

1 **MOTOR VEHICLE INSURANCE ARBITRATION**

2 **AMENDMENTS**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stephen H. Urquhart**

6 Senate Sponsor: Michael G. Waddoups

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Insurance Code by amending provisions relating to arbitration for
11 third party motor vehicle accident claims.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ provides that a person may elect to submit a third party motor vehicle accident
15 claim to arbitration by filing a notice to submit the claim to arbitration within 14
16 days after the complaint has been answered;
- 17 ▶ clarifies that an arbitration award is limited to \$25,000 in addition to any available
18 personal injury protection benefits and any claim for property damage;
- 19 ▶ provides a procedure for a person to rescind an election to arbitrate and provides
20 that a person who rescinds an election may not elect to arbitrate again;
- 21 ▶ amends procedures for conducting an arbitration process;
- 22 ▶ provides that an arbitration award issued may be reduced to judgment by the court
23 upon notice and motion unless the arbitration award has been satisfied; and
- 24 ▶ makes technical changes.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **31A-22-321**, as enacted by Chapter 177, Laws of Utah 2005



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

34 Section 1. Section **31A-22-321** is amended to read:

35 **31A-22-321. Use of arbitration in third party motor vehicle accident cases.**

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

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

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

42 (ii) filed a notice to submit the claim to arbitration [~~before the plaintiff's initial~~
43 ~~disclosures have been filed under Rule 26, Utah Rules of Civil Procedure~~] within 14 days after
44 the complaint has been answered; and

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

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

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

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 [~~(9)~~] (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.
- 75 ~~[(4)]~~ (6) (a) Unless otherwise agreed to in writing by the parties, a claim that is
- 76 submitted to arbitration under this section shall be resolved by a single arbitrator.
- 77 (b) [AH] Unless otherwise agreed to by the parties or ordered by the court, all parties
- 78 shall agree on the single arbitrator selected under Subsection ~~[(4)](a)~~ (6)(a) within 90 days of
- 79 the answer of the defendant.
- 80 (c) If the parties are unable to agree on a single arbitrator as required under Subsection
- 81 ~~[(4)] (6)(b)~~, the parties shall select a panel of three arbitrators.
- 82 (d) If the parties select a panel of three arbitrators under Subsection ~~[(4)] (6)(c)~~:
- 83 (i) each side shall select one arbitrator; and
- 84 (ii) the arbitrators appointed under Subsection ~~[(4)] (6)(d)(i)~~ shall select one additional
- 85 arbitrator to be included in the panel.
- 86 ~~[(5)]~~ (7) Unless otherwise agreed to in writing:
- 87 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
- 88 under Subsection ~~[(4)] (6)(a)~~; and
- 89 (b) if an arbitration panel is selected under Subsection ~~[(4)] (6)(d)~~:

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

92 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected
93 under Subsection ~~[(4)]~~ (6)(d)(ii).

94 ~~[(6)]~~ (8) Except as otherwise provided in this section and unless otherwise agreed to in
95 writing by the parties, an arbitration proceeding conducted under this section shall be governed
96 by Title 78, Chapter 31a, Utah Uniform Arbitration Act.

97 ~~[(7)]~~ (9) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure
98 and Utah Rules of Evidence apply to the arbitration proceeding.

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

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

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

106 ~~[(8)]~~ (10) A written decision by a single arbitrator or by a majority of the arbitration
107 panel shall constitute a final decision.

108 ~~[(9)]~~ (11) An arbitration award issued under this section shall be the final resolution of
109 all claims between the parties and may be reduced to judgment by the court upon motion and
110 notice unless:

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

112 ~~[(a)]~~ (i) files a notice requesting a trial de novo in the district court; and

113 ~~[(b)]~~ (ii) serves the nonmoving party with a copy of the notice requesting a trial de
114 novo under Subsection ~~[(9)(a)]~~ (11)(a)(i); or

115 (b) the arbitration award has been satisfied.

116 ~~[(10)]~~ (12) (a) Upon filing a notice requesting a trial de novo under Subsection ~~[(9)]~~
117 (11), the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure
118 and Utah Rules of Evidence in the district court.

119 (b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
120 request a jury trial with a request for trial de novo filed under Subsection ~~[(9)]~~ (11)(a)(i).

121 ~~[(11)]~~ (13) (a) If the plaintiff, as the moving party in a trial de novo requested under
122 Subsection ~~[(9)]~~ (11), does not obtain a verdict that is at least \$5,000 and is at least 20% greater
123 than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs.

124 (b) Except as provided in Subsection ~~[(11)]~~ (13)(c), the costs under Subsection ~~[(11)]~~
125 (13)(a) shall include:

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

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

128 (c) An award of costs under this Subsection ~~[(11)]~~ (13) may not exceed \$2,500.

129 ~~[(12)]~~ (14) (a) If a defendant, as the moving party in a trial de novo requested under
130 Subsection ~~[(9)]~~ (11), does not obtain a verdict that is at least 20% less than the arbitration
131 award, the defendant is responsible for all of the nonmoving party's costs.

132 (b) Except as provided in Subsection ~~[(12)]~~ (14)(c), the costs under Subsection ~~[(12)]~~
133 (14)(a) shall include:

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

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

136 (c) An award of costs under this Subsection ~~[(12)]~~ (14) may not exceed \$2,500.

137 ~~[(13)]~~ (15) For purposes of determining whether a party's verdict is greater or less than
138 the arbitration award under Subsections ~~[(11)]~~ (13) and ~~[(12)]~~ (14), a court may not consider
139 any recovery or other relief granted on a claim for damages if the claim for damages:

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

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

143 ~~[(14)]~~ (16) If a district court determines, upon a motion of the nonmoving party, that
144 the moving party's use of the trial de novo process was filed in bad faith as defined in Section
145 78-27-56, the district court may award reasonable attorney fees to the nonmoving party.

146 ~~[(15)]~~ (17) Nothing in this section is intended to affect or prevent any first party claim
147 from later being brought under any first party insurance policy under which the injured person
148 is a covered person.

149 ~~[(16)]~~ (18) (a) If a defendant requests a trial de novo under Subsection ~~[(9)]~~ (11), the
150 verdict at trial may not exceed \$40,000.

151 (b) If a plaintiff requests a trial de novo under Subsection ~~[(9)]~~ (11), the verdict at trial

152 may not exceed \$25,000.

153 ~~[(+7)]~~ (19) All arbitration awards issued under this section shall bear postjudgment

154 interest pursuant to Section 15-1-4.

Legislative Review Note
as of 11-15-06 2:44 PM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-18-06 3:24 PM

The Judiciary Interim Committee recommended this bill.

H.B. 44 - Motor Vehicle Insurance Arbitration Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill will not impose additional costs on individuals, businesses, or local governments. Individuals electing to pursue arbitration may realize legal cost savings.

1/3/2007, 9:44:43 AM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst