist coverage under this section was the intended victim of the tortfeasor, the incident must be reported to the appropriate law enforcement agency and the covered person must cooperate with any related law enforcement investigation.

(12) The purpose of this section is to protect innocent victims of motorists of underinsured motor vehicles. Covered persons are entitled to coverage without regard to whether an incident was intentionally caused. However, a person is not entitled to coverage if the insurer can demonstrate that the covered person intended to cause the event for which a claim is made under the coverage described in this section. As used in this section, and in the section of policies providing the underinsured motorist coverage described in this section, "accident" means an occurrence that is unexpected and unintended from the standpoint of the covered person.

(13) The coverage under this section may be excluded as provided for under RCW 48.177.010(6).

(14) "Underinsured coverage," for the purposes of this section, means coverage for "underinsured motor vehicles," as defined in subsection (1) of this section.

NEW SECTION. **Sec. 2.** A new section is added to chapter 48.22 RCW to read as follows:

(1) For the purposes of this section, "basic contract of automobile insurance" means any automobile insurance policy that includes first-party coverage for automobile physical damage.

(2) Every basic contract of automobile insurance must contain the following language: "When an automobile is deemed repairable, [the insurance carrier] will pay to restore the loss vehicle to its condition prior to the loss, including for repairs that follow the original equipment vehicle manufacturer's instructions and/or guidelines."

(3) Payment of a claim under a basic contract of automobile insurance for automobile physical damage must be based upon the reasonable and necessary costs at the claimant's chosen repair facility. The burden shall be on the insurance company to prove unreasonableness of vehicle repair procedures and/or charges.

(4) Nothing in this section mandates, per se, an insurance company to pay for parts supplied by the original equipment manufacturer except to the extent that the use of alternate parts would fail to restore the loss vehicle to its condition prior to the loss.

(5) Every basic contract of automobile insurance must include a provision for the right to an appraisal to resolve disputes between the insurer and insured regarding the actual cash value and all losses. The policy's appraisal clause shall read as follows:

(a) If we [the insurance carrier] and you [the policyholder] insured 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 each select a competent appraiser and notify the other;

(b) The selected appraisers must appoint a competent and disinterested umpire. If the appraisers do not appoint such an umpire within fifteen days, either party may request a judge of a court of competent jurisdiction in the venue identified in the policy to select an umpire;

(c) The appraisers must then appraise the loss, making separate findings regarding the amount of loss for each element of loss, and submit their differences to the umpire only if they are unable to agree on the losses;

(d) The amount and loss must be determined by agreement of the appraisers, or by agreement of one appraiser and the umpire; and

(e) Each party is responsible for expenses of the appraisal, and each party is equally responsible for the cost of the umpire. However, we [the insurance carrier] will reimburse you [the policyholder] for the costs of the appraisal process when the amount of loss determined through the appraisal process is greater than the amount of amount of loss we adjusted before the appraisal process was invoked. Appraisal process costs include reasonable appraiser professional charges, reasonable attorneys' fees, and other necessary actual costs."

(6) A violation of this section constitutes a violation of RCW 48.30.015 and RCW 19.86.020.

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