

MOTOR VEHICLE ACCIDENT ARBITRATION

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Insurance Code by amending provisions relating to the use of arbitration for certain motor vehicle accident claims.

Highlighted Provisions:

This bill:

- ▶ increases the arbitration award limit for a party that submits a bodily injury claim to arbitration;
- ▶ provides that a claim submitted to arbitration is not subject to subrogation on the part of the underinsured motorist carrier;
- ▶ provides that a party that elects to proceed against a defendant through certain arbitration proceedings:
 - waives the right to obtain a judgment against the personal assets of the defendant; and
 - is limited only to recovery against available insurance coverage;
- ▶ amends the time limit that discovery must be completed within;
- ▶ provides that upon filing a notice requesting a trial de novo and unless otherwise stipulated to by the parties, an additional amount of time shall be allowed for discovery;
- ▶ amends the requirements to determine when the moving party in a trial de novo is responsible for the nonmoving party's costs;
- ▶ increases the limits on the award of certain costs in a trial de novo on an arbitration

30 proceeding;

31 ▶ increases the limits on a trial verdict in a trial de novo on an arbitration proceeding;

32 ▶ provides that an interim committee designated by the Legislative Management

33 Committee shall study the results of implementing arbitration in third party motor

34 vehicle accident claims; and

35 ▶ makes technical changes.

36 **Monies Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **31A-22-321**, as last amended by Laws of Utah 2008, Chapters 3, 162, and 221

43 **Uncodified Material Affected:**

44 ENACTS UNCODIFIED MATERIAL



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

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

48 **31A-22-321. Use of arbitration in third party motor vehicle accident cases.**

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

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

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

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

57 (b) the notice required under Subsection (1)(a)(ii) is filed while the action under

58 Subsection (1)(a)(i) is still pending.

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

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

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

67 (d) A party who elects to proceed against a defendant under this section:

68 (i) waives the right to obtain a judgment against the personal assets of the defendant;
69 and

70 (ii) is limited to recovery only against available limits of insurance coverage.

71 (e) (i) This section does not prevent a party from pursuing an underinsured motorist
72 claim as set out in Section 31A-22-305.3.

73 (ii) An underinsured motorist claim described in Subsection (2)(e)(i) is not limited to
74 the \$50,000 limit described in Subsection (2)(a).

75 (iii) There shall be no right of subrogation on the part of the underinsured motorist
76 carrier for a claim submitted to arbitration under this section.

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

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

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

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

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

85 (i) file a notice of the rescission of the election to arbitrate with the district court in

86 which the matter was filed; and

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

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

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

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

97 (b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall
98 be completed within 150 days after the date arbitration is elected under this section or the date
99 the answer is filed, whichever is longer.

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

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

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

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

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

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

111 (7) Unless otherwise agreed to in writing:

112 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
113 under Subsection (6)(a); and

114 (b) if an arbitration panel is selected under Subsection (6)(d):
115 (i) each party shall pay the fees and costs of the arbitrator selected by that party's side;
116 and
117 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected
118 under Subsection (6)(d)(ii).

119 (8) Except as otherwise provided in this section and unless otherwise agreed to in
120 writing by the parties, an arbitration proceeding conducted under this section shall be
121 governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

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

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

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

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

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

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

136 (a) either party, within 20 days after service of the arbitration award:
137 (i) files a notice requesting a trial de novo in the district court; and
138 (ii) serves the nonmoving party with a copy of the notice requesting a trial de novo
139 under Subsection (11)(a)(i); or
140 (b) the arbitration award has been satisfied.

141 (12) (a) Upon filing a notice requesting a trial de novo under Subsection (11)[-];

142 (i) unless otherwise stipulated to by the parties or ordered by the court, an additional
143 90 days shall be allowed for further discovery;

144 (ii) the additional discovery time under Subsection (12)(a)(i) shall run from the notice
145 of appeal; and

146 (iii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil
147 Procedure and Utah Rules of Evidence in the district court.

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

150 (13) (a) If the plaintiff, as the moving party in a trial de novo requested under
151 Subsection (11), does not obtain a verdict that is at least \$5,000 and is at least [~~35%~~] 30%
152 greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's
153 costs.

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

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

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

158 (c) An award of costs under this Subsection (13) may not exceed [~~\$4,000~~] \$6,000.

159 (14) (a) If a defendant, as the moving party in a trial de novo requested under
160 Subsection (11), does not obtain a verdict that is at least [~~35%~~] 30% less than the arbitration
161 award, the defendant is responsible for all of the nonmoving party's costs.

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

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

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

166 (c) An award of costs under this Subsection (14) may not exceed [~~\$4,000~~] \$6,000.

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

170 (a) was not fully disclosed in writing prior to the arbitration proceeding; or
171 (b) was not disclosed in response to discovery contrary to the Utah Rules of Civil
172 Procedure.

173 (16) If a district court determines, upon a motion of the nonmoving party, that the
174 moving party's use of the trial de novo process was filed in bad faith as defined in Section
175 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

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

179 (18) (a) If a defendant requests a trial de novo under Subsection (11), in no event can
180 the total verdict at trial [may not] exceed [~~\$40,000~~] \$15,000 above any available limits of
181 insurance coverage and in no event can the total verdict exceed \$65,000.

182 (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may
183 not exceed [~~\$25,000~~] \$50,000.

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

186 Section 2. **Study.**

187 (1) During the 2012 interim, the Legislative Management Committee shall designate
188 an appropriate interim committee of the Legislature to study the results of the use of
189 arbitration in third party motor vehicle accident claims under Section 31A-22-321.

190 (2) The designated interim committee shall:

191 (a) hear reports from persons impacted in using arbitration; and

192 (b) consider any issues which need additional legislative remedies.