

Senator Michael G. Waddoups proposes the following substitute bill:

**MOTOR VEHICLE INSURANCE COVERAGE -
ARBITRATION REQUIREMENTS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the Insurance Code to allow binding arbitration of motor vehicle liability claims. The act establishes arbitration procedures and award limitations for disputed intra-family liability claims.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

31A-22-303, as last amended by Chapter 243, Laws of Utah 2000

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

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

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

(1) (a) In addition to complying with the requirements of Chapter 21 and Part II of Chapter 22, a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

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

(ii) (A) if it is an owner's policy, designate by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Subsection (7), insure any person included in Subsection (1)(a)(iii) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada, subject to limits exclusive of interest and



26 costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section
27 31A-22-304; or

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

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

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

38 or

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

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

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

46 (2) (a) A policy containing motor vehicle liability coverage under Subsection
47 31A-22-302(1)(a) may:

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

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

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

56 (iv) if issued to a motor vehicle business, restrict coverage afforded to anyone other than

57 the motor vehicle business or its officers, agents, or employees to the minimum limits under
58 Section 31A-22-304, and to those instances when there is no other valid and collectible insurance
59 with at least those limits, whether the other insurance is primary, excess, or contingent.

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

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

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

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

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

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

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

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

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

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

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

88 elsewhere, if:

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

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

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

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

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

104 (i) by submitting the claim to § [mandatory,] § binding arbitration; or

105 (ii) through litigation.

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

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

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

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

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

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

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

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

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

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

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

129 (i) The amount of the arbitration award may not exceed the liability limits of all the
130 defendant's applicable liability insurance policies, including applicable liability umbrella policies.
131 If the initial arbitration award exceeds the liability limits of all applicable liability insurance
132 policies, the arbitration award shall be reduced to an amount equal to the liability limits of all
133 applicable liability insurance policies.

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

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

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