

ARBITRATION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: _____

LONG TITLE

General Description:

This bill makes changes to the use of arbitration in cases involving a third party motor vehicle accident.

Highlighted Provisions:

This bill:

- ▶ modifies arbitration award limitations;
- ▶ modifies provisions relating to a trial de novo; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-22-321, as last amended by Laws of Utah 2015, Chapter 345

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

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

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

(1) A person injured as a result of a motor vehicle accident may elect to submit all third



28 party bodily injury claims to arbitration by filing a notice of the submission of the claim to
29 binding arbitration in a district court if:

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

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

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

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

37 (2) (a) If a party submits a bodily injury claim to arbitration under Subsection (1), the
38 party submitting the claim or the party's representative is limited to an arbitration award that
39 does not exceed [~~\$50,000~~] the defendant's per person limits of third party bodily insurance
40 coverage in addition to any available personal injury protection benefits and any claim for
41 property damage.

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

44 (c) A claim for property damage may not be made in an arbitration proceeding under
45 Subsection (1) unless agreed upon by the parties in writing.

46 (d) A party who elects to proceed against a defendant under this section:

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

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

50 (e) (i) This section does not prevent a party from pursuing an underinsured motorist
51 claim as set out in Section [31A-22-305.3](#).

52 (ii) An underinsured motorist claim described in Subsection (2)(e)(i) is not limited to
53 [~~the \$50,000 limit~~] the defendant's per person limits of third party bodily insurance coverage as
54 described in Subsection (2)(a).

55 (iii) There shall be no right of subrogation on the part of the underinsured motorist
56 carrier for a claim submitted to arbitration under this section.

57 (3) A claim for punitive damages may not be made in an arbitration proceeding under
58 Subsection (1) or any subsequent proceeding, even if the claim is later resolved through a trial

59 de novo under Subsection (11).

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

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

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

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

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

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

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

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

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

77 (b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be
78 completed within 150 days after the date arbitration is elected under this section or the date the
79 answer is filed, whichever is longer.

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

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

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

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

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

89 (ii) the arbitrators appointed under Subsection (6)(d)(i) shall select one additional

90 arbitrator to be included in the panel.

91 (7) Unless otherwise agreed to in writing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (b) the arbitration award has been satisfied.

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

122 (i) [~~unless otherwise stipulated to by the parties or ordered by the court, an additional~~
 123 ~~90 days shall be allowed for further discovery;~~] no further discovery is allowed and the party
 124 requesting a trial de novo shall file a certificate of readiness for trial pursuant to Rule 16(b),
 125 Utah Rules of Civil Procedure; and

126 [~~(ii) the additional discovery time under Subsection (12)(a)(i) shall run from the notice~~
 127 ~~of appeal; and]~~

128 [~~(iii)~~] (ii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil
 129 Procedure and Utah Rules of Evidence in the district court.

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

132 (13) (a) If the plaintiff, as the moving party in a trial de novo requested under
 133 Subsection (11), does not obtain a verdict that is at least \$5,000 and is at least 30% greater than
 134 the damages awarded in arbitration [award], excluding the items listed in Subsection (19), the
 135 plaintiff is responsible for all of the nonmoving party's costs.

136 (b) [~~Except as provided in Subsection (13)(c), the~~] The costs [under] described in
 137 Subsection (13)(a) [shall] include:

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

139 (ii) the costs of expert witnesses and depositions[~~;~~];

140 (iii) the arbitration costs paid by the prevailing party under Subsection (7);

141 (iv) prejudgment interest described in Section 78B-5-824; and

142 (v) postjudgment interest described in Section 15-1-4.

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

144 (14) (a) If a defendant, as the moving party in a trial de novo requested under
 145 Subsection (11), does not obtain a verdict that is at least 30% less than [~~the arbitration award]~~
 146 the damages awarded in arbitration, excluding the items described in Subsection (19), the
 147 defendant is responsible for all of the nonmoving party's costs.

148 (b) [~~Except as provided in Subsection (14)(c), the~~] The costs [under] described in
 149 Subsection (14)(a) [shall] include:

150 (i) [~~any costs set forth]~~ costs described in Rule 54(d), Utah Rules of Civil Procedure;
 151 [~~and]~~

- 152 (ii) the costs of expert witnesses and depositions[-];
- 153 (iii) the arbitration costs paid by the prevailing party under Subsection (7);
- 154 (iv) prejudgment interest described in Section 78B-5-824; and
- 155 (v) postjudgment interest described in Section 15-1-4.
- 156 [~~(c) An award of costs under this Subsection (14) may not exceed \$6,000.~~]
- 157 (15) For purposes of determining whether a party's verdict is greater or less than the
- 158 arbitration award under Subsections (13) and (14), a court may not consider any recovery or
- 159 other relief granted on a claim for damages if the claim for damages:
- 160 (a) was not fully disclosed in writing prior to the arbitration proceeding; or
- 161 (b) was not disclosed in response to discovery contrary to the Utah Rules of Civil
- 162 Procedure.
- 163 (16) If a district court determines, upon a motion of the nonmoving party, that the
- 164 moving party's use of the trial de novo process was filed in bad faith as defined in Section
- 165 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.
- 166 (17) Nothing in this section is intended to affect or prevent any first party claim from
- 167 later being brought under any first party insurance policy under which the injured person is a
- 168 covered person.
- 169 (18) (a) If a defendant requests a trial de novo under Subsection (11)[~~in no event can~~
- 170 ~~the total verdict at trial~~];
- 171 (i) Subsection (2)(d) does not apply; and
- 172 (ii) the total damages award at trial may not exceed \$15,000 above any available per
- 173 person limits of insurance coverage [and in no event can the total verdict exceed \$65,000], not
- 174 including the costs described in Subsection (14)(b).
- 175 (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may
- 176 not exceed [~~\$50,000~~] the per person limits of insurance coverage.
- 177 (19) All arbitration awards issued under this section shall [~~bear postjudgment interest~~
- 178 ~~pursuant to Section 15-1-4.~~] include:
- 179 (a) the costs described in Rule 54(d), Utah Rules of Civil Procedure;
- 180 (b) the costs of expert witnesses and depositions;
- 181 (c) the arbitration costs paid by the prevailing party under Subsection (7);
- 182 (d) prejudgment interest described in Section 78B-5-824; and

183 (e) postjudgment interest described in Section 15-1-4.

184 (20) If a party requests a trial de novo under Subsection (11), the party shall file a copy
185 of the notice requesting a trial de novo with the commissioner notifying the commissioner of
186 the party's request for a trial de novo under Subsection (11).

187 Section 2. **Effective date.**

188 This bill takes effect on May 1, 2024.