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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:

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 party bodily injury 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 third party bodily injury claim; and

- 29 (ii) filed a notice to submit the claim to arbitration within 14 days after the complaint
30 has been answered; and
- 31 (b) the notice required under Subsection (1)(a)(ii) is filed while the action under
32 Subsection (1)(a)(i) is still pending.
- 33 (2) (a) If a party submits a bodily injury claim to arbitration under Subsection (1), the
34 party submitting the claim or the party's representative is limited to an arbitration
35 award that does not exceed [~~\$50,000~~] \$75,000 or the defendant's per person limits of
36 third party bodily insurance, whichever is less, in addition to any available personal
37 injury protection benefits and any claim for property damage.
- 38 (b) A claim for reimbursement of personal injury protection benefits is to be resolved
39 between insurers as provided for in Subsection 31A-22-309(6)(a)(ii).
- 40 (c) A claim for property damage may not be made in an arbitration proceeding under
41 Subsection (1) unless agreed upon by the parties in writing.
- 42 (d) A party who elects to proceed against a defendant under this section:
- 43 (i) waives the right to obtain a judgment against the personal assets of the defendant;
44 and
- 45 (ii) is limited to recovery only against available limits of insurance [~~coverage~~] , plus a
46 maximum \$15,000 in excess of policy limits, and available costs if appealed.
- 47 (e) (i) This section does not prevent a party from pursuing an underinsured motorist
48 claim as set out in Section 31A-22-305.3.
- 49 (ii) An underinsured motorist claim described in Subsection (2)(e)(i) is not limited to [
50 ~~the \$50,000 limit~~] the defendant's per person limits of third party bodily insurance
51 coverage [described in Subsection (2)(a)] or the \$75,000 limit.
- 52 (iii) There shall be no right of subrogation on the part of the underinsured motorist
53 carrier for a claim submitted to arbitration under this section.
- 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
56 a trial de novo under Subsection (11).
- 57 (4) (a) A person who has elected arbitration under this section may rescind the person'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 person 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 Utah
- 68 Rules of 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
- 71 under this 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
- 74 Procedure.
- 75 (b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be
- 76 completed within 150 days after the date arbitration is elected under this section or
- 77 the date the answer is filed, whichever is longer.
- 78 (6) (a) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
- 79 arbitration under this section shall be resolved by a single arbitrator.
- 80 (b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall
- 81 agree on the single arbitrator selected under Subsection (6)(a) within 90 days of the
- 82 answer of the defendant.
- 83 (c) If the parties are unable to agree on a single arbitrator as required under Subsection
- 84 (6)(b), the parties shall select a panel of three arbitrators.
- 85 (d) If the parties select a panel of three arbitrators under Subsection (6)(c):
- 86 (i) each side shall select one arbitrator; and
- 87 (ii) the arbitrators appointed under Subsection (6)(d)(i) shall select one additional
- 88 arbitrator to be included in the panel.
- 89 (7) Unless otherwise agreed to in writing:
- 90 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
- 91 under Subsection (6)(a); and
- 92 (b) if an arbitration panel is selected under Subsection (6)(d):
- 93 (i) each party shall pay the fees and costs of the arbitrator selected by that party's
- 94 side; and
- 95 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected
- 96 under Subsection (6)(d)(ii).

