

**Testimony of
Robert Passmore – Department Vice President
American Property Casualty Insurance Association
Kansas House Bill 2593
Kansas House Committee on Judiciary
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The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA members write 66.4 percent of all property-casualty insurance sold in Kansas representing over \$5 billion (about \$15 per person in the US) dollars in direct written premium. On behalf of our members and their policyholders, we ask this committee to reject House Bill 2593 which, as written, would deny use of arbitration clauses in insurance contracts that have been used for decades to quickly resolve disputes, and reduce the cost of litigation for businesses and consumers alike.

Mandatory arbitration clauses are relatively rare in property-casualty policies. Where it is used, it is because it is an effective, efficient, and speedy means of resolving disputes without destroying business and customer relationships. Not only is litigation costly and time-consuming, but the strong adversarial nature of the process tends to erode relationships between the litigants. Because it is less formal and more “user-friendly,” arbitration tends to minimize hostility and to emphasize post-dispute relationships. Many studies¹, including a study published in the Stanford Law Review found that plaintiffs, or claimants generally get the same or better outcomes in arbitration than in litigation.

Some states authorize mandatory, binding arbitration of disputes over the amount of a policyholder’s uninsured motorist claim for bodily injury and property damage. In addition, ISO – the organization that develops policy language that many insurance companies use as the basis for their products -- has promulgated, and most states have approved, personal auto and homeowners’ policy endorsements that create a binding arbitration process to resolve appraisal disputes as well as policy endorsements that provide mandatory arbitration of coverage disputes for commercial policies.

In sharp contrast to most other kinds of consumer contracts, insurer policy language is subject to regulatory oversight by the states. Kansas requires insurers to file their policy language with the regulator who has the power to reject policy language that would prescribe unfair arbitration terms or procedures. The courts add another layer of consumer protection and have not hesitated to strike down provisions that subject consumers to unfair procedures.

There are two similar kinds of provisions that are commonly used -- arbitration of uninsured motorist claims and an appraisal process for property damage claims. These provisions typically require one or both parties to agree to submit the dispute for resolution and are limited to the amount of the loss. Issues of coverage, or of bad faith are reserved for the courts, and policyholders can still pursue those remedies in addition to the arbitration or appraisal process. It is not clear from the language of the bill whether those types of provisions would also be prohibited.

While the bill does preserve the ability to include arbitration language in contracts between insurers, including reinsurance contracts, it fails to recognize that businesses often have their own risk management experts or utilize the expertise of agents, insurance brokers or legal representation when purchasing insurance, providing yet another layer of protection for commercial policyholders.

Rather than addressing what we believe is the rare circumstance where an insurer’s policy language on arbitration fails to meet that standard of fairness that is properly within the authority of the insurance regulator, this proposal is a blanket elimination of a process that has served policyholders well for many years and on behalf of our members, APCIA urges this committee to vote no on House Bill 2593.