

**MINUTES OF THE HOUSE TRANSPORTATION
STANDING COMMITTEE**
Room 135, West Office Building, State Capitol Complex
February 7, 2007

MEMBERS PRESENT: Rep. Todd E. Kiser, Chair
 Rep. Bradley M. Daw, Vice-Chair
 Rep. Tim M. Cosgrove
 Rep. Ben C. Ferry
 Rep. Julie Fisher
 Rep. Lynn N. Hemingway
 Rep. Christopher N. Herrod
 Rep. Kory M. Holdaway
 Rep. Brad King
 Rep. Ronda R. Menlove
 Rep. Karen W. Morgan
 Rep. Paul Neuenschwander
 Rep. Gordon E. Snow

MEMBERS ABSENT: Rep. Steven D. Clark
 Rep. Mark W. Walker

STAFF PRESENT: Mark Steinagel, Policy Analyst
 Linda Error, Committee Secretary

Note: A list of visitors and a copy of handouts are filed with the committee minutes.

Rep. Daw called the meeting to order at 8:15 a.m.

MOTION: Rep. Menlove moved to approve the minutes of the February 2, 2007 meeting.
 The motion passed unanimously, with Rep. Hemingway, Rep. King, Rep. Kiser,
 Rep. Morgan, and Rep. Snow absent for the vote.

1st Substitute S.B. 17 Traffic Code Amendments (Sen. S. Jenkins)

Sen. Jenkins introduced the bill to the committee, with the assistance of Neldon Jones, systems engineer. (handout)

Spoke to the bill: Rolayne Fairclough, AAA Utah

MOTION: Rep. Cosgrove moved to amend the bill as follows:

1. Page 1, Line 19:

19 {→ ~~changes the maximum posted speed limits;~~}

2. Page 7, Lines 182 through 185:

182 (3) (a) Except as provided in Subsection (3)(b), a posted speed limit may not exceed

183 [65] {70} 65 miles per hour.

184 (b) A posted speed limit on a freeway or other limited access highways may not exceed

185 [75] {80} 75 miles per hour.

SUBSTITUTE

MOTION: Rep. Ferry moved to amend the bill as follows including the previous amendment:

1. *Page 10, Line 281*
Senate 3rd Reading Amendments
1-29-2007:

281 (a) using a wireless telephone or other electronic device unless:
(i) the wireless telephone is designed and configured for hands-free talking and listening; and
(ii) the hands-free talking and listening features are used while operating the motor vehicle ;

Rep. Ferry requested the vote on the amendments be divided.

Rep. Ferry's substitute motion to amend passed, with Rep. King voting in opposition. Rep. Morgan and Rep. Snow were absent for the vote.

Rep. Cosgrove's underlying motion to amend passed, with Rep. Daw, Rep. Herrod, Rep. Holdaway, and Rep. Kiser voting in opposition. Rep. Morgan and Rep. Snow were absent for the vote.

MOTION: Rep. Ferry moved to pass the bill out favorably. The motion passed, with Rep. King voting in opposition. Rep. Morgan and Rep. Snow were absent for the vote.

H.B. 213 Driver License - Application of Minor (Rep. D. Litvack)

Rep. Litvack introduced the bill to the committee with the assistance of Duane Betournay, Deputy Director, Division of Child and Family Services.

MOTION: Rep. Menlove moved to amend the bill as follows:

1. *Page 1, Line 10:*

10 This bill modifies the Utah Human Services Code , Insurance Code, and the Driver Licensing Act by

2. *Page 1, Line 13:*

13 This bill:

► clarifies that a guardianship between a foster parent and a minor who is in the custody of the Division of Child and Family Services is included in the relationships that are covered under certain insurance policies;

3. *Page 1, Line 17:*

17 and liability requirements may sign the application;

► limits the liability of foster parents who sign the application for or furnish a motor vehicle to a foster child in their care;

4. *Page 2, Lines 30 through 31:*

30 AMENDS:

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

31 53-3-211, as last amended by Chapter 201, Laws of Utah 2006

= **53-3-212, as renumbered and amended by Chapter 234, Laws of Utah 1993**

5. *Page 2, Line 35:*

35 *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, Insurance Contracts in General, and Chapter 22, Part 2, Liability Insurance in General, 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 costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304; or

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

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

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

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

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

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

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

(c) "Guardianship" under Subsection (1)(a)(iii) includes the relationship between a foster parent and a minor who is in the legal custody of the Division of Child and Family Services if:

(A) the minor resides in a foster home, as defined under Section 62A-2-101, with a foster parent who is the named insured; and

(B) the foster parent has signed to be jointly and severally liable for compensatory damages of the minor's operation of a motor vehicle in accordance with Section 53-3-211.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) by submitting the claim to binding arbitration; or
- (ii) through litigation.

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

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

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

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

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

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

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

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

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

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

(ii) the amount of all applicable liability insurance policy limits may not be

disclosed to the arbitration panel.

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

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

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

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

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

6. *Page 2, Lines 55 through 58:*

55 (4) (a) If owner's or operator's security covering the minor's operation of the
56 motor vehicle
57 is in effect in amounts as required under Section 31A-22-304, the person who signed the
58 minor's application under Subsection (2) is not subject to the liability imposed under
58 Subsection (3).

(b) If a foster parent signs the application under Subsection (2) for a minor who is in the legal custody of the Division of Child and Family Services and who resides with the foster parent, the foster parent's liability may not exceed the minimum liability insurance policy limits established under Section 31A-22-304 or the limits of the foster parent's liability insurance policy established under Section 31A-22-302, whichever are greater.

7. *Page 3, Line 80:*

80 driving simulation device at the substitution rate provided under Subsection
53-3-505.5(2)(b).

= **Section 3. Section 53-3-212 is amended to read:**

53-3-212. Owner giving permission and minor liable for damages caused by minor driving a motor vehicle.

(1) ~~{The}~~ **Except as provided in Subsection (3), the** owner of a motor

vehicle causing or knowingly permitting a person younger than 18 years of age to drive the motor vehicle on a highway, or a person who gives or furnishes a motor vehicle to the minor, are each jointly and severally liable with the minor for any damages caused by the negligence of the minor in driving the motor vehicle.

(2) This liability provision is in addition to the liability provisions in Section 53-3-211.

(3) If a foster parent signs the application under Subsection (2) for a minor who is in the legal custody of the Division of Child and Family Services and who resides with the foster parent, the foster parent's liability may not exceed the minimum liability insurance policy limits established under Section 31A-22-304 or the limits of the foster parent's liability insurance policy established under Section 31A-22-302, whichever are greater.

Renumber remaining sections accordingly.

The motion to amend passed, with Rep. King, Rep. Morgan, and Rep. Snow absent for the vote.

MOTION: Rep. Ferry moved that **H.B. 213**, as mended, be referred to interim study. The motion passed unanimously, with Rep. King and Rep. Snow absent for the vote.

MOTION: Rep. Menlove moved to adjourn the meeting. The motion passed unanimously, with Rep. King and Rep. Snow absent for the vote.

Rep. Daw adjourned the meeting at 9:50 a.m.

Rep. Todd E. Kiser