

MOTOR VEHICLE INSURANCE AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd E. Kiser

Senate Sponsor: Kevin T. VanTassell

LONG TITLE

General Description:

This bill modifies the Insurance Code by amending provisions relating to personal injury protection coverage.

Highlighted Provisions:

This bill:

- ▶ provides that there is no right of reimbursement to an insurer that has paid for benefits that are required to be paid under personal injury protection by the insurer of the person who would be held legally liable for the personal injuries sustained if the insurer of the person who would be held legally liable has tendered its policy limits;
- ▶ provides that if the insurer of the person who would be held legally liable for the personal injuries sustained reimburses a no-fault insurer and subsequently determines that the reimbursement is needed to settle a third party liability claim, the insurer of the person who would be held legally liable shall notify the no-fault insurer that a portion of the reimbursement is needed to settle a third party liability claim;
- ▶ provides a procedure for an insurer to notify a no-fault insurer that a portion of the reimbursement is needed;
- ▶ requires a no-fault insurer to return the needed portion of the reimbursement within 15 business days; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **31A-22-309**, as last amended by Laws of Utah 2001, Chapter 59

35 **31A-22-321**, as last amended by Laws of Utah 2007, Chapter 236



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

38 Section 1. Section **31A-22-309** is amended to read:

39 **31A-22-309. Limitations, exclusions, and conditions to personal injury**
40 **protection.**

41 (1) (a) A person who has or is required to have direct benefit coverage under a policy
42 which includes personal injury protection may not maintain a cause of action for general
43 damages arising out of personal injuries alleged to have been caused by an automobile accident,
44 except where the person has sustained one or more of the following:

- 45 (i) death;
- 46 (ii) dismemberment;
- 47 (iii) permanent disability or permanent impairment based upon objective findings;
- 48 (iv) permanent disfigurement; or
- 49 (v) medical expenses to a person in excess of \$3,000.

50 (b) Subsection (1)(a) does not apply to a person making an uninsured motorist claim.

51 (2) (a) Any insurer issuing personal injury protection coverage under this part may only
52 exclude from this coverage benefits:

53 (i) for any injury sustained by the insured while occupying another motor vehicle owned
54 by or furnished for the regular use of the insured or a resident family member of the insured and
55 not insured under the policy;

56 (ii) for any injury sustained by any person while operating the insured motor vehicle
57 without the express or implied consent of the insured or while not in lawful possession of the

58 insured motor vehicle;

59 (iii) to any injured person, if the person's conduct contributed to his injury:

60 (A) by intentionally causing injury to himself; or

61 (B) while committing a felony;

62 (iv) for any injury sustained by any person arising out of the use of any motor vehicle
63 while located for use as a residence or premises;

64 (v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion
65 or revolution, or to any act or condition incident to any of the foregoing; or

66 (vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous
67 properties of nuclear materials.

68 (b) The provisions of this subsection do not limit the exclusions which may be contained
69 in other types of coverage.

70 (3) The benefits payable to any injured person under Section 31A-22-307 are reduced
71 by:

72 (a) any benefits which that person receives or is entitled to receive as a result of an
73 accident covered in this code under any workers' compensation or similar statutory plan; and

74 (b) any amounts which that person receives or is entitled to receive from the United
75 States or any of its agencies because that person is on active duty in the military service.

76 (4) When a person injured is also an insured party under any other policy, including
77 those policies complying with this part, primary coverage is given by the policy insuring the
78 motor vehicle in use during the accident.

79 (5) (a) Payment of the benefits provided for in Section 31A-22-307 shall be made on a
80 monthly basis as expenses are incurred.

81 (b) Benefits for any period are overdue if they are not paid within 30 days after the
82 insurer receives reasonable proof of the fact and amount of expenses incurred during the period.
83 If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable
84 proof is overdue if not paid within 30 days after that proof is received by the insurer. Any part
85 or all of the remainder of the claim that is later supported by reasonable proof is also overdue if

86 not paid within 30 days after the proof is received by the insurer.

87 (c) If the insurer fails to pay the expenses when due, these expenses shall bear interest
88 at the rate of 1-1/2% per month after the due date.

89 (d) The person entitled to the benefits may bring an action in contract to recover the
90 expenses plus the applicable interest. If the insurer is required by the action to pay any overdue
91 benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the
92 claimant.

93 (6) ~~Every~~ (a) Except as provided in Subsection (6)(b), every policy providing
94 personal injury protection coverage is subject to the following:

95 ~~(a)~~ (i) that where the insured under the policy is or would be held legally liable for the
96 personal injuries sustained by any person to whom benefits required under personal injury
97 protection have been paid by another insurer, including the Workers' Compensation Fund
98 created under Chapter 33, the insurer of the person who would be held legally liable shall
99 reimburse the other insurer for the payment, but not in excess of the amount of damages
100 recoverable; and

101 ~~(b)~~ (ii) that the issue of liability for that reimbursement and its amount shall be decided
102 by mandatory, binding arbitration between the insurers.

103 (b) There shall be no right of reimbursement between insurers under Subsection (6)(a) if
104 the insurer of the person who would be held legally liable for the personal injuries sustained has
105 tendered its policy limit.

106 (c) (i) If the insurer of the person who would be held legally liable for the personal
107 injuries sustained reimburses a no-fault insurer prior to settling a third party liability claim with
108 an injured person and subsequently determines that some or all of the reimbursed amount is
109 needed to settle a third party claim, the insurer of the person who would be held legally liable
110 for the personal injuries sustained shall provide written notice to the no-fault insurer that some
111 or all of the reimbursed amount is needed to settle a third party liability claim.

112 (ii) The written notice described under Subsection (6)(c)(i) shall:

113 (A) identify the amount of the reimbursement that is needed to settle a third party

114 liability claim;

115 (B) provide notice to the no-fault insurer that the no-fault insurer has 15 days to return
116 the amount described in Subsection (6)(c)(ii)(A); and

117 (C) identify the third party liability insurer that the returned amount shall be paid to.

118 (iii) A no-fault insurer that receives a notice under this Subsection (6)(c) shall return the
119 portion of the reimbursement identified under Subsection (6)(c)(ii) to the third party liability
120 insurer identified under Subsection (6)(c)(ii)(C) within 15 business days from receipt of a notice
121 under this Subsection (6)(c).

122 Section 2. Section **31A-22-321** is amended to read:

123 **31A-22-321. Use of arbitration in third party motor vehicle accident cases.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

169 (c) If the parties are unable to agree on a single arbitrator as required under Subsection

170 (6)(b), the parties shall select a panel of three arbitrators.

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

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

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

175 (7) Unless otherwise agreed to in writing:

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

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

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

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

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

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

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

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

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

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

197 (11) An arbitration award issued under this section shall be the final resolution of all

198 bodily injury claims between the parties and may be reduced to judgment by the court upon
199 motion and notice unless:

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

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

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

204 (b) the arbitration award has been satisfied.

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

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

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

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

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

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

217 (c) An award of costs under this Subsection (13) may not exceed \$2,500.

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

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

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

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

225 (c) An award of costs under this Subsection (14) may not exceed \$2,500.

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

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

232 (16) If a district court determines, upon a motion of the nonmoving party, that the
233 moving party's use of the trial de novo process was filed in bad faith as defined in Section
234 78-27-56, the district court may award reasonable attorney fees to the nonmoving party.

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

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

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

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