

MOTOR VEHICLE INSURANCE ARBITRATION

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code by amending provisions relating to the use of arbitration in third party motor vehicle accident cases.

Highlighted Provisions:

This bill:

- ▶ provides that if a plaintiff, as the moving party in a trial de novo, does not obtain a verdict that is at least 35%, rather than 20%, greater than the arbitration award, the plaintiff is responsible for the nonmoving party's costs;

- ▶ provides that if a defendant, as the moving party in a trial de novo, does not obtain a verdict that is at least 35%, rather than 20%, less than the arbitration award, the defendant is responsible for the nonmoving party's costs;

- ▶ increases the cap on the award of costs from \$2,500 to \$4,000; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-22-321, as last amended by Laws of Utah 2007, Chapter 236

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

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

32 **31A-22-321. Use of arbitration in third party motor vehicle accident cases.**

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

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

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

39 (ii) filed a notice to submit the claim to arbitration within 14 days after the complaint
40 has been answered; and

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

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

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

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

51 (3) A claim for punitive damages may not be made in an arbitration proceeding under
52 Subsection (1) or any subsequent proceeding, even if the claim is later resolved through a trial
53 de novo under Subsection (11).

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

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

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

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

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

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

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

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

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

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

73 (6) (a) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
74 arbitration under this section shall be resolved by a single arbitrator.

75 (b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall
76 agree on the single arbitrator selected under Subsection (6)(a) within 90 days of the answer of
77 the defendant.

78 (c) If the parties are unable to agree on a single arbitrator as required under Subsection
79 (6)(b), the parties shall select a panel of three arbitrators.

80 (d) If the parties select a panel of three arbitrators under Subsection (6)(c):

81 (i) each side shall select one arbitrator; and

82 (ii) the arbitrators appointed under Subsection (6)(d)(i) shall select one additional
83 arbitrator to be included in the panel.

84 (7) Unless otherwise agreed to in writing:

85 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected

86 under Subsection (6)(a); and

87 (b) if an arbitration panel is selected under Subsection (6)(d):

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

89 and

90 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected
91 under Subsection (6)(d)(ii).

92 (8) Except as otherwise provided in this section and unless otherwise agreed to in
93 writing by the parties, an arbitration proceeding conducted under this section shall be governed
94 by Title 78, Chapter 31a, Utah Uniform Arbitration Act.

95 (9) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and
96 Utah Rules of Evidence apply to the arbitration proceeding.

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

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

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

104 (10) A written decision by a single arbitrator or by a majority of the arbitration panel
105 shall constitute a final decision.

106 (11) An arbitration award issued under this section shall be the final resolution of all
107 bodily injury claims between the parties and may be reduced to judgment by the court upon
108 motion and notice unless:

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

110 (i) files a notice requesting a trial de novo in the district court; and

111 (ii) serves the nonmoving party with a copy of the notice requesting a trial de novo
112 under Subsection (11)(a)(i); or

113 (b) the arbitration award has been satisfied.

114 (12) (a) Upon filing a notice requesting a trial de novo under Subsection (11), the claim
115 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules
116 of Evidence in the district court.

117 (b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request
118 a jury trial with a request for trial de novo filed under Subsection (11)(a)(i).

119 (13) (a) If the plaintiff, as the moving party in a trial de novo requested under
120 Subsection (11), does not obtain a verdict that is at least \$5,000 and is at least [~~20%~~] 35%
121 greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's
122 costs.

123 (b) Except as provided in Subsection (13)(c), the costs under Subsection (13)(a) shall
124 include:

- 125 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and
- 126 (ii) the costs of expert witnesses and depositions.

127 (c) An award of costs under this Subsection (13) may not exceed [~~\$2,500~~] \$4,000.

128 (14) (a) If a defendant, as the moving party in a trial de novo requested under
129 Subsection (11), does not obtain a verdict that is at least [~~20%~~] 35% less than the arbitration
130 award, the defendant is responsible for all of the nonmoving party's costs.

131 (b) Except as provided in Subsection (14)(c), the costs under Subsection (14)(a) shall
132 include:

- 133 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and
- 134 (ii) the costs of expert witnesses and depositions.

135 (c) An award of costs under this Subsection (14) may not exceed [~~\$2,500~~] \$4,000.

136 (15) For purposes of determining whether a party's verdict is greater or less than the
137 arbitration award under Subsections (13) and (14), a court may not consider any recovery or
138 other relief granted on a claim for damages if the claim for damages:

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

142 (16) If a district court determines, upon a motion of the nonmoving party, that the
143 moving party's use of the trial de novo process was filed in bad faith as defined in Section
144 78-27-56, the district court may award reasonable attorney fees to the nonmoving party.

145 (17) Nothing in this section is intended to affect or prevent any first party claim from
146 later being brought under any first party insurance policy under which the injured person is a
147 covered person.

148 (18) (a) If a defendant requests a trial de novo under Subsection (11), the verdict at trial
149 may not exceed \$40,000.

150 (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may
151 not exceed \$25,000.

152 (19) All arbitration awards issued under this section shall bear postjudgment interest
153 pursuant to Section 15-1-4.