

1 **MOTOR VEHICLE INSURANCE AMENDMENT**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Chad E. Bennion**

6 **LONG TITLE**

7 **General Description:**

8 This bill modifies the Insurance Code to amend provisions relating to motor vehicle
9 insurance.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ provides that an insurer issuing a motor vehicle insurance policy that covers an
13 at-fault driver may not reduce compensation to an injured party based on the injured
14 party not being covered by a policy of insurance that provides personal injury
15 protection coverage.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **31A-22-303**, as last amended by Chapter 187, Laws of Utah 2002

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

25 Section 1. Section **31A-22-303** is amended to read:

26 **31A-22-303. Motor vehicle liability coverage.**

27 (1) (a) In addition to complying with the requirements of Chapter 21, Insurance



28 Contracts in General, and [~~Part H of~~] Chapter 22, Part 2, Liability Insurance in General, a
29 policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

30 (i) name the motor vehicle owner or operator in whose name the policy was purchased,
31 state that named insured's address, the coverage afforded, the premium charged, the policy
32 period, and the limits of liability;

33 (ii) (A) if it is an owner's policy, designate by appropriate reference all the motor
34 vehicles on which coverage is granted, insure the person named in the policy, insure any other
35 person using any named motor vehicle with the express or implied permission of the named
36 insured, and, except as provided in Subsection (7), insure any person included in Subsection
37 (1)(a)(iii) against loss from the liability imposed by law for damages arising out of the
38 ownership, maintenance, or use of these motor vehicles within the United States and Canada,
39 subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less
40 than the minimum limits specified under Section 31A-22-304; or

41 (B) if it is an operator's policy, insure the person named as insured against loss from
42 the liability imposed upon him by law for damages arising out of the insured's use of any motor
43 vehicle not owned by him, within the same territorial limits and with the same limits of liability
44 as in an owner's policy under Subsection (1)(ii)(A);

45 (iii) except as provided in Subsection (7), insure persons related to the named insured
46 by blood, marriage, adoption, or guardianship who are residents of the named insured's
47 household, including those who usually make their home in the same household but
48 temporarily live elsewhere, to the same extent as the named insured and the available coverage
49 of the policy may not be reduced to the persons described in this Subsection (1)(a)(iii) because:

50 (A) a permissive user driving a covered motor vehicle is at fault in causing an accident;
51 or

52 (B) the named insured or any of the persons described in this Subsection (1)(a)(iii)
53 driving a covered motor vehicle is at fault in causing an accident; and

54 (iv) cover damages or injury resulting from a covered driver of a motor vehicle who is
55 stricken by an unforeseeable paralysis, seizure, or other unconscious condition and who is not
56 reasonably aware that paralysis, seizure, or other unconscious condition is about to occur to the
57 extent that a person of ordinary prudence would not attempt to continue driving.

58 (b) The driver's liability under Subsection (1)(a)(iv) is limited to the insurance

59 coverage.

60 (2) (a) A policy containing motor vehicle liability coverage under Subsection
61 31A-22-302(1)(a) may:

62 (i) provide for the prorating of the insurance under that policy with other valid and
63 collectible insurance;

64 (ii) grant any lawful coverage in addition to the required motor vehicle liability
65 coverage;

66 (iii) if the policy is issued to a person other than a motor vehicle business, limit the
67 coverage afforded to a motor vehicle business or its officers, agents, or employees to the
68 minimum limits under Section 31A-22-304, and to those instances when there is no other valid
69 and collectible insurance with at least those limits, whether the other insurance is primary,
70 excess, or contingent; and

71 (iv) if issued to a motor vehicle business, restrict coverage afforded to anyone other
72 than the motor vehicle business or its officers, agents, or employees to the minimum limits
73 under Section 31A-22-304, and to those instances when there is no other valid and collectible
74 insurance with at least those limits, whether the other insurance is primary, excess, or
75 contingent.

76 (b) (i) The liability insurance coverage of a permissive user of a motor vehicle owned
77 by a motor vehicle business shall be primary coverage.

78 (ii) The liability insurance coverage of a motor vehicle business shall be secondary to
79 the liability insurance coverage of a permissive user as specified under Subsection (2)(b)(i).

80 (3) Motor vehicle liability coverage need not insure any liability:

81 (a) under any workers' compensation law under Title 34A, Utah Labor Code;

82 (b) resulting from bodily injury to or death of an employee of the named insured, other
83 than a domestic employee, while engaged in the employment of the insured, or while engaged
84 in the operation, maintenance, or repair of a designated vehicle; or

85 (c) resulting from damage to property owned by, rented to, bailed to, or transported by
86 the insured.

87 (4) An insurance carrier providing motor vehicle liability coverage has the right to
88 settle any claim covered by the policy, and if the settlement is made in good faith, the amount
89 of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

90 (5) A policy containing motor vehicle liability coverage imposes on the insurer the
91 duty to defend, in good faith, any person insured under the policy against any claim or suit
92 seeking damages which would be payable under the policy.

