

**MOTOR VEHICLE INSURANCE ARBITRATION**

**AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

Senate Sponsor: Michael G. Waddoups

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code by amending provisions relating to arbitration for third party motor vehicle accident bodily injury claims.

**Highlighted Provisions:**

This bill:

- ▶ provides that a person may elect to submit a third party motor vehicle accident bodily injury claim to arbitration by filing a notice to submit the claim to arbitration within 14 days after the complaint has been answered;
- ▶ clarifies that an arbitration award is limited to \$25,000 in addition to any available personal injury protection benefits and any claim for property damage;
- ▶ provides that a claim for property damage may not be made in certain arbitration proceedings unless agreed upon by the parties in writing;
- ▶ provides a procedure for a person to rescind an election to arbitrate and provides that a person who rescinds an election may not elect to arbitrate again;
- ▶ amends procedures for conducting an arbitration process;
- ▶ provides that an arbitration award issued may be reduced to judgment by the court upon notice and motion unless the arbitration award has been satisfied; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **31A-22-321**, as enacted by Chapter 177, Laws of Utah 2005



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **31A-22-321** is amended to read:

37 **31A-22-321. Use of arbitration in third party motor vehicle accident cases.**

38 (1) A person injured as a result of a motor vehicle accident may elect to submit all third  
39 party bodily injury claims to arbitration by filing a notice of the submission of the claim to  
40 binding arbitration in a district court if:

41 (a) the claimant or the claimant's representative has:

42 (i) previously and timely filed a complaint in a district court that includes a third party  
43 bodily injury claim; and

44 (ii) filed a notice to submit the claim to arbitration [~~before the plaintiff's initial~~  
45 ~~disclosures have been filed under Rule 26, Utah Rules of Civil Procedure]~~ within 14 days after  
46 the complaint has been answered; and

47 (b) the notice required under Subsection (1)(a)(ii) is filed while the action under  
48 Subsection (1)(a)(i) is still pending.

49 (2) (a) If a party submits a bodily injury claim to arbitration under Subsection (1), the  
50 party submitting the claim or the party's representative is limited to an arbitration award that  
51 does not exceed \$25,000 in addition to any available personal injury protection benefits and  
52 any claim for property damage.

53 (b) A claim for reimbursement of personal injury protection benefits is to be resolved  
54 between insurers as provided for in Subsection 31A-22-309(6)(b).

55 (c) A claim for property damage may not be made in an arbitration proceeding under  
56 Subsection (1) unless agreed upon by the parties in writing.

57 (3) A claim for punitive damages may not be made in an arbitration proceeding under

58 Subsection (1) or any subsequent proceeding, even if the claim is later resolved through a trial  
59 de novo under Subsection [~~(9)~~] (11).

60 (4) (a) A person who has elected arbitration under this section may rescind the person's  
61 election if the rescission is made within:

62 (i) 90 days after the election to arbitrate; and

63 (ii) no less than 30 days before any scheduled arbitration hearing.

64 (b) A person seeking to rescind an election to arbitrate under this Subsection (4) shall:

65 (i) file a notice of the rescission of the election to arbitrate with the district court in  
66 which the matter was filed; and

67 (ii) send copies of the notice of the rescission of the election to arbitrate to all counsel  
68 of record to the action.

69 (c) All discovery completed in anticipation of the arbitration hearing shall be available  
70 for use by the parties as allowed by the Utah Rules of Civil Procedure and Utah Rules of  
71 Evidence.

72 (d) A party who has elected to arbitrate under this section and then rescinded the  
73 election to arbitrate under this Subsection (4) may not elect to arbitrate the claim under this  
74 section again.

75 (5) (a) Unless otherwise agreed to by the parties or by order of the court, an arbitration  
76 process elected under this section is subject to Rule 26, Utah Rules of Civil Procedure.

77 (b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be  
78 completed within 150 days after the date arbitration is elected under this section.

79 [~~(4)~~] (6) (a) Unless otherwise agreed to in writing by the parties, a claim that is  
80 submitted to arbitration under this section shall be resolved by a single arbitrator.

81 (b) [~~AH~~] Unless otherwise agreed to by the parties or ordered by the court, all parties  
82 shall agree on the single arbitrator selected under Subsection [~~(4)~~](a) (6)(a) within 90 days of  
83 the answer of the defendant.

84 (c) If the parties are unable to agree on a single arbitrator as required under Subsection  
85 [~~(4)~~] (6)(b), the parties shall select a panel of three arbitrators.

86 (d) If the parties select a panel of three arbitrators under Subsection [~~(4)~~] (6)(c):  
87 (i) each side shall select one arbitrator; and  
88 (ii) the arbitrators appointed under Subsection [~~(4)~~] (6)(d)(i) shall select one additional  
89 arbitrator to be included in the panel.

