

INSURANCE ARBITRATION AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

Senate Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill modifies the Insurance Code by amending provisions related to using arbitration for third party motor vehicle accident claims.

Highlighted Provisions:

This bill:

▶ authorizes a person injured in a motor vehicle accident to use arbitration to resolve a third party claim if the claimant has:

- previously and timely commenced the claim in a district court; and
- filed the notice to submit the claim to arbitration while the claim is still pending in district court and before the plaintiff's initial disclosures have been filed;

▶ provides procedures for resolving the third party claim through arbitration;

▶ provides that an arbitration award may not exceed \$25,000;

▶ provides that an arbitration award issued by a single arbitrator or an arbitration panel shall be the final resolution of all claims unless either party files a notice for a trial de novo within 20 days of service of the arbitration award;

▶ provides that if a plaintiff, as the moving party in a trial de novo, does not receive a verdict that is at least \$5,000 and is at least 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 receive a verdict that is at least 20% less than the arbitration award, the defendant is responsible for the nonmoving party's costs;

▶ provides that a court may award reasonable attorney fees if the court finds that a

party's use of the de novo process was filed in bad faith;

▶ provides that if a defendant demands a trial de novo after an arbitration award, the verdict at trial may not exceed \$40,000;

▶ provides that if a plaintiff demands a trial de novo after an arbitration award, the verdict at trial may not exceed \$25,000;

▶ provides that arbitration awards shall bear postjudgment interest; and

▶ provides that an interim committee designated by the Legislative Management Committee study the results of implementing arbitration in third party motor vehicle accident claims.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

31A-22-321, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

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

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

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

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

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

(ii) filed a notice to submit the claim to arbitration before the plaintiff's initial disclosures have been filed under Rule 26, Utah Rules of Civil Procedure; and

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

(2) If a party submits a claim to arbitration under Subsection (1), the party submitting the claim or the party's representative is limited to an arbitration award that does not exceed \$25,000.

(3) A claim for punitive damages may not be made in an arbitration proceeding under Subsection (1), even if the claim is later resolved through a trial de novo under Subsection (9).

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

(b) All parties shall agree on the single arbitrator selected under Subsection (4)(a).

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

(d) If the parties select a panel of three arbitrators under Subsection (4)(c):

(i) each side shall select one arbitrator; and

(ii) the arbitrators appointed under Subsection (4)(d)(i) shall select one additional arbitrator to be included in the panel.

(5) Unless otherwise agreed to in writing:

(a) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (4)(a); and

(b) if an arbitration panel is selected under Subsection (4)(d):

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

(ii) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (4)(d)(ii).

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

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

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

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

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

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

(9) An arbitration award issued under this section shall be the final resolution of all claims between the parties unless either party, within 20 days after service of the arbitration award:

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

(b) serves the nonmoving party with a copy of the notice requesting a trial de novo under Subsection (9)(a).

(10) (a) Upon filing a notice requesting a trial de novo under Subsection (9), the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of Evidence in the district court.

(b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request a jury trial with a request for trial de novo filed under Subsection (9)(a).

(11) (a) If the plaintiff, as the moving party in a trial de novo requested under Subsection (9), does not obtain a verdict that is at least \$5,000 and is at least 20% greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs.

(b) Except as provided in Subsection (11)(c), the costs under Subsection (11)(a) shall include:

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

(ii) the costs of expert witnesses and depositions.

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

(12) (a) If a defendant, as the moving party in a trial de novo requested under Subsection (9), does not obtain a verdict that is at least 20% less than the arbitration award, the defendant is responsible for all of the nonmoving party's costs.

(b) Except as provided in Subsection (12)(c), the costs under Subsection (12)(a) shall include:

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

(ii) the costs of expert witnesses and depositions.

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

(13) For purposes of determining whether a party's verdict is greater or less than the arbitration award under Subsections (11) and (12), a court may not consider any recovery or other relief granted on a claim for damages if the claim for damages:

(a) was not fully disclosed in writing prior to the arbitration proceeding; or

(b) was not disclosed in response to discovery contrary to the Utah Rules of Civil Procedure.

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

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

(16) (a) If a defendant requests a trial de novo under Subsection (9), the verdict at trial may not exceed \$40,000.

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

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

Section 2. **Study.**

(1) During the 2006 interim, the Legislative Management Committee shall designate an appropriate interim committee of the Legislature to study the results of implementing the use of arbitration in third party motor vehicle accident claims as provided under this bill.

(2) The designated interim committee shall:

(a) hear reports from persons impacted in using the arbitration authorized under this bill;

and

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