

Senator Stephen H. Urquhart proposes the following substitute bill:

**MOTOR VEHICLE ACCIDENT ARBITRATION**

**AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

House Sponsor: James A. Dunnigan

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code by amending provisions relating to the use of arbitration for certain motor vehicle accident claims.

**Highlighted Provisions:**

This bill:

- ▶ increases the arbitration award limit for a party that submits a bodily injury claim to arbitration;
- ▶ provides that a claim submitted to arbitration is not subject to subrogation on the part of the underinsured motorist carrier;
- ▶ provides that a party that elects to proceed against a defendant through certain arbitration proceedings:
  - waives the right to obtain a judgment against the personal assets of the defendant; and
  - is limited only to recovery against available insurance coverage;
- ▶ amends the time limit that discovery must be completed within;
- ▶ provides that upon filing a notice requesting a trial de novo and unless otherwise stipulated to by the parties, an additional amount of time shall be allowed for



- 26 discovery;
- 27       ▶ amends the requirements to determine when the moving party in a trial de novo is
- 28 responsible for the nonmoving party's costs;
- 29       ▶ increases the limits on the award of certain costs in a trial de novo on an arbitration
- 30 proceeding;
- 31       ▶ increases the limits on trial verdict in a trial de novo on an arbitration proceeding;
- 32       ▶ provides that an interim committee designated by the Legislative Management
- 33 Committee shall study the results of implementing arbitration in third party motor
- 34 vehicle accident claims; and
- 35       ▶ makes technical changes.

36 **Monies Appropriated in this Bill:**

37       None

38 **Other Special Clauses:**

39       None

40 **Utah Code Sections Affected:**

41 AMENDS:

42       **31A-22-321**, as last amended by Laws of Utah 2008, Chapters 3, 162, and 221

43 **Uncodified Material Affected:**

44 ENACTS UNCODIFIED MATERIAL



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

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

48       **31A-22-321. Use of arbitration in third party motor vehicle accident cases.**

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

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

53       (i) previously and timely filed a complaint in a district court that includes a third party  
54 bodily injury claim; and

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

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

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

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

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

67 (d) A party who elects to proceed against a defendant under this section:

68 (i) waives the right to obtain a judgment against the personal assets of the defendant;

69 and

70 (ii) is limited to recovery only against available limits of insurance coverage.

71 (e) (i) This section does not prevent a party from pursuing an underinsured motorist  
72 claim as set out in Section 31A-22-305.3.

73 (ii) An underinsured motorist claim described in Subsection (2)(e)(i) is not limited to  
74 the \$50,000 limit described in Subsection (2)(a).

75 (iii) There shall be no right of subrogation on the part of the underinsured motorist  
76 carrier for a claim submitted to arbitration under this section.

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

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

82 (i) 90 days after the election to arbitrate; and

83 (ii) no less than 30 days before any scheduled arbitration hearing.

84 (b) A person seeking to rescind an election to arbitrate under this Subsection (4) shall:

85 (i) file a notice of the rescission of the election to arbitrate with the district court in  
86 which the matter was filed; and

87 (ii) send copies of the notice of the rescission of the election to arbitrate to all counsel

88 of record to the action.

89 (c) All discovery completed in anticipation of the arbitration hearing shall be available  
90 for use by the parties as allowed by the Utah Rules of Civil Procedure and Utah Rules of  
91 Evidence.

92 (d) A party who has elected to arbitrate under this section and then rescinded the  
93 election to arbitrate under this Subsection (4) may not elect to arbitrate the claim under this  
94 section again.

95 (5) (a) Unless otherwise agreed to by the parties or by order of the court, an arbitration  
96 process elected under this section is subject to Rule 26, Utah Rules of Civil Procedure.

97 (b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be  
98 completed within 150 days after the date arbitration is elected under this section or the date the  
99 answer is filed, whichever is longer.

100 (6) (a) Unless otherwise agreed to in writing by the parties, a claim that is submitted to  
101 arbitration under this section shall be resolved by a single arbitrator.

102 (b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall  
103 agree on the single arbitrator selected under Subsection (6)(a) within 90 days of the answer of  
104 the defendant.

105 (c) If the parties are unable to agree on a single arbitrator as required under Subsection  
106 (6)(b), the parties shall select a panel of three arbitrators.

107 (d) If the parties select a panel of three arbitrators under Subsection (6)(c):

108 (i) each side shall select one arbitrator; and

109 (ii) the arbitrators appointed under Subsection (6)(d)(i) shall select one additional  
110 arbitrator to be included in the panel.

111 (7) Unless otherwise agreed to in writing:

112 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected  
113 under Subsection (6)(a); and

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

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

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

119 (8) Except as otherwise provided in this section and unless otherwise agreed to in  
120 writing by the parties, an arbitration proceeding conducted under this section shall be governed  
121 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

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

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

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

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

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

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

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

137 (i) files a notice requesting a trial de novo in the district court; and

138 (ii) serves the nonmoving party with a copy of the notice requesting a trial de novo  
139 under Subsection (11)(a)(i); or

140 (b) the arbitration award has been satisfied.

141 (12) (a) Upon filing a notice requesting a trial de novo under Subsection (11)[;]:

142 (i) unless otherwise stipulated to by the parties or ordered by the court, an additional 90  
143 days shall be allowed for further discovery;

144 (ii) the additional discovery time under Subsection (12)(a)(i) shall run from the notice  
145 of appeal; and

146 (iii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil  
147 Procedure and Utah Rules of Evidence in the district court.

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

150 (13) (a) If the plaintiff, as the moving party in a trial de novo requested under  
151 Subsection (11), does not obtain a verdict that is at least \$5,000 and is at least [~~35%~~] 30%  
152 greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's  
153 costs.

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

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

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

158 (c) An award of costs under this Subsection (13) may not exceed [~~\$4,000~~] \$6,000.

159 (14) (a) If a defendant, as the moving party in a trial de novo requested under  
160 Subsection (11), does not obtain a verdict that is at least [~~35%~~] 30% less than the arbitration  
161 award, the defendant is responsible for all of the nonmoving party's costs.

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

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

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

166 (c) An award of costs under this Subsection (14) may not exceed [~~\$4,000~~] \$6,000.

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

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

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

173 (16) If a district court determines, upon a motion of the nonmoving party, that the  
174 moving party's use of the trial de novo process was filed in bad faith as defined in Section  
175 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

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

179 (18) (a) If a defendant requests a trial de novo under Subsection (11), in no event can  
180 the total verdict at trial [~~may not~~] exceed [~~\$40,000~~] \$15,000 above any available limits of

181 insurance coverage and in no event can the total verdict exceed \$65,000.

182 (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may  
183 not exceed [~~\$25,000~~] \$50,000.

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

186 Section 2. **Study.**

187 (1) During the 2012 interim, the Legislative Management Committee shall designate an  
188 appropriate interim committee of the Legislature to study the results of the use of arbitration in  
189 third party motor vehicle accident claims under Section 31A-22-321.

190 (2) The designated interim committee shall:

191 (a) hear reports from persons impacted in using arbitration; and

192 (b) consider any issues which need additional legislative remedies.

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**S.B. 105 1st Sub. (Green) - Motor Vehicle Accident Arbitration Amendments**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

This bill may entice up to 200 motor vehicle accident cases into arbitration. The court fees required in arbitration cases are about the same as those litigated. The amount of time spent on an arbitration case is reduced for judges and attorneys and remains the same for others such as paralegals, clerks and secretaries. Total time savings could be significant but there are too many variables for a reliable estimate.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Businesses and individuals may be impacted due to proposed changes in award limits.