

## SB0052S02 compared with SB0052

~~deleted text~~ shows text that was in SB0052 but was deleted in SB0052S02.

inserted text shows text that was not in SB0052 but was inserted into SB0052S02.

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Senator Stephen H. Urquhart proposes the following substitute bill:

### TORTIOUS ACT ARBITRATION

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill creates a new chapter in Title 78B to promote arbitration in tort cases.

##### Highlighted Provisions:

This bill:

- ▶ enacts a new chapter, Tort Arbitration, in Title 78B;
- ▶ creates filing and notice limits;
- ▶ prohibits claims for punitive damages;
- ▶ sets guidelines for rescinding an arbitration election;
- ▶ provides for the selection of a single arbitrator or panel of arbitrators;
- ▶ states that decisions by arbitrators are final, but still allows for a trial de novo;
- ▶ specifies payment obligations for parties; and
- ▶ addresses pre- and postjudgment interest.

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### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

ENACTS:

**78B-10a-101**, Utah Code Annotated 1953

**78B-10a-102**, Utah Code Annotated 1953

**78B-10a-103**, Utah Code Annotated 1953

**78B-10a-104**, Utah Code Annotated 1953

**78B-10a-105**, Utah Code Annotated 1953

**78B-10a-106**, Utah Code Annotated 1953

**78B-10a-107**, Utah Code Annotated 1953

**78B-10a-108**, Utah Code Annotated 1953

**78B-10a-109**, Utah Code Annotated 1953

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

Section 1. Section **78B-10a-101** is enacted to read:

#### **CHAPTER 10a. TORT ARBITRATION**

##### **78B-10a-101. Title.**

This chapter is known as "Tort Arbitration."

Section 2. Section **78B-10a-102** is enacted to read:

##### **78B-10a-102. General provisions -- Filing -- Notice -- Limits.**

(1) Except for bodily injury cases involving a motor vehicle as described in Sections 31A-22-303, 31A-22-305, and 31A-22-305.3, ~~and~~ medical malpractice cases as described in Section 78B-3-401, ~~a person suffering~~ and governmental claims described in section 63G-7-401, any party to an action for personal injury or property damage as a result of tortious conduct may elect to submit all bodily injury claims and property damage claims to arbitration by filing a notice of the submission of the claim to binding arbitration in a district court if:

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

(i) previously and timely filed a complaint in a district court that includes a claim for

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bodily injury or property damage, or both; and

(i) filed a notice to submit the claim to arbitration within 14 days after the complaint is answered; and

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

(2) All parties shall respond within 30 days to the notice either agreeing or refusing to agree to arbitration. If a party does not respond, it is considered a refusal.

(a) If all parties agree to arbitration, the arbitration shall proceed in accordance with this chapter.

(b) If the parties do not agree to arbitration, the action shall proceed to trial. The request for arbitration may not be revealed during a trial or while a damage award is being deliberated.

(~~2~~3) If ~~{a party submits}~~ the parties agree to submit a bodily injury or property damage claim to arbitration under Subsection (1), the party ~~{submitting the claim}~~ initially requesting arbitration or the party's representative is limited to an arbitration award not to exceed \$50,000.

Section 3. Section **78B-10a-103** is enacted to read:

### **78B-10a-103. Punitive damages.**

A claim for punitive damages may not be made in an arbitration proceeding in accordance with this chapter or any subsequent proceeding, even if the claim is later resolved through a trial de novo in accordance with Section 78b-10a-108.

Section 4. Section **78B-10a-104** is enacted to read:

### **78B-10a-104. Rescission -- Discovery.**

(1) (a) ~~{A person}~~ Any party who has ~~{elected}~~ agreed to arbitration in accordance with this chapter may rescind the ~~{election}~~ agreement if the rescission is made within:

(i) 90 days after the ~~{election}~~ agreement to arbitrate; and

(ii) not less than 30 days before any scheduled arbitration hearing.

(b) A person seeking to rescind an ~~{election}~~ agreement to arbitrate in accordance with this chapter shall:

(i) file a notice of the rescission of the ~~{election}~~ agreement to arbitrate with the district court where the matter was filed; and

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(ii) send copies of the notice of the rescission of the ~~election~~agreement to arbitrate to all counsel of record in the action.

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

(d) A party who has ~~selected~~agreed to arbitrate in accordance with this chapter and then rescinded the ~~election~~agreement to arbitrate may not ~~elect~~subsequently request to arbitrate the claim again.

