

MOTOR VEHICLE INSURANCE ARBITRATION

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Insurance Code by amending provisions relating to the use of arbitration in third party motor vehicle accident cases.

Highlighted Provisions:

This bill:

- ▶ provides that if a plaintiff, as the moving party in a trial de novo, does not obtain a verdict that is at least 35%, rather than 20%, greater than the arbitration award, the plaintiff is responsible for the nonmoving party's costs;

- ▶ provides that if a defendant, as the moving party in a trial de novo, does not obtain a verdict that is at least 35%, rather than 20%, less than the arbitration award, the defendant is responsible for the nonmoving party's costs;

- ▶ increases the cap on the award of costs from \$2,500 to \$4,000;

- ▶ provides that if a trial de novo is requested, the moving party shall pay the nonmoving party's portion of the costs and fees for the arbitrator or arbitration panel; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **31A-22-321**, as last amended by Laws of Utah 2007, Chapter 236



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 bodily injury claims to arbitration by filing a notice of the submission of the claim to
38 binding 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 bodily injury claim; and

42 (ii) filed a notice to submit the claim to arbitration within 14 days after the complaint
43 has been answered; and

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

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

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

52 (c) A claim for property damage may not be made in an arbitration proceeding under
53 Subsection (1) unless agreed upon by the parties in writing.

54 (3) A claim for punitive damages may not be made in an arbitration proceeding under
55 Subsection (1) or any subsequent proceeding, even if the claim is later resolved through a trial
56 de novo under Subsection (11).

57 (4) (a) A person who has elected arbitration under this section may rescind the person's
58 election if the rescission is made within:

- 59 (i) 90 days after the election to arbitrate; and
- 60 (ii) no less than 30 days before any scheduled arbitration hearing.
- 61 (b) A person seeking to rescind an election to arbitrate under this Subsection (4) shall:
- 62 (i) file a notice of the rescission of the election to arbitrate with the district court in
- 63 which the matter was filed; and
- 64 (ii) send copies of the notice of the rescission of the election to arbitrate to all counsel
- 65 of record to the action.
- 66 (c) All discovery completed in anticipation of the arbitration hearing shall be available
- 67 for use by the parties as allowed by the Utah Rules of Civil Procedure and Utah Rules of
- 68 Evidence.
- 69 (d) A party who has elected to arbitrate under this section and then rescinded the
- 70 election to arbitrate under this Subsection (4) may not elect to arbitrate the claim under this
- 71 section again.
- 72 (5) (a) Unless otherwise agreed to by the parties or by order of the court, an arbitration
- 73 process elected under this section is subject to Rule 26, Utah Rules of Civil Procedure.
- 74 (b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be
- 75 completed within 150 days after the date arbitration is elected under this section.
- 76 (6) (a) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
- 77 arbitration under this section shall be resolved by a single arbitrator.
- 78 (b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall
- 79 agree on the single arbitrator selected under Subsection (6)(a) within 90 days of the answer of
- 80 the defendant.
- 81 (c) If the parties are unable to agree on a single arbitrator as required under Subsection
- 82 (6)(b), the parties shall select a panel of three arbitrators.
- 83 (d) If the parties select a panel of three arbitrators under Subsection (6)(c):
- 84 (i) each side shall select one arbitrator; and
- 85 (ii) the arbitrators appointed under Subsection (6)(d)(i) shall select one additional
- 86 arbitrator to be included in the panel.
- 87 (7) Unless otherwise agreed to in writing:
- 88 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
- 89 under Subsection (6)(a); and

90 (b) if an arbitration panel is selected under Subsection (6)(d):

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

92 and

93 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected
94 under Subsection (6)(d)(ii).

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

98 (9) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and
99 Utah Rules of Evidence apply to the arbitration proceeding.

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

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

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

107 (10) A written decision by a single arbitrator or by a majority of the arbitration panel
108 shall constitute a final decision.

109 (11) (a) An arbitration award issued under this section shall be the final resolution of
110 all bodily injury claims between the parties and may be reduced to judgment by the court upon
111 motion and notice unless:

112 [~~(a)~~] (i) either party, within 20 days after service of the arbitration award:

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

114 [~~(i)~~] (B) serves the nonmoving party with a copy of the notice requesting a trial de
115 novo under Subsection (11)(a)(i)(A); or

116 [~~(b)~~] (ii) the arbitration award has been satisfied.

117 (b) If a trial de novo is requested under this Subsection (11), the moving party shall pay
118 the nonmoving party's portion of the costs and fees for the arbitrator or arbitration panel.

119 (12) (a) Upon filing a notice requesting a trial de novo under Subsection (11), the claim
120 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules

121 of Evidence in the district court.

122 (b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
123 request a jury trial with a request for trial de novo filed under Subsection (11)(a)(i)(A).

124 (13) (a) If the plaintiff, as the moving party in a trial de novo requested under
125 Subsection (11), does not obtain a verdict that is at least \$5,000 and is at least [~~20%~~] 35%
126 greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's
127 costs.

128 (b) Except as provided in Subsection (13)(c), the costs under Subsection (13)(a) shall
129 include:

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

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

132 (c) An award of costs under this Subsection (13) may not exceed [~~\$2,500~~] \$4,000.

133 (14) (a) If a defendant, as the moving party in a trial de novo requested under
134 Subsection (11), does not obtain a verdict that is at least [~~20%~~] 35% less than the arbitration
135 award, the defendant is responsible for all of the nonmoving party's costs.

136 (b) Except as provided in Subsection (14)(c), the costs under Subsection (14)(a) shall
137 include:

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

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

140 (c) An award of costs under this Subsection (14) may not exceed [~~\$2,500~~] \$4,000.

141 (15) For purposes of determining whether a party's verdict is greater or less than the
142 arbitration award under Subsections (13) and (14), a court may not consider any recovery or
143 other relief granted on a claim for damages if the claim for damages:

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

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

147 (16) If a district court determines, upon a motion of the nonmoving party, that the
148 moving party's use of the trial de novo process was filed in bad faith as defined in Section
149 78-27-56, the district court may award reasonable attorney fees to the nonmoving party.

150 (17) Nothing in this section is intended to affect or prevent any first party claim from
151 later being brought under any first party insurance policy under which the injured person is a

152 covered person.

153 (18) (a) If a defendant requests a trial de novo under Subsection (11), the verdict at trial
154 may not exceed \$40,000.

155 (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may
156 not exceed \$25,000.

157 (19) All arbitration awards issued under this section shall bear postjudgment interest
158 pursuant to Section 15-1-4.

Legislative Review Note
as of 2-12-08 8:49 AM

Office of Legislative Research and General Counsel

H.B. 467 - Motor Vehicle Insurance Arbitration Amendments

Fiscal Note

2008 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 likely will not result in direct, measurable costs and/or benefits for businesses, or local governments. Individuals may benefit from increased awards in arbitration cases.
