

**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;
- ▶ repeals the time limit that discovery must be completed within after arbitration is elected;
- ▶ provides that unless otherwise agreed to by the parties or ordered by the court, the case shall be concluded within a certain time period;
- ▶ increases the limits on the award of certain costs in a trial de novo on an arbitration



28 proceeding;

29       ▶ increases the limits on trial verdict in a trial de novo on an arbitration proceeding;

30       ▶ provides that when either party requests a trial de novo, the non-moving party may  
31 advise the jury of the amount of the underlying arbitration award;

32       ▶ provides that personal assets of the defendant shall be accessible for any amount of  
33 the judgment not covered by the motor vehicle insurance in a trial de novo on an  
34 arbitration proceeding; 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



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

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

46       **31A-22-321. Use of arbitration in third party motor vehicle accident cases.**

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

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

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

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

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

57       (2) (a) If a party submits a bodily injury claim to arbitration under Subsection (1), the  
58 party submitting the claim or the party's representative is limited to an arbitration award that

59 does not exceed [~~\$25,000~~] \$50,000 in addition to any available personal injury protection  
60 benefits and any claim for property damage.

61 (b) There shall be no right of subrogation on the part of the undersinsured motorist  
62 carrier for a claim submitted to arbitration under this section.

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

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

67 (e) 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 insurance coverage.

71 (f) (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)(f)(i) is not limited to  
74 the \$50,000 limit described in Subsection (2)(a).

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

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

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

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

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

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

85 (ii) send copies of the notice of the rescission of the election to arbitrate to all counsel  
86 of record to the action.

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

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

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

95 (b) Unless otherwise agreed to by the parties or ordered by the court, [~~discovery shall~~  
96 ~~be completed within 150 days after the date arbitration is elected under this section]~~ the case  
97 shall be concluded within 270 days from the date arbitration is elected under this section.

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

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

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

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

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

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

109 (7) Unless otherwise agreed to in writing:

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

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

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

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

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

120 (9) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and

121 Utah Rules of Evidence apply to the arbitration proceeding.

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

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

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

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

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

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

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

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

138 (b) the arbitration award has been satisfied.

139 (12) (a) Upon filing a notice requesting a trial de novo under Subsection (11), the claim  
140 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules  
141 of Evidence in the district court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166 (16) If a district court determines, upon a motion of the nonmoving party, that the  
167 moving party's use of the trial de novo process was filed in bad faith as defined in Section  
168 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

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

172 (18) (a) If a defendant requests a trial de novo under Subsection (11), the verdict at trial  
173 may not exceed [~~\$40,000~~] \$65,000.

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

176 (19) When either party requests a trial de novo, the non-moving party may advise the  
177 jury of the amount of the underlying arbitration award.

178 (20) The personal assets of the defendant shall be accessible for any amount of the  
179 judgment not covered by the motor vehicle insurance.

180 [~~(19)~~] (21) All arbitration awards issued under this section shall bear postjudgment  
181 interest pursuant to Section 15-1-4.

**Legislative Review Note**  
as of 1-25-10 12:57 PM

**Office of Legislative Research and General Counsel**

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**S.B. 105 - 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.