- 97 (8) Except as otherwise provided in this section and unless otherwise agreed to in writing
98 by the parties, an arbitration proceeding conducted under this section shall be governed
99 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- 100 (9) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and
101 Utah Rules of Evidence apply to the arbitration proceeding.
- 102 (b) The Utah Rules of Civil Procedure and Utah Rules of Evidence shall be applied
103 liberally with the intent of concluding the claim in a timely and cost-efficient manner.
- 104 (c) Discovery shall be conducted in accordance with Rules 26 through 37 of the Utah
105 Rules of Civil Procedure and shall be subject to the jurisdiction of the district court in
106 which the matter is filed.
- 107 (d) Dispositive motions shall be filed, heard, and decided by the district court prior to
108 the arbitration proceeding in accordance with the court's scheduling order.
- 109 (10) A written decision by a single arbitrator or by a majority of the arbitration panel shall
110 constitute a final decision.
- 111 (11) An arbitration award issued under this section shall be the final resolution of all bodily
112 injury claims between the parties and may be reduced to judgment by the court upon
113 motion and notice unless:
- 114 (a) either party, within 20 days after service of the arbitration award:
- 115 (i) files a notice requesting a trial de novo in the district court; and
116 (ii) serves the nonmoving party with a copy of the notice requesting a trial de novo
117 under Subsection (11)(a)(i); or
- 118 (b) the arbitration award has been satisfied.
- 119 (12) (a) Upon filing a notice requesting a trial de novo under Subsection (11):
- 120 (i) unless otherwise stipulated to by the parties or ordered by the court, an additional [
121 90] 120 days shall be allowed for further discovery;
- 122 (ii) the additional discovery time under Subsection (12)(a)(i) shall run from the notice
123 of appeal; and
- 124 (iii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil
125 Procedure and Utah Rules of Evidence in the district court.
- 126 (b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request
127 a jury trial with a request for trial de novo filed under Subsection (11)(a)(i).
- 128 (13) (a) If the plaintiff, as the moving party in a trial de novo requested under Subsection
129 (11), does not obtain a verdict that is at least \$5,000 and is at least 30% greater than
130 the damages awarded in arbitration [award,] , excluding the items listed in Subsection

- 131 (19), the plaintiff is responsible for all of the nonmoving party's costs.
- 132 (b) ~~[Except as provided in Subsection (13)(c), the]~~ The costs [under] described in
133 Subsection (13)(a) [shall] include:
- 134 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; ~~[and]~~
135 (ii) the costs of expert witnesses and depositions[-] ;
136 (iii) the arbitration costs paid by the prevailing party under Subsection (7);
137 (iv) prejudgment interest described in Section 78B-5-824; and
138 (v) postjudgment interest described in Section 15-1-4.
- 139 ~~[(e) An award of costs under this Subsection (13) may not exceed \$6,000.]~~
- 140 (14) (a) If a defendant, as the moving party in a trial de novo requested under Subsection
141 (11), does not obtain a verdict that is at least 30% less than ~~[the arbitration award]~~ the
142 damages awarded in arbitration, excluding the items described in Subsection (19), the
143 defendant is responsible for all of the nonmoving party's costs.
- 144 (b) ~~[Except as provided in Subsection (14)(c), the]~~ The costs [under] described in
145 Subsection (14)(a) [shall] include:
- 146 (i) ~~[any costs set forth]~~ costs described in Rule 54(d), Utah Rules of Civil Procedure; [
147 and]
- 148 (ii) the costs of expert witnesses and depositions[-] ;
149 (iii) the arbitration costs paid by the prevailing party under Subsection (7);
150 (iv) prejudgment interest described in Section 78B-5-824; and
151 (v) postjudgment interest described in Section 15-1-4.
- 152 ~~[(e) An award of costs under this Subsection (14) may not exceed \$6,000.]~~
- 153 (15) For purposes of determining whether a party's verdict is greater or less than the
154 arbitration award under Subsections (13) and (14), a court may not consider any
155 recovery or other relief granted on a claim for damages if the claim for damages:
156 (a) was not fully disclosed in writing prior to the arbitration proceeding; or
157 (b) was not disclosed in response to discovery contrary to the Utah Rules of Civil
158 Procedure.
- 159 (16) If a district court determines, upon a motion of the nonmoving party, that the moving
160 party's use of the trial de novo process was filed in bad faith as defined in Section
161 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.
- 162 (17) Nothing in this section is intended to affect or prevent any first party claim from later
163 being brought under any first party insurance policy under which the injured person is a
164 covered person.

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

169 (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may
170 not exceed [~~\$50,000~~] \$75,000, or the per person limits of insurance coverage,
171 whichever is less.

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

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

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

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

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

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

181 Section 2. **Effective date.**

182 This bill takes effect on May 1, 2024.