

TEST DRIVING VEHICLES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred C. Cox

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Insurance Code and Motor Vehicle Business Regulation Act by amending provisions relating to motor vehicle liability coverage of a motor vehicle owned by a motor vehicle dealer.

Highlighted Provisions:

This bill:

▶ provides that before a motor vehicle dealer allows a permissive user other than an officer, agent, or employee of a motor vehicle business to operate a motor vehicle owned by the dealer:

- the dealer shall provide written notification to the permissive user that the liability insurance coverage of the permissive user shall be the primary coverage; and

- the permissive user shall sign the written notification;

▶ provides that if a motor vehicle business fails to provide the written notification:

- the liability insurance coverage of the motor vehicle business shall be primary coverage; and

- the liability insurance coverage of the permissive user of the motor vehicle owned by the motor vehicle business shall be secondary to the liability insurance coverage of the motor vehicle business;

▶ provides that a motor vehicle dealer is required to have on file a signed, written



28 notification at any time a permissive user is operating a motor vehicle owned by the dealer; and
29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **31A-22-303**, as last amended by Laws of Utah 2010, Chapter 172

37 ENACTS:

38 **41-3-901**, Utah Code Annotated 1953



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

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

41 **31A-22-303. Motor vehicle liability coverage.**

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

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

48 (ii) (A) if it is an owner's policy, designate by appropriate reference all the motor
49 vehicles on which coverage is granted, insure the person named in the policy, insure any other
50 person using any named motor vehicle with the express or implied permission of the named
51 insured, and, except as provided in Section 31A-22-302.5, insure any person included in
52 Subsection (1)(a)(iii) against loss from the liability imposed by law for damages arising out of
53 the ownership, maintenance, or use of these motor vehicles within the United States and
54 Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not
55 less than the minimum limits specified under Section 31A-22-304; or

56 (B) if it is an operator's policy, insure the person named as insured against loss from
57 the liability imposed upon him by law for damages arising out of the insured's use of any motor
58

59 vehicle not owned by him, within the same territorial limits and with the same limits of liability
60 as in an owner's policy under Subsection (1)(a)(ii)(A);

61 (iii) except as provided in Section 31A-22-302.5, insure persons related to the named
62 insured by blood, marriage, adoption, or guardianship who are residents of the named insured's
63 household, including those who usually make their home in the same household but
64 temporarily live elsewhere, to the same extent as the named insured;

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

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

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

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

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

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

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

82 (B) the foster parent has signed to be jointly and severally liable for compensatory
83 damages caused by the minor's operation of a motor vehicle in accordance with Section
84 53-3-211.

85 (ii) "Guardianship" as defined under this Subsection (1)(c) ceases to exist when a
86 minor described in Subsection (1)(c)(i)(A) is no longer a resident of the named insured's
87 household.

88 (2) (a) A policy containing motor vehicle liability coverage under Subsection
89 31A-22-302(1)(a) may:

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

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

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

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

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

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

108 (iii) Before a motor vehicle business allows a permissive user of a motor vehicle to
109 operate a motor vehicle owned by the motor vehicle business, the motor vehicle business shall
110 provide written notification to the permissive user that the liability insurance coverage of the
111 permissive user shall be the primary coverage as required in Section 41-3-901.

112 (iv) Notwithstanding Subsections (2)(b)(i) and (ii), if a motor vehicle business fails to
113 provide written notification as required in Section 41-3-901:

114 (A) the liability insurance coverage of a motor vehicle business shall be primary
115 coverage; and

116 (B) the liability insurance coverage of a permissive user of a motor vehicle owned by a
117 motor vehicle business shall be secondary to the liability insurance coverage of a motor vehicle
118 business as specified under Subsection (2)(b)(iv)(A).

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

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

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

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

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

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

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

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

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

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

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

149 (ii) through litigation.

150 (b) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii),
151 the claimant may not elect to resolve the claim through binding arbitration under this section

152 without the written consent of both parties and the defendant's liability insurer.

153 (c) (i) Unless otherwise agreed on in writing by the parties, a claim that is submitted to
154 binding arbitration under Subsection (8)(a)(i) shall be resolved by a panel of three arbitrators.

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

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

160 (e) Except as otherwise provided in this section, an arbitration procedure conducted
161 under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act,
162 unless otherwise agreed on in writing by the parties.

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

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

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

168 (h) [~~Prior to~~] Before the rendering of the arbitration award:

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

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

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

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

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

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

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

189 Section 2. Section **41-3-901** is enacted to read:

190 **41-3-901. Motor vehicle liability coverage for permissive user of motor vehicle.**

191 (1) Before a motor vehicle dealer allows a permissive user other than an officer, agent,
192 or employee of a motor vehicle business to operate a motor vehicle owned by the dealer:

193 (a) the dealer shall provide written notification to the permissive user that the liability
194 insurance coverage of the permissive user shall be the primary coverage as required by
195 Subsection 31A-22-303(2)(b); and

196 (b) the permissive user shall sign the written notification provided by the dealer under
197 Subsection (1)(a).

198 (2) The motor vehicle dealer shall have on file a signed, written notification under
199 Subsection (1) at any time a permissive user is operating a motor vehicle owned by the dealer.

200 (3) A person who violates this section is not subject to the criminal penalties described
201 in Section 41-3-701.

Legislative Review Note
as of 1-19-11 1:40 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 227

SHORT TITLE: **Test Driving Vehicles**

SPONSOR: **Cox, F.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.