

**ARBITRATION AMENDMENTS FOR DOG BITES**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: LaVar Christensen**

Senate Sponsor: John L. Valentine

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**LONG TITLE**

**General Description:**

This bill creates a provision for using arbitration in personal injury from a dog attack.

**Highlighted Provisions:**

This bill:

- ▶ authorizes a person injured from a dog attack to use arbitration to resolve a third party claim under certain requirements;
- ▶ provides procedures for resolving the third party claim through arbitration;
- ▶ limits an arbitration award to \$50,000;
- ▶ prohibits a claim for punitive damages or any subsequent proceeding;
- ▶ 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 the trial may not exceed \$65,000;
- ▶ provides that if a plaintiff demands a trial de novo after an arbitration award, the verdict at the trial may not exceed \$15,000 above any insurance policy limit; and
- ▶ provides that arbitration awards shall bear postjudgment interest.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



28 **Utah Code Sections Affected:**

29 ENACTS:

30 **18-1-4**, Utah Code Annotated 1953



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

33 Section 1. Section **18-1-4** is enacted to read:

34 **18-1-4. Use of arbitration in personal injury from dog attack cases.**

35 (1) A person injured as a result of a dog may elect to submit all third party bodily  
36 injury claims to arbitration by filing a notice of the submission of the claim to binding  
37 arbitration in a district court if:

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

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

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

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

45 (2) (a) If a party submits a bodily injury claim to arbitration under Subsection (1), the  
46 party submitting the claim or the party's representative is limited to an arbitration award that  
47 may not exceed \$50,000 in addition to any medical premise benefits and any claim for property  
48 damage.

49 (b) A party who elects to proceed against a defendant under this section:

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

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

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

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

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

59           (ii) no less than 30 days before any scheduled arbitration hearing.  
60           (b) A person seeking to rescind an election to arbitrate under this Subsection (4) shall:  
61           (i) file a notice of the rescission of the election to arbitrate with the district court in  
62 which the matter was filed; and  
63           (ii) send copies of the notice of the rescission of the election to arbitrate to all counsel  
64 of record to the action.  
65           (c) All discovery completed in anticipation of the arbitration hearing shall be available  
66 for use by the parties as allowed by the Utah Rules of Civil Procedure and Utah Rules of  
67 Evidence.  
68           (d) A party who has elected to arbitrate under this section and then rescinded the  
69 election to arbitrate under this Subsection (4) may not elect to arbitrate the claim under this  
70 section again.  
71           (5) (a) Unless otherwise agreed to by the parties or by order of the court, an arbitration  
72 process elected under this section is subject to Rule 26, Utah Rules of Civil Procedure.  
73           (b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be  
74 completed within 150 days after the date arbitration is elected under this section or the date the  
75 answer is filed, whichever is longer.  
76           (6) (a) Unless otherwise agreed to in writing by the parties, a claim that is submitted to  
77 arbitration under this section shall be resolved by a single arbitrator.  
78           (b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall  
79 agree on the single arbitrator selected under Subsection (6)(a) within 90 days of the answer of  
80 the defendant.  
81           (c) If the parties are unable to agree on a single arbitrator as required under Subsection  
82 (6)(b), the parties shall select a panel of three arbitrators.  
83           (d) If the parties select a panel of three arbitrators under Subsection (6)(c):  
84           (i) each side shall select one arbitrator; and  
85           (ii) the arbitrators appointed under Subsection (6)(d)(i) shall select one additional  
86 arbitrator to be included in the panel.  
87           (7) Unless otherwise agreed to in writing:  
88           (a) each party shall pay an equal share of the fees and costs of the arbitrator selected  
89 under Subsection (6)(a); and

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

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

92 and

93 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected

94 under Subsection (6)(d)(ii).

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

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

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

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

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

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

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

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

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

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

116 (b) the arbitration award has been satisfied.

117 (12) (a) Upon filing a notice requesting a trial de novo under Subsection (11):

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

120 (ii) the additional discovery time under Subsection (12)(a)(i) shall run from the notice

121 of appeal; and

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

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

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

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

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

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

133 (c) An award of costs under this Subsection (13) may not exceed \$6,000.

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

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

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

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

141 (c) An award of costs under this Subsection (14) may not exceed \$6,000.

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

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

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

148 (16) If a district court determines, upon a motion of the nonmoving party, that the  
149 moving party's use of the trial de novo process was filed in bad faith as defined in Section  
150 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

151 (17) Nothing in this section is intended to affect or prevent any first party claim from

152 later being brought under any first party insurance policy under which the injured person is a  
153 covered person.

154 (18) (a) If a defendant requests a trial de novo under Subsection (11), the total verdict  
155 at trial may not exceed \$15,000 above any available limits of insurance coverage and the total  
156 verdict may not exceed \$65,000.

157 (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may  
158 not exceed \$50,000.

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

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**Legislative Review Note**  
**as of 2-25-13 5:23 PM**

**Office of Legislative Research and General Counsel**