93 (6) (a) If a policy containing motor vehicle liability coverage provides an insurer with
94 the defense of lack of cooperation on the part of the insured, that defense is not effective
95 against a third person making a claim against the insurer, unless there was collusion between
96 the third person and the insured.

97 (b) If the defense of lack of cooperation is not effective against the claimant, after
98 payment, the insurer is subrogated to the injured person's claim against the insured to the extent
99 of the payment and is entitled to reimbursement by the insured after the injured third person has
100 been made whole with respect to the claim against the insured.

101 (7) A policy of motor vehicle liability coverage under Subsection 31A-22-302(1) may
102 specifically exclude from coverage a person who is a resident of the named insured's
103 household, including a person who usually makes his home in the same household but
104 temporarily lives elsewhere, if:

105 (a) at the time of the proposed exclusion, each person excluded from coverage satisfies
106 the owner's or operator's security requirement of Section 41-12a-301, independently of the
107 named insured's proof of owner's or operator's security;

108 (b) the named insured and the person excluded from coverage each provide written
109 consent to the exclusion; and

110 (c) the insurer includes the name of each person excluded from coverage in the
111 evidence of insurance provided to an additional insured or loss payee.

112 (8) A policy of motor vehicle liability coverage may limit coverage to the policy
113 minimum limits under Section 31A-22-304 if the insured motor vehicle is operated by a person
114 who has consumed any alcohol or any illegal drug or illegal substance if the policy or a
115 specifically reduced premium was extended to the insured upon express written declaration
116 executed by the insured that the insured motor vehicle would not be so operated.

117 (9) (a) When a claim is brought exclusively by a named insured or a person described
118 in Subsection (1)(a)(iii) and asserted exclusively against a named insured or an individual
119 described in Subsection (1)(a)(iii), the claimant may elect to resolve the claim:

120 (i) by submitting the claim to binding arbitration; or

121 (ii) through litigation.

122 (b) Once the claimant has elected to commence litigation under Subsection (9)(a)(ii),
123 the claimant may not elect to resolve the claim through binding arbitration under this section
124 without the written consent of both parties and the defendant's liability insurer.

125 (c) (i) Unless otherwise agreed on in writing by the parties, a claim that is submitted to
126 binding arbitration under Subsection (9)(a)(i) shall be resolved by a panel of three arbitrators.

127 (ii) Unless otherwise agreed on in writing by the parties, each party shall select an
128 arbitrator. The arbitrators selected by the parties shall select a third arbitrator.

129 (d) Unless otherwise agreed on in writing by the parties, each party will pay the fees
130 and costs of the arbitrator that party selects. Both parties shall share equally the fees and costs
131 of the third arbitrator.

132 (e) Except as otherwise provided in this section, an arbitration procedure conducted
133 under this section shall be governed by Title 78 Chapter 31a, Utah Uniform Arbitration Act,
134 unless otherwise agreed on in writing by the parties.

135 (f) (i) Discovery shall be conducted in accordance with Rules 26b through 36, Utah
136 Rules of Civil Procedure.

137 (ii) All issues of discovery shall be resolved by the arbitration panel.

138 (g) A written decision of two of the three arbitrators shall constitute a final decision of
139 the arbitration panel.

140 (h) Prior to the rendering of the arbitration award:

141 (i) the existence of a liability insurance policy may be disclosed to the arbitration
142 panel; and

143 (ii) the amount of all applicable liability insurance policy limits may not be disclosed to
144 the arbitration panel.

145 (i) The amount of the arbitration award may not exceed the liability limits of all the
146 defendant's applicable liability insurance policies, including applicable liability umbrella
147 policies. If the initial arbitration award exceeds the liability limits of all applicable liability
148 insurance policies, the arbitration award shall be reduced to an amount equal to the liability
149 limits of all applicable liability insurance policies.

150 (j) The arbitration award is the final resolution of all claims between the parties unless
151 the award was procured by corruption, fraud, or other undue means.

152 (k) If the arbitration panel finds that the action was not brought, pursued, or defended
153 in good faith, the arbitration panel may award reasonable fees and costs against the party that
154 failed to bring, pursue, or defend the claim in good faith.

155 (l) Nothing in this section is intended to limit any claim under any other portion of an
156 applicable insurance policy.

157 (10) An insurer issuing a policy of insurance under this part that is covering an at-fault
158 driver may not reduce compensation to an injured party based on the injured party not being
159 covered by a policy of insurance that provides personal injury protection coverage under
160 Sections 31A-22-306 through 31A-22-309.

Legislative Review Note
as of 2-10-04 8:54 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0325

Motor Vehicle Insurance Amendments

13-Feb-04

2:20 PM

State Impact

No fiscal impact.

Individual and Business Impact

Insurance companies covering at-fault drivers will see some additional costs. Injured persons will benefit from the bill.

Office of the Legislative Fiscal Analyst