

MOTOR VEHICLE INSURANCE AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Insurance Code by amending provisions relating to motor vehicle insurance.

Highlighted Provisions:

This bill:

- ▶ provides that a motor vehicle liability coverage policy shall insure a covered person's use of a rental motor vehicle with the same coverage and policy limits as that of all other covered motor vehicles;

- ▶ provides that a rental company's owner's or operator's security applies only when there is no other valid or collectible insurance;

- ▶ provides that when there is no other valid or collectible insurance for a rental vehicle, a rental company is required to meet the minimum requirements for owner's or operator's security;

- ▶ clarifies that rental company owner's or operator's security requirements do not expand or reduce liability or impair the rental company's right to indemnity, contribution, or both; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **31A-22-303**, as last amended by Chapter 295, Laws of Utah 2005

32 **31A-22-314**, as last amended by Chapters 325 and 329, Laws of Utah 1998



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

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

36 **31A-22-303. Motor vehicle liability coverage.**

37 (1) (a) In addition to complying with the requirements of Chapter 21, Insurance
38 Contracts in General, and Chapter 22, Part 2, Liability Insurance in General, a policy of motor
39 vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

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

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

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

55 (iii) except as provided in Subsection (7), insure persons related to the named insured
56 by blood, marriage, adoption, or guardianship who are residents of the named insured's
57 household, including those who usually make their home in the same household but
58 temporarily live elsewhere, to the same extent as the named insured;

59 (iv) where a claim is brought by the named insured or a person described in Subsection
60 (1)(a)(iii), the available coverage of the policy may not be reduced or stepped-down because:

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

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

65 (v) cover damages or injury resulting from a covered driver of a motor vehicle who is
66 stricken by an unforeseeable paralysis, seizure, or other unconscious condition and who is not
67 reasonably aware that paralysis, seizure, or other unconscious condition is about to occur to the
68 extent that a person of ordinary prudence would not attempt to continue driving[-]; and

69 (vi) insure the person named as insured and a person related to the named insured as
70 described under Subsection (1)(a)(iii) against loss from the liability imposed by law for
71 damages arising out of a covered driver's use of a rental motor vehicle with the same coverage
72 and limits under the policy as that of all other motor vehicles for which coverage is granted.

73 (b) The driver's liability under Subsection (1)(a)(v) is limited to the insurance
74 coverage.

75 (2) (a) A policy containing motor vehicle liability coverage under Subsection
76 31A-22-302(1)(a) may:

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

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

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

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

90 contingent.

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

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

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

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

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

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

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

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

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

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

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

120 (a) at the time of the proposed exclusion, each person excluded from coverage satisfies

121 the owner's or operator's security requirement of Section 41-12a-301, independently of the
122 named insured's proof of owner's or operator's security;

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

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

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

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

135 (i) by submitting the claim to binding arbitration; or

136 (ii) through litigation.

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

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

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

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

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

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

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

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

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

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

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

160 (i) The amount of the arbitration award may not exceed the liability limits of all the
161 defendant's applicable liability insurance policies, including applicable liability umbrella
162 policies. If the initial arbitration award exceeds the liability limits of all applicable liability
163 insurance policies, the arbitration award shall be reduced to an amount equal to the liability
164 limits of all applicable liability insurance policies.

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

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

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

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

176 Section 2. Section **31A-22-314** is amended to read:

177 **31A-22-314. Mandatory coverage.**

178 (1) As used in this section, "owner's or operator's security" has the same meaning as
179 defined in Section 41-12a-103.

180 ~~[(+)] (2) (a)~~ A rental company shall ~~[provide its renters with primary coverage]~~
181 maintain owner's or operator's security meeting the requirements of Title 41, Chapter 12a,
182 Financial Responsibility of Motor Vehicle Owners and Operators Act~~[- unless there is other~~

183 ~~valid or collectible insurance coverage].~~

184 ~~[(2) All coverage shall include primary defense costs and may not be waived.]~~

185 (b) Owner's or operator's security maintained by a rental company under Subsection
186 (2)(a) applies only when there is no other valid or collectible insurance or other form of
187 security meeting the minimum requirements of Title 41, Chapter 12a, Financial Responsibility
188 of Motor Vehicle Owners and Operators Act.

189 (c) If other valid or collectible insurance or other form of security satisfies the
190 minimum requirements of Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle
191 Owners and Operators Act, on a loss involving a rental vehicle, a rental company's obligation
192 under Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle Owners and Operators
193 Act, is satisfied.

194 (d) When no other valid or collectible insurance or other form of security exists
195 meeting the minimum requirements of Title 41, Chapter 12a, Financial Responsibility of Motor
196 Vehicle Owners and Operators Act, a rental company shall provide security meeting the
197 minimum requirements of Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle
198 Owners and Operators Act, for losses involving a rental vehicle.

199 (3) Nothing in this section shall be construed to expand or reduce the liability of a
200 rental company or to impair a rental company's right to indemnity, contribution, or both.

Legislative Review Note
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Office of Legislative Research and General Counsel