(2) (a) Unless otherwise agreed to by the parties or by order of the court, an arbitration process ~~selected~~agreed to in accordance with this chapter is subject to Rule 26, Utah Rules of Civil Procedure.

(b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be completed within 150 days after the date arbitration is elected in accordance with this chapter or the date the answer is filed, whichever is longer.

Section 5. Section **78B-10a-105** is enacted to read:

### **78B-10a-105. Selection of arbitrator or panel -- Costs.**

(1) (a) Unless otherwise agreed to in writing by the parties, a claim submitted to arbitration shall be resolved by a single arbitrator.

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

(c) If the parties are unable to agree on a single arbitrator as required by Subsection (1)(b), a panel of three arbitrators shall be selected in accordance with Subsection (1)(d).

(d) If a panel of three arbitrators is selected:

(i) each side shall select one arbitrator; and

(ii) the arbitrators appointed under Subsection (1)(d)(i) shall jointly select one additional arbitrator to be included on the panel.

(2) Unless otherwise agreed to in writing:

(a) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (1)(a); and

(b) if an arbitration panel is selected under Subsection (1)(d), each party shall pay:

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

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(ii) an equal share of the fees and costs of the arbitrator selected under Subsection (1)(d)(ii).

Section 6. Section **78B-10a-106** is enacted to read:

### **78B-10a-106. Governing provisions.**

(1) Except as otherwise provided in this chapter and unless otherwise agreed to in writing by the parties, an arbitration proceeding conducted in accordance with this chapter shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(2) (a) Subject to the provisions of this chapter, the Utah Rules of Civil Procedure and Utah Rules of Evidence apply to arbitration proceedings.

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

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

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

Section 7. Section **78B-10a-107** is enacted to read:

### **78B-10a-107. Decision -- Award -- Court action.**

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

(2) An arbitration award issued in accordance with this chapter shall be the final resolution of all property damage or bodily injury claims between the parties and may be reduced to judgment by the court upon motion and notice unless:

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

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

(ii) serves the nonmoving party with a copy of the notice requesting a trial de novo; or

(b) the arbitration award has been satisfied.

Section 8. Section **78B-10a-108** is enacted to read:

### **78B-10a-108. Trial de novo.**

(1) (a) Upon filing a notice requesting a trial de novo in accordance with Subsection 78B-10a-107(2):

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

(ii) the additional discovery time under Subsection (1)(a)(i) shall run from the notice of the request for a trial de novo; and

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

(b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request a jury trial with a request for trial de novo filed in accordance with Subsection 78B-10a-107(2)(a)(i).

(2) (a) If the plaintiff, as the moving party in a trial de novo requested under Subsection 78B-10a-107(2), does not obtain a verdict that is at least \$5,000 and 30% greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs.

(b) Except as provided in Subsection (2)(c), the costs under Subsection (2)(a) shall include:

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

(ii) the costs of expert witnesses and depositions.

(c) An award of costs under this Subsection (2) may not exceed \$6,000.

(3) (a) If a defendant, as the moving party in a trial de novo requested in accordance with Subsection 78B-10a-107(2), does not obtain a verdict that is at least 35% less than the arbitration award, the defendant is responsible for all of the nonmoving party's costs.

(b) Except as provided in Subsection (3)(c), the costs under Subsection (3)(a) shall include:

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

(ii) the costs of expert witnesses and depositions.

(c) An award of costs in accordance with this Subsection (3) may not exceed \$6,000.

(4) For purposes of determining whether a party's verdict is greater or less than the arbitration award under Subsections (2) and (3), a court may not consider any recovery or other relief granted on a claim for damages if the claim for damages:

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

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

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

(6) (a) If a defendant requests a trial de novo under Subsection 78B-10a-107(2), the total verdict at trial may not exceed \$15,000 above any available limits of insurance coverage and the total verdict may not exceed \$65,000.

(b) If a plaintiff requests a trial de novo under Subsection 78B-10a-107(2), the verdict at trial may not exceed \$50,000.

Section 9. Section **78B-10a-109** is enacted to read:

### **78B-10a-109. Interest.**

All arbitration awards issued in accordance with this chapter shall bear prejudgment interest pursuant to Sections 15-1-1 and 78B-5-824, and postjudgment interest pursuant to Section 15-1-4.

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### **Legislative Review Note**

~~as of 1-11-11 3:18 PM~~

~~Office of Legislative Research and General Counsel}~~