

**INSURANCE AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Stephen H. Urquhart**

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code by amending provisions related to motor vehicle insurance and certain subrogation actions.

**Highlighted Provisions:**

This bill:

- ▶ authorizes a person injured in a motor vehicle accident to use arbitration to resolve a motor vehicle insurance claim if the claimant has not commenced litigation and agrees to a maximum arbitration award of \$25,000;

- ▶ provides procedures for settling a motor vehicle insurance claim through binding arbitration;

- ▶ provides that an arbitration award issued by an arbitration panel shall be the final resolution of all claims unless either party files a notice for a trial de novo within ten days after the day of the arbitration award;

- ▶ provides that if a claimant, as the moving party in a trial de novo proceeding, does not receive a verdict that is 20% or greater than the arbitration award, the claimant is responsible for the nonmoving party's costs;

- ▶ provides that if a respondent, as the moving party in a trial de novo proceeding, does not receive a verdict that is 20% or less than the arbitration award, the respondent is responsible for the nonmoving party's costs;

- ▶ provides that certain insurers are not entitled to subrogation for compensation received by an injured person for tortious or intentional conduct of another until the



28 injured person is made whole;

29       ▶ provides that a court shall consider special and general damages in determining  
30 whether an injured person has been made whole; and

31       ▶ makes technical changes.

32 **Monies Appropriated in this Bill:**

33       None

34 **Other Special Clauses:**

35       None

36 **Utah Code Sections Affected:**

37 ENACTS:

38       **31A-22-321**, Utah Code Annotated 1953

39       **31A-22-635**, Utah Code Annotated 1953



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

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

43       **31A-22-321. Use of arbitration in motor vehicle insurance.**

44       (1) A person injured by or as a result of a motor vehicle accident may elect to resolve  
45 the claim by submitting it to binding arbitration under the following conditions:

46       (a) the claimant or the claimant's representative has not commenced litigation;

47       (b) the claimant or the claimant's representative has not submitted the claim to binding  
48 arbitration under Subsection 31A-22-303(9); and

49       (c) the claimant or the claimant's representative is limited to an arbitration award that  
50 does not exceed \$25,000.

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

53       (b) If the parties select a panel of arbitrators:

54       (i) each party shall select one arbitrator; and

55       (ii) the arbitrators appointed under Subsection (2)(b)(i) shall select one additional  
56 arbitrator to be included in the panel.

57       (3) Unless otherwise agreed to in writing:

58       (a) each party shall pay a proportionate share of fees and costs of the arbitrator; and

- 59 (b) if an arbitration panel is selected under Subsection (2)(b):  
60 (i) each party shall pay the fees and costs of the arbitrator selected by that party; and  
61 (ii) each party shall proportionately share the fees and costs of the arbitrator selected  
62 under Subsection (2)(b)(ii).
- 63 (4) Except as otherwise provided in this section and unless otherwise agreed to in  
64 writing by the parties, an arbitration procedure conducted under this section shall be governed  
65 by Title 78, Chapter 31a, Utah Uniform Arbitration Act.
- 66 (5) (a) Discovery shall be conducted in accordance with Rules 26b through 36, Utah  
67 Rules of Civil Procedure.
- 68 (b) All issues of discovery shall be resolved by the arbitrator or arbitration panel.
- 69 (6) A written decision by a single arbitrator or by a majority of the arbitration panel  
70 shall constitute the final decision.
- 71 (7) The existence of a liability insurance policy may be disclosed to the arbitrator or  
72 arbitration panel prior to the rendering of the arbitration award.
- 73 (8) (a) The amount of the arbitration award issued under this section may not exceed  
74 \$25,000.
- 75 (b) If the initial arbitration award exceeds \$25,000, the award shall be reduced to  
76 \$25,000.
- 77 (9) (a) An arbitration award issued under this section shall be the final resolution of all  
78 claims between the parties unless either party files a notice for a trial de novo within ten days  
79 after the day of the arbitration award.
- 80 (b) A notice under Subsection (9)(a) shall be provided to:  
81 (i) the arbitrator or arbitration panel that issued the arbitration award; and  
82 (ii) all parties involved in the arbitration.
- 83 (c) If a trial de novo is elected under Subsection (9)(a), the claimant or the claimant's  
84 representative may file a complaint in the appropriate district court.
- 85 (d) All discovery completed in the arbitration process shall be available for use in the  
86 trial de novo proceeding.
- 87 (10) (a) If the claimant, as the moving party in a trial de novo proceeding elected under  
88 Subsection (9), does not receive a verdict that is 20% or greater than the arbitration award, the  
89 claimant is responsible for all of the nonmoving party's costs in the trial de novo proceeding.

90 (b) If a respondent, as the moving party in a trial de novo proceeding elected under  
91 Subsection (9), does not receive a verdict that is 20% or less than the arbitration award, the  
92 respondent is responsible for all of the nonmoving party's costs in the trial de novo proceeding.

93 Section 2. Section **31A-22-635** is enacted to read:

94 **31A-22-635. Limits on subrogation actions.**

95 (1) As used in this section:

96 (a) "insurer" means an insured governed by this part as provided under Section  
97 31A-22-600; and

98 (b) "insurer" includes:

99 (i) a health maintenance organization;

100 (ii) a third party administrator that is subject to this title; and

101 (iii) an entity acting as a self insurance carrier of employee benefit plans.

102 (2) An insurer or its subcontractors are not entitled to subrogation of compensation  
103 received by an injured person resulting from tortious or intentional conduct of another until the  
104 injured person is made whole.

105 (3) In determining whether an injured person has been made whole through  
106 compensation resulting from the tortious or intentional conduct of another, the court shall  
107 determine whether the compensation actually received by the injured person is sufficient to  
108 cover all special damages and general damages suffered by the injured person.

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**Legislative Review Note**  
**as of 1-24-05 10:37 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0235**

**Insurance Amendments**

*10-Feb-05*

*1:24 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

The bill will require auto insurers, accident and health insurers, and entities acting as self-insurance carriers of employee benefits to change their forms and auto insurers and accident and health insurers to refile their forms with the insurance department. The changing and refiling of forms will increase administrative costs. Parties to arbitration should save costs when compared to litigation.

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**Office of the Legislative Fiscal Analyst**