90 [~~(5)~~] (7) Unless otherwise agreed to in writing:

91 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected  
92 under Subsection [~~(4)~~] (6)(a); and

93 (b) if an arbitration panel is selected under Subsection [~~(4)~~] (6)(d):

94 (i) each party shall pay the fees and costs of the arbitrator selected by that party's side;  
95 and

96 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected  
97 under Subsection [~~(4)~~] (6)(d)(ii).

98 [~~(6)~~] (8) Except as otherwise provided in this section and unless otherwise agreed to in  
99 writing by the parties, an arbitration proceeding conducted under this section shall be governed  
100 by Title 78, Chapter 31a, Utah Uniform Arbitration Act.

101 [~~(7)~~] (9) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure  
102 and Utah Rules of Evidence apply to the arbitration proceeding.

103 (b) The Utah Rules of Civil Procedure and Utah Rules of Evidence shall be applied  
104 liberally with the intent of concluding the claim in a timely and cost-efficient manner.

105 (c) Discovery shall be conducted in accordance with Rules 26 through 37 of the Utah  
106 Rules of Civil Procedure and shall be subject to the jurisdiction of the district court in which  
107 the matter is filed.

108 (d) Dispositive motions shall be filed, heard, and decided by the district court prior to  
109 the arbitration proceeding in accordance with the court's scheduling order.

110 [~~(8)~~] (10) A written decision by a single arbitrator or by a majority of the arbitration  
111 panel shall constitute a final decision.

112 [~~(9)~~] (11) An arbitration award issued under this section shall be the final resolution of  
113 all bodily injury claims between the parties and may be reduced to judgment by the court upon

114 motion and notice unless:

115 (a) either party, within 20 days after service of the arbitration award:

116 ~~[(a)]~~ (i) files a notice requesting a trial de novo in the district court; and

117 ~~[(b)]~~ (ii) serves the nonmoving party with a copy of the notice requesting a trial de

118 novo under Subsection ~~[(9)(a)]~~ (11)(a)(i); or

119 (b) the arbitration award has been satisfied.

120 ~~[(10)]~~ (12) (a) Upon filing a notice requesting a trial de novo under Subsection ~~[(9)]~~

121 (11), the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure

122 and Utah Rules of Evidence in the district court.

123 (b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may

124 request a jury trial with a request for trial de novo filed under Subsection ~~[(9)]~~ (11)(a)(i).

125 ~~[(11)]~~ (13) (a) If the plaintiff, as the moving party in a trial de novo requested under

126 Subsection ~~[(9)]~~ (11), does not obtain a verdict that is at least \$5,000 and is at least 20% greater

127 than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs.

128 (b) Except as provided in Subsection ~~[(11)]~~ (13)(c), the costs under Subsection ~~[(11)]~~

129 (13)(a) shall include:

130 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

131 (ii) the costs of expert witnesses and depositions.

132 (c) An award of costs under this Subsection ~~[(11)]~~ (13) may not exceed \$2,500.

133 ~~[(12)]~~ (14) (a) If a defendant, as the moving party in a trial de novo requested under

134 Subsection ~~[(9)]~~ (11), does not obtain a verdict that is at least 20% less than the arbitration

135 award, the defendant is responsible for all of the nonmoving party's costs.

136 (b) Except as provided in Subsection ~~[(12)]~~ (14)(c), the costs under Subsection ~~[(12)]~~

137 (14)(a) shall include:

138 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

139 (ii) the costs of expert witnesses and depositions.

140 (c) An award of costs under this Subsection ~~[(12)]~~ (14) may not exceed \$2,500.

141 ~~[(13)]~~ (15) For purposes of determining whether a party's verdict is greater or less than

142 the arbitration award under Subsections [~~(11)~~] (13) and [~~(12)~~] (14), a court may not consider  
143 any recovery or other relief granted on a claim for damages if the claim for damages:

- 144 (a) was not fully disclosed in writing prior to the arbitration proceeding; or
- 145 (b) was not disclosed in response to discovery contrary to the Utah Rules of Civil  
146 Procedure.

147 [~~(14)~~] (16) If a district court determines, upon a motion of the nonmoving party, that  
148 the moving party's use of the trial de novo process was filed in bad faith as defined in Section  
149 78-27-56, the district court may award reasonable attorney fees to the nonmoving party.

150 [~~(15)~~] (17) Nothing in this section is intended to affect or prevent any first party claim  
151 from later being brought under any first party insurance policy under which the injured person  
152 is a covered person.

153 [~~(16)~~] (18) (a) If a defendant requests a trial de novo under Subsection [~~(9)~~] (11), the  
154 verdict at trial may not exceed \$40,000.

155 (b) If a plaintiff requests a trial de novo under Subsection [~~(9)~~] (11), the verdict at trial  
156 may not exceed \$25,000.

157 [~~(17)~~] (19) All arbitration awards issued under this section shall bear postjudgment  
158 interest pursuant to Section 15-1-4.