

1                   **ARBITRATION FOR DOG BITES AMENDMENTS**

2                                   2014 GENERAL SESSION

3                                   STATE OF UTAH

4                   **Chief Sponsor: LaVar Christensen**

5                                   Senate Sponsor: John L. Valentine

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7                   **LONG TITLE**

8                   **General Description:**

9                   This bill modifies Title 18, Chapter 1, Injuries by Dogs, by creating a provision for  
10 using arbitration in personal injury from a dog attack.

11                   **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ authorizes a person injured from a dog attack to use arbitration to resolve a third  
14 party claim under certain requirements;
- 15                   ▶ provides procedures for resolving the third party claim through arbitration;
- 16                   ▶ limits an arbitration award to \$50,000;
- 17                   ▶ prohibits a claim for punitive damages or any subsequent proceeding;
- 18                   ▶ provides that a court may award reasonable attorney fees if the court finds that a  
19 party's use of the de novo process was filed in bad faith;
- 20                   ▶ provides that if a defendant demands a trial de novo after an arbitration award, the  
21 verdict at the trial may not exceed \$65,000;
- 22                   ▶ provides that if a plaintiff demands a trial de novo after an arbitration award, the  
23 verdict at the trial may not exceed \$15,000 above any insurance policy limit; and
- 24                   ▶ provides that arbitration awards shall bear postjudgment interest.

25                   **Money Appropriated in this Bill:**

26                   None

27                   **Other Special Clauses:**

28                   None

29                   **Utah Code Sections Affected:**

30 ENACTS:

31 **18-1-4**, Utah Code Annotated 1953



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

34 Section 1. Section **18-1-4** is enacted to read:

35 **18-1-4. Use of arbitration in personal injury from dog attack cases.**

36 (1) A person injured as a result of a dog attack may elect to submit all third party  
37 bodily injury claims to arbitration by filing a notice of the submission of the claim to binding  
38 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 may not exceed \$50,000 in addition to any medical premise benefits and any claim for property  
49 damage.

50 (b) A party who elects to proceed against a defendant under this section:

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

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

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 party who has elected arbitration under this section may rescind the party'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 party 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 the 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 or the date the  
76 answer is filed, whichever is longer.

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

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

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

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

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

86 (ii) the arbitrators selected under Subsection (6)(d)(i) shall select one additional  
87 arbitrator to be included in the panel.

88 (7) Unless otherwise agreed to in writing:

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

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

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

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

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

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

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

103 (c) Discovery shall be conducted in accordance with the Utah Rules of Civil Procedure  
104 and shall be subject to the jurisdiction of the district court in which 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) An arbitration award issued under this section shall be the final resolution of all  
110 bodily injury claims between the parties and may be reduced to judgment by the court upon  
111 motion and notice unless:

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

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

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

116 (b) the arbitration award has been satisfied.

117 (12) (a) Upon filing a notice requesting a trial de novo under Subsection (11):

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

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

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

124 (b) In accordance with the Utah Rules of Civil Procedure, either party may request a  
125 jury trial with a request for trial de novo filed under Subsection (11).

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

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

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

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

133 (c) An award of costs under this Subsection (13) may not exceed \$6,000.

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

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

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

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

141 (c) An award of costs under this Subsection (14) may not exceed \$6,000.

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

145           (a) writing prior to the arbitration proceeding; or

146           (b) response to discovery contrary to the Utah Rules of Civil 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 described in Section  
149 78B-5-825, 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 total verdict  
154 at trial may not exceed \$15,000 above any available limits of insurance coverage and the total  
155 verdict may not exceed \$65,000.

156           (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may  
157 not exceed \$50,000.

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