

PERSONAL INJURY AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill amends provisions related to motor vehicle insurance.

Highlighted Provisions:

This bill:

- ▶ includes a bone fracture as an injury that allows a person who has or is required to have direct benefit coverage under a policy that includes personal injury protection to maintain an action for damages;

- ▶ modifies the showing required to establish the qualifying injury in an action for damages; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-22-307, as last amended by Laws of Utah 2006, Chapter 197

31A-22-309, as last amended by Laws of Utah 2017, Chapter 363

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



28 Section 1. Section 31A-22-307 is amended to read:

29 **31A-22-307. Personal injury protection coverages and benefits.**

30 (1) Personal injury protection coverages and benefits include:

31 (a) up to the minimum amount required coverage of not less than \$3,000 per person,
32 the reasonable value of all expenses for necessary:

33 (i) medical services;

34 (ii) surgical services;

35 (iii) X-ray services;

36 (iv) dental services;

37 (v) rehabilitation services, including prosthetic devices;

38 (vi) ambulance services;

39 (vii) hospital services; and

40 (viii) nursing services;

41 (b) (i) the lesser of \$250 per week or 85% of any loss of gross income and loss of
42 earning capacity per person from inability to work, for a maximum of 52 consecutive weeks
43 after the loss, except that this benefit need not be paid for the first three days of disability,
44 unless the disability continues for longer than two consecutive weeks after the date of injury;
45 and

46 (ii) a special damage allowance not exceeding \$20 per day for a maximum of 365 days,
47 for services actually rendered or expenses reasonably incurred for services that, but for the
48 injury, the injured person would have performed for the injured person's household, except that
49 this benefit need not be paid for the first three days after the date of injury unless the person's
50 inability to perform these services continues for more than two consecutive weeks;

51 (c) funeral, burial, or cremation benefits not to exceed a total of \$1,500 per person; and

52 (d) compensation on account of death of a person, payable to the person's heirs, in the
53 total of \$3,000.

54 (2) (a) (i) To determine the reasonable value of the medical expenses provided for in
55 Subsection (1) and under Subsection 31A-22-309(1)(a)~~(v)~~(vi), the commissioner shall
56 conduct a relative value study of services and accommodations for the diagnosis, care,
57 recovery, or rehabilitation of an injured person in the most populous county in the state to
58 assign a unit value and determine the 75th percentile charge for each type of service and

59 accommodation.

60 (ii) The relative value study shall be updated every other year.

61 (iii) In conducting the relative value study, the department may consult or contract with
62 appropriate public and private medical and health agencies or other technical experts.

63 (iv) The costs and expenses incurred in conducting, maintaining, and administering the
64 relative value study shall be funded by the tax created under Section 59-9-105.

65 (v) Upon completion of the relative value study, the department shall prepare and
66 publish a relative value study which sets forth the unit value and the 75th percentile charge
67 assigned to each type of service and accommodation.

68 (b) (i) The reasonable value of any service or accommodation is determined by
69 applying the unit value and the 75th percentile charge assigned to the service or
70 accommodation under the relative value study.

71 (ii) If a service or accommodation is not assigned a unit value or the 75th percentile
72 charge under the relative value study, the value of the service or accommodation shall equal the
73 reasonable cost of the same or similar service or accommodation in the most populous county
74 of this state.

75 (c) This Subsection (2) does not preclude the department from adopting a schedule
76 already established or a schedule prepared by persons outside the department, if it meets the
77 requirements of this Subsection (2).

78 (d) Every insurer shall report to the commissioner any pattern of overcharging,
79 excessive treatment, or other improper actions by a health provider within 30 days after the day
80 on which the insurer has knowledge of the pattern.

81 (e) (i) In disputed cases, a court on its own motion or on the motion of either party,
82 may designate an impartial medical panel of not more than three licensed physicians to
83 examine the claimant and testify on the issue of the reasonable value of the claimant's medical
84 services or expenses.

85 (ii) An impartial medical panel designated under Subsection (2)(e)(i) shall consist of a
86 majority of health care professionals within the same license classification and specialty as the
87 provider of the claimant's medical services or expenses.

88 (3) Medical expenses as provided for in Subsection (1)(a) and in Subsection
89 31A-22-309(1)(a)(~~v~~)(vi) include expenses for any nonmedical remedial care and treatment

90 rendered in accordance with a recognized religious method of healing.

91 (4) The insured may waive for the named insured and the named insured's spouse only
92 the loss of gross income benefits of Subsection (1)(b)(i) if the insured states in writing that:

93 (a) within 31 days of applying for coverage, neither the insured nor the insured's spouse
94 received any earned income from regular employment; and

95 (b) for at least 180 days from the date of the writing and during the period of insurance,
96 neither the insured nor the insured's spouse will receive earned income from regular
97 employment.

98 (5) This section does not:

99 (a) prohibit the issuance of a policy of insurance providing coverages greater than the
100 minimum coverage required under this chapter; or

101 (b) require the segregation of those minimum coverages from other coverages in the
102 same policy.

103 (6) Deductibles are not permitted with respect to the insurance coverages required
104 under this section.

