

**DRAFT
BULLETIN**

TO: All Property and Casualty Insurers Writing PERSONAL LINES INSURANCE Products in [State]

FROM: [Insert Name & Title]

DATE: [Insert Date]

RE: Arbitration Clauses and Choice of Law/Venue Provisions in Personal Lines Insurance

Section 1. Authority

This bulletin is adopted by [title of supervisory authority], pursuant to Section [insert applicable section] of the [insert state] insurance code.

Section 2. Purpose of this Bulletin

The purpose of this bulletin is to provide guidance to insurers with regard to provisions within personal lines policies that limit or impose unreasonable preconditions on consumers' ability to adjudicate their disputes in court. Pre-Dispute Mandatory Arbitration Clauses, choice of law provisions, and choice of venue provisions unfairly limit or impose unreasonable preconditions on individual consumers' ability to adjudicate their disputes in [state] courts under the protection of [state] law. These provisions are prohibited in personal lines policies.

Section 3. Definitions

- A. "Choice of Law Provision" means a contractual provision in which the parties specify the state whose law will govern disputes arising under the insurance contract.
- B. "Choice of Venue Provision" means a contractual provision in which the parties establish the location where either party may require the dispute to be tried or arbitrated.
- C. "Commercial Lines Insurance" means insurance that is not "Personal Lines Insurance".
- D. "Personal Lines Insurance" means homeowners; tenants; private passenger non-fleet automobiles; mobile manufactured homes; and other property and casualty insurance for personal, family or household needs. [Property and casualty state-specific definition].
- E. "Pre-Dispute Mandatory Arbitration Clause" means a provision in an insurance policy, rider, endorsement, or any other part of the contract requiring that future disputes involving the insurance policy or claims thereunder must be resolved through arbitration by allowing one party to the dispute to so require when the dispute arises.

Section 4. Pre-Dispute Mandatory Arbitration Clauses

The insurance code was enacted to regulate the business of insurance and for the protection of the insurance-buying public.¹ Under [Forms Review Statute, *e.g.* Or. Rev. Stat. § 742.005] the [insurance commissioner] shall disapprove any form if, in the [insurance commissioner's] judgment, its use would be prejudicial to the interests of the insurer's policyholders or if the [insurance commissioner] finds it contains provisions which are unjust, unfair or inequitable. It is also unlawful to engage in this state in any trade practice that, although not expressly defined and prohibited in the insurance code, is found by the [commissioner] to be an unfair or deceptive act or practice in the transaction of insurance that is injurious to the insurance-buying public.²

¹ See [Cite to section of insurance code discussing purpose and effect of federal law. *e.g.*, Or. Rev. Stat. § 731.008, Or. Rev. Stat. § 731.012].

² See [Cite to relevant portion of Unfair Trade Practices Act. *e.g.*, Or. Rev. Stat. § 746.240].

Pre-Dispute Mandatory Arbitration Clauses in Personal Lines Insurance policies preclude policyholders from exercising their rights to a trial by judge or jury.³ Because these policies are contracts of adhesion, inclusion of a Pre-Dispute Mandatory Arbitration Clause forces the consumer to waive a fundamental constitutional right without a meaningful opportunity to bargain for other benefits or consideration. Arbitration provisions also typically require confidentiality. This may unacceptably interfere with the [insurance department's] ability to regulate insurance claims handling by discouraging policyholders from seeking assistance with the [insurance department].

The Legislature has determined that arbitration provisions are appropriate in certain specifically defined situations.⁴ With the exception of those provisions that are specifically authorized or required by state insurance statutes, the [insurance commissioner] finds the inclusion of Pre-Dispute Mandatory Arbitration Clauses in Personal Lines Insurance policies to be unfair and injurious to the insurance buying public. Pre-Dispute Mandatory Arbitration Clauses in Personal Lines Insurance products are prohibited.

The [insurance commissioner] recognizes that the use of arbitration and other alternative dispute resolution methods may be of value in certain instances. For example, arbitration may be faster and less costly than court proceedings. Parties may still avail themselves of these benefits by electing to arbitrate after the dispute arises.

Section 5. Choice of Venue and Choice of Law Provisions

Longstanding state and federal policy dictate that insurance transacted in this state shall be governed and interpreted under [jurisdiction] law. While businesses with operations across multiple states may find benefit in negotiating to have their commercial lines insurance contracts governed under the laws of another jurisdiction, consumers of Personal Lines Insurance policies placed in [jurisdiction] expect to be afforded the protections and benefits under the [jurisdiction] insurance code. Choice of Law Provisions in Personal Lines Insurance policies that import foreign law upend consumer expectations, cause confusion among the insurance buying public, and may result in consumer harm. Similarly, Choice of Venue Provisions that require the insured to travel out of state pose an unfair barrier to adjudicate their claims.

The [insurance commissioner] finds the inclusion of Choice of Law Provisions in Personal Lines Insurance policies that import foreign law, or Choice of Venue Provisions that require adjudication out-of-state, to be unfair and injurious to the insurance buying public. Including such provisions in a Personal Lines Insurance policy constitutes an unfair trade practice in violation of [Citation to state UTPA law. *e.g.*, Or. Rev. Stat. § 746.240]. Choice of Law Provisions that import foreign law may not be included in Personal Lines Insurance policies and will be disapproved. Choice of Venue Provisions that require adjudication out-of-state may not be included in Personal Lines Insurance policies and will be disapproved.

³ See *e.g.*, [Cite to relevant state court decision. *e.g.*, *Molodyh v. Truck Ins. Exchange*, 744 P. 2d 992, 997 (Or.) (1987).]

⁴ Such as state laws authorizing or requiring that disputed valuations of auto property damage claims or disputes over UM/UIM damages be resolved through arbitration.