

1 **MOTOR VEHICLE LIABILITY COVERAGE**

2 **AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Dan R. Eastman**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Insurance Code by amending provisions related to motor vehicle
10 liability coverage.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides that motor vehicle liability coverage need not insure any liability that arises
- 14 out of acts by the insured that are intended to cause damage or injury; and
- 15 ▶ makes technical changes.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **31A-22-303**, as last amended by Chapters 90 and 126, Laws of Utah 2004

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

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

26 **31A-22-303. Motor vehicle liability coverage.**

27 (1) (a) In addition to complying with the requirements of Chapter 21, Insurance



28 Contracts in General, and Chapter 22, Part 2, Liability Insurance in General, a policy of motor
29 vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

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

33 (ii) (A) if it is an owner's policy, designate by appropriate reference all the motor
34 vehicles on which coverage is granted, insure the person named in the policy, insure any other
35 person using any named motor vehicle with the express or implied permission of the named
36 insured, and, except as provided in Subsection (7), insure any person included in Subsection
37 (1)(a)(iii) against loss from the liability imposed by law for damages arising out of the
38 ownership, maintenance, or use of these motor vehicles within the United States and Canada,
39 subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less
40 than the minimum limits specified under Section 31A-22-304; or

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

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

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

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

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

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

59 coverage.

60 (2) (a) A policy containing motor vehicle liability coverage under Subsection
61 31A-22-302(1)(a) may:

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

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

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

71 (iv) if issued to a motor vehicle business, restrict coverage afforded to anyone other
72 than the motor vehicle business or its officers, agents, or employees to the minimum limits
73 under Section 31A-22-304, and to those instances when there is no other valid and collectible
74 insurance with at least those limits, whether the other insurance is primary, excess, or
75 contingent.

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

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

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

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

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

85 (c) resulting from damage to property owned by, rented to, bailed to, or transported by
86 the insured[-]; or

87 (d) arising out of acts by the insured that are intended to cause damage or injury.

88 (4) An insurance carrier providing motor vehicle liability coverage has the right to
89 settle any claim covered by the policy, and if the settlement is made in good faith, the amount

90 of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

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

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

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

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

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

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

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

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

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

- 121 (i) by submitting the claim to binding arbitration; or
- 122 (ii) through litigation.
- 123 (b) Once the claimant has elected to commence litigation under Subsection (9)(a)(ii),
- 124 the claimant may not elect to resolve the claim through binding arbitration under this section
- 125 without the written consent of both parties and the defendant's liability insurer.
- 126 (c) (i) Unless otherwise agreed on in writing by the parties, a claim that is submitted to
- 127 binding arbitration under Subsection (9)(a)(i) shall be resolved by a panel of three arbitrators.
- 128 (ii) Unless otherwise agreed on in writing by the parties, each party shall select an
- 129 arbitrator. The arbitrators selected by the parties shall select a third arbitrator.
- 130 (d) Unless otherwise agreed on in writing by the parties, each party will pay the fees
- 131 and costs of the arbitrator that party selects. Both parties shall share equally the fees and costs
- 132 of the third arbitrator.
- 133 (e) Except as otherwise provided in this section, an arbitration procedure conducted
- 134 under this section shall be governed by Title 78, Chapter 31a, Utah Uniform Arbitration Act,
- 135 unless otherwise agreed on in writing by the parties.
- 136 (f) (i) Discovery shall be conducted in accordance with Rules 26b through 36, Utah
- 137 Rules of Civil Procedure.
- 138 (ii) All issues of discovery shall be resolved by the arbitration panel.
- 139 (g) A written decision of two of the three arbitrators shall constitute a final decision of
- 140 the arbitration panel.
- 141 (h) Prior to the rendering of the arbitration award:
- 142 (i) the existence of a liability insurance policy may be disclosed to the arbitration
- 143 panel; and
- 144 (ii) the amount of all applicable liability insurance policy limits may not be disclosed to
- 145 the arbitration panel.
- 146 (i) The amount of the arbitration award may not exceed the liability limits of all the
- 147 defendant's applicable liability insurance policies, including applicable liability umbrella
- 148 policies. If the initial arbitration award exceeds the liability limits of all applicable liability
- 149 insurance policies, the arbitration award shall be reduced to an amount equal to the liability
- 150 limits of all applicable liability insurance policies.
- 151 (j) The arbitration award is the final resolution of all claims between the parties unless

152 the award was procured by corruption, fraud, or other undue means.

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

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

158 (10) An at-fault driver or an insurer issuing a policy of insurance under this part that is
159 covering an at-fault driver may not reduce compensation to an injured party based on the
160 injured party not being covered by a policy of insurance that provides personal injury
161 protection coverage under Sections 31A-22-306 through 31A-22-309.

Legislative Review Note
as of 1-20-05 2:00 PM

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

Fiscal Note
Bill Number SB0049

Motor Vehicle Liability Coverage Amendments

28-Jan-05

3:53 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst