

Senator Stephanie Pitcher proposes the following substitute bill:

ARBITRATION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: Anthony E. Loubet

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:



26 **31A-22-321. Use of arbitration in third party motor vehicle accident cases.**

27 (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~~] \$75,000 or the defendant's per person limits of third party bodily
40 insurance 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~~], plus a
50 maximum \$15,000 in excess of policy limits, and available costs if appealed.

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

53 (ii) An underinsured motorist claim described in Subsection (2)(e)(i) is not limited to
54 [~~the \$50,000 limit~~] the defendant's per person limits of third party bodily insurance coverage
55 [~~described in Subsection (2)(a)~~] or the \$75,000 limit.

56 (iii) There shall be no right of subrogation on the part of the underinsured motorist

57 carrier for a claim submitted to arbitration under this section.

58 (3) A claim for punitive damages may not be made in an arbitration proceeding under
59 Subsection (1) or any subsequent proceeding, even if the claim is later resolved through a trial
60 de novo under Subsection (11).

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

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

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

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

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

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

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

73 (d) A party who has elected to arbitrate under this section and then rescinded the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

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

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

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

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

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

- 88 (d) If the parties select a panel of three arbitrators under Subsection (6)(c):
89 (i) each side shall select one arbitrator; and
90 (ii) the arbitrators appointed under Subsection (6)(d)(i) shall select one additional
91 arbitrator to be included in the panel.
- 92 (7) Unless otherwise agreed to in writing:
93 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
94 under Subsection (6)(a); and
95 (b) if an arbitration panel is selected under Subsection (6)(d):
96 (i) each party shall pay the fees and costs of the arbitrator selected by that party's side;
97 and
98 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected
99 under Subsection (6)(d)(ii).
- 100 (8) Except as otherwise provided in this section and unless otherwise agreed to in
101 writing by the parties, an arbitration proceeding conducted under this section shall be governed
102 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- 103 (9) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and
104 Utah Rules of Evidence apply to the arbitration proceeding.
105 (b) The Utah Rules of Civil Procedure and Utah Rules of Evidence shall be applied
106 liberally with the intent of concluding the claim in a timely and cost-efficient manner.
107 (c) Discovery shall be conducted in accordance with Rules 26 through 37 of the Utah
108 Rules of Civil Procedure and shall be subject to the jurisdiction of the district court in which
109 the matter is filed.
- 110 (d) Dispositive motions shall be filed, heard, and decided by the district court prior to
111 the arbitration proceeding in accordance with the court's scheduling order.
- 112 (10) A written decision by a single arbitrator or by a majority of the arbitration panel
113 shall constitute a final decision.
- 114 (11) An arbitration award issued under this section shall be the final resolution of all
115 bodily injury claims between the parties and may be reduced to judgment by the court upon
116 motion and notice unless:
117 (a) either party, within 20 days after service of the arbitration award:
118 (i) files a notice requesting a trial de novo in the district court; and

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

121 (b) the arbitration award has been satisfied.

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

123 (i) unless otherwise stipulated to by the parties or ordered by the court, an additional
124 ~~[90]~~ 120 days shall be allowed for further discovery;

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

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

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

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

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

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

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

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

140 (iv) prejudgment interest described in Section [78B-5-824](#); and

141 (v) postjudgment interest described in Section [15-1-4](#).

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

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

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

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

150 [and]

151 (ii) the costs of expert witnesses and depositions[-];

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

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

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

155 [~~(c) An award of costs under this Subsection (14) may not exceed \$6,000;~~]

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

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

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

162 (16) If a district court determines, upon a motion of the nonmoving party, that the
163 moving party's use of the trial de novo process was filed in bad faith as defined in Section
164 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

165 (17) Nothing in this section is intended to affect or prevent any first party claim from
166 later being brought under any first party insurance policy under which the injured person is a
167 covered person.

168 (18) (a) If a defendant requests a trial de novo under Subsection (11)[~~in no event can~~
169 ~~the total verdict at trial~~], the total damages award at trial may not exceed \$15,000 above any
170 available per person limits of insurance coverage [~~and in no event can the total verdict exceed~~
171 ~~\$65,000~~], not including the costs described in Subsection (14)(b).

172 (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may
173 not exceed [~~\$50,000~~] the per person limits of insurance coverage.

174 (19) All arbitration awards issued under this section shall [~~bear postjudgment interest~~
175 ~~pursuant to Section 15-1-4.~~] include:

176 (a) the costs described in Rule 54(d), Utah Rules of Civil Procedure;

177 (b) the arbitration costs paid by the prevailing party under Subsection (7);

178 (c) prejudgment interest described in Section 78B-5-824; and

179 (d) postjudgment interest described in Section 15-1-4.

180 (20) If a party requests a trial de novo under Subsection (11), the party shall file a copy

181 of the notice requesting a trial de novo with the commissioner notifying the commissioner of
182 the party's request for a trial de novo under Subsection (11).

183 Section 2. **Effective date.**

184 This bill takes effect on May 1, 2024.