105 Section 2. Section 31A-22-309 is amended to read:

106 **31A-22-309. Limitations, exclusions, and conditions to personal injury**
107 **protection.**

108 (1) (a) A person who has or is required to have direct benefit coverage under a policy
109 which includes personal injury protection may not maintain a cause of action for general
110 damages arising out of personal injuries alleged to have been caused by an automobile
111 accident, except where the person ~~has~~ **→ [presents prima facie evidence that the person]** ~~has~~ has
111a sustained

112 one or more of the following:

113 (i) death;

114 (ii) dismemberment;

115 (iii) permanent disability or permanent impairment based upon objective findings;

116 (iv) permanent disfigurement; [or]

117 (v) a bone fracture; or

118 ~~(v)~~ (vi) medical expenses to a person in excess of \$3,000.

119 (b) Subsection (1)(a) does not apply to a person making an uninsured motorist claim.

120 (2) (a) Any insurer issuing personal injury protection coverage under this part may only

121 exclude from this coverage benefits:

122 (i) for any injury sustained by the insured while occupying another motor vehicle
123 owned by or furnished for the regular use of the insured or a resident family member of the
124 insured and not insured under the policy;

125 (ii) for any injury sustained by any person while operating the insured motor vehicle
126 without the express or implied consent of the insured or while not in lawful possession of the
127 insured motor vehicle;

128 (iii) to any injured person, if the person's conduct contributed to the person's injury:

129 (A) by intentionally causing injury to the person; or

130 (B) while committing a felony;

131 (iv) for any injury sustained by any person arising out of the use of any motor vehicle
132 while located for use as a residence or premises;

133 (v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion
134 or revolution, or to any act or condition incident to any of the foregoing; or

135 (vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous
136 properties of nuclear materials.

137 (b) This Subsection (2) does not limit the exclusions that may be contained in other
138 types of coverage.

139 (3) The benefits payable to any injured person under Section 31A-22-307 are reduced
140 by:

141 (a) any benefits which that person receives or is entitled to receive as a result of an
142 accident covered in this code under any workers' compensation or similar statutory plan; and

143 (b) any amounts which that person receives or is entitled to receive from the United
144 States or any of its agencies because that person is on active duty in the military service.

145 (4) When a person injured is also an insured party under any other policy, including
146 those policies complying with this part, primary coverage is given by the policy insuring the
147 motor vehicle in use during the accident.

148 (5) (a) Payment of the benefits provided for in Section 31A-22-307 shall be made on a
149 monthly basis as expenses are incurred.

150 (b) Benefits for any period are overdue if they are not paid within 30 days after the
151 insurer receives reasonable proof of the fact and amount of expenses incurred during the

152 period. If reasonable proof is not supplied as to the entire claim, the amount supported by
153 reasonable proof is overdue if not paid within 30 days after that proof is received by the
154 insurer. Any part or all of the remainder of the claim that is later supported by reasonable proof
155 is also overdue if not paid within 30 days after the proof is received by the insurer.

156 (c) If the insurer fails to pay the expenses when due, these expenses shall bear interest
157 at the rate of 1-1/2% per month after the due date.

158 (d) The person entitled to the benefits may bring an action in contract to recover the
159 expenses plus the applicable interest. If the insurer is required by the action to pay any overdue
160 benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the
161 claimant.

162 (6) (a) Except as provided in Subsection (6)(b), every policy providing personal injury
163 protection coverage is subject to the following:

164 (i) that where the insured under the policy is or would be held legally liable for the
165 personal injuries sustained by any person to whom benefits required under personal injury
166 protection have been paid by another insurer, the insurer of the person who would be held
167 legally liable shall reimburse the other insurer for the payment, but not in excess of the amount
168 of damages recoverable; and

169 (ii) that the issue of liability for that reimbursement and its amount shall be decided by
170 mandatory, binding arbitration between the insurers.

171 (b) There shall be no right of reimbursement between insurers under Subsection (6)(a)
172 if the insurer of the person who would be held legally liable for the personal injuries sustained
173 has tendered its policy limit.

174 (c) (i) If the insurer of the person who would be held legally liable for the personal
175 injuries sustained reimburses a no-fault insurer prior to settling a third party liability claim with
176 an injured person and subsequently determines that some or all of the reimbursed amount is
177 needed to settle a third party claim, the insurer of the person who would be held legally liable
178 for the personal injuries sustained shall provide written notice to the no-fault insurer that some
179 or all of the reimbursed amount is needed to settle a third party liability claim.

180 (ii) The written notice described under Subsection (6)(c)(i) shall:

181 (A) identify the amount of the reimbursement that is needed to settle a third party
182 liability claim;

183 (B) provide notice to the no-fault insurer that the no-fault insurer has 15 days to return
184 the amount described in Subsection (6)(c)(ii)(A); and

185 (C) identify the third party liability insurer that the returned amount shall be paid to.

186 (iii) A no-fault insurer that receives a notice under this Subsection (6)(c) shall return
187 the portion of the reimbursement identified under Subsection (6)(c)(ii) to the third party
188 liability insurer identified under Subsection (6)(c)(ii)(C) within 15 business days from receipt
189 of a notice under this Subsection (6)(c).