

**Representative Michael K. McKell** proposes the following substitute bill:

**INSURANCE COVERAGE REVISIONS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill amends provisions related to policy provisions limiting motor vehicle insurance coverage limits under certain circumstances.

**Highlighted Provisions:**

This bill:

- amends provisions related to motor vehicle insurance policy limitations based on certain drivers operating while under the influence of drugs or alcohol; and
- prohibits the policy limitation's applicability to certain individuals under the age of 21.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-22-303**, as last amended by Laws of Utah 2010, Chapter 172

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



Section 1. Section 31A-22-303 is amended to read:

**31A-22-303. Motor vehicle liability coverage.**

(1) (a) In addition to complying with the requirements of Chapter 21, Insurance Contracts in General, and Chapter 22, Part 2, Liability Insurance in General, a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

(i) name the motor vehicle owner or operator in whose name the policy was purchased, state that named insured's address, the coverage afforded, the premium charged, the policy period, and the limits of liability;

(ii) (A) if it is an owner's policy, designate by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Section 31A-22-302.5, insure any person included in Subsection (1)(a)(iii) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304; or

(B) if it is an operator's policy, insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the insured's use of any motor vehicle not owned by him, within the same territorial limits and with the same limits of liability as in an owner's policy under Subsection (1)(a)(ii)(A);

(iii) except as provided in Section 31A-22-302.5, insure persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere, to the same extent as the named insured;

(iv) where a claim is brought by the named insured or a person described in Subsection (1)(a)(iii), the available coverage of the policy may not be reduced or stepped-down because:

(A) a permissive user driving a covered motor vehicle is at fault in causing an accident;  
or

(B) the named insured or any of the persons described in this Subsection (1)(a)(iii) driving a covered motor vehicle is at fault in causing an accident; and

(v) cover damages or injury resulting from a covered driver of a motor vehicle who is

57 stricken by an unforeseeable paralysis, seizure, or other unconscious condition and who is not  
58 reasonably aware that paralysis, seizure, or other unconscious condition is about to occur to the  
59 extent that a person of ordinary prudence would not attempt to continue driving.

60 (b) The driver's liability under Subsection (1)(a)(v) is limited to the insurance  
61 coverage.

62 (c) (i) "Guardianship" under Subsection (1)(a)(iii) includes the relationship between a  
63 foster parent and a minor who is in the legal custody of the Division of Child and Family  
64 Services if:

65 (A) the minor resides in a foster home, as defined in Section 62A-2-101, with a foster  
66 parent who is the named insured; and

67 (B) the foster parent has signed to be jointly and severally liable for compensatory  
68 damages caused by the minor's operation of a motor vehicle in accordance with Section  
69 53-3-211.

70 (ii) "Guardianship" as defined under this Subsection (1)(c) ceases to exist when a  
71 minor described in Subsection (1)(c)(i)(A) is no longer a resident of the named insured's  
72 household.

73 (2) (a) A policy containing motor vehicle liability coverage under Subsection  
74 31A-22-302(1)(a) may:

75 (i) provide for the prorating of the insurance under that policy with other valid and  
76 collectible insurance;

77 (ii) grant any lawful coverage in addition to the required motor vehicle liability  
78 coverage;

79 (iii) if the policy is issued to a person other than a motor vehicle business, limit the  
80 coverage afforded to a motor vehicle business or its officers, agents, or employees to the  
81 minimum limits under Section 31A-22-304, and to those instances when there is no other valid  
82 and collectible insurance with at least those limits, whether the other insurance is primary,  
83 excess, or contingent; and

84 (iv) if issued to a motor vehicle business, restrict coverage afforded to anyone other  
85 than the motor vehicle business or its officers, agents, or employees to the minimum limits  
86 under Section 31A-22-304, and to those instances when there is no other valid and collectible  
87 insurance with at least those limits, whether the other insurance is primary, excess, or

88 contingent.

89 (b) (i) The liability insurance coverage of a permissive user of a motor vehicle owned  
90 by a motor vehicle business shall be primary coverage.

91 (ii) The liability insurance coverage of a motor vehicle business shall be secondary to  
92 the liability insurance coverage of a permissive user as specified under Subsection (2)(b)(i).

93 (3) Motor vehicle liability coverage need not insure any liability:

94 (a) under any workers' compensation law under Title 34A, Utah Labor Code;

95 (b) resulting from bodily injury to or death of an employee of the named insured, other  
96 than a domestic employee, while engaged in the employment of the insured, or while engaged  
97 in the operation, maintenance, or repair of a designated vehicle; or

98 (c) resulting from damage to property owned by, rented to, bailed to, or transported by  
99 the insured.

100 (4) An insurance carrier providing motor vehicle liability coverage has the right to  
101 settle any claim covered by the policy, and if the settlement is made in good faith, the amount  
102 of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

103 (5) A policy containing motor vehicle liability coverage imposes on the insurer the  
104 duty to defend, in good faith, any person insured under the policy against any claim or suit  
105 seeking damages which would be payable under the policy.

106 (6) (a) If a policy containing motor vehicle liability coverage provides an insurer with  
107 the defense of lack of cooperation on the part of the insured, that defense is not effective  
108 against a third person making a claim against the insurer, unless there was collusion between  
109 the third person and the insured.

110 (b) If the defense of lack of cooperation is not effective against the claimant, after  
111 payment, the insurer is subrogated to the injured person's claim against the insured to the extent  
112 of the payment and is entitled to reimbursement by the insured after the injured third person has  
113 been made whole with respect to the claim against the insured.

114 ~~[(7) A policy of motor vehicle liability coverage may limit coverage to the policy~~  
115 ~~minimum limits under Section 31A-22-304 if the insured motor vehicle is operated by a person~~  
116 ~~who has consumed any alcohol or any illegal drug or illegal substance if the policy or a~~  
117 ~~specifically reduced premium was extended to the insured upon express written declaration~~  
118 ~~executed by the insured that the insured motor vehicle would not be so operated.]~~

119       (7) (a) A policy of motor vehicle coverage may limit coverage to the policy minimum  
120 limits under Section [31A-22-304](#) if the policy or a specifically reduced premium was extended  
121 to the insured upon express written declaration executed by the insured that the insured motor  
122 vehicle would not be operated by a person described in Subsection (7)(c) operating in a manner  
123 described in Subsection (7)(b)(i).

124       (b) (i) A policy of motor vehicle liability coverage may limit coverage as described in  
125 Subsection (7)(a) if the insured motor vehicle is operated by an individual described in  
126 Subsection (7)(c) if the individual described in Subsection (7)(c) is guilty of:

127       (A) driving under the influence as described in Section [41-6a-502](#);

128       (B) impaired driving as described in Section [41-6a-502.5](#); or

129       (C) operating a vehicle with a measurable controlled substance in the individual's body  
130 as described in Section [41-6a-517](#).

131       (ii) An individual's refusal to submit to a chemical test as described in Section  
132 [41-6a-520](#) is admissible evidence, but not conclusive, that the individual is guilty of an offense  
133 described in Subsection (7)(b)(i).

134       (c) A reduction in coverage as described in Subsection (7)(a) applies to the following  
135 individuals:

136       (i) the insured;

137       (ii) the spouse of the insured; or

138       (iii) if the individual has a separate policy as a secondary source of coverage, and:

139       (A) the individual is over the age of 21 and resides in the household of the insured; or

140       (B) the individual is a permissible user of the motor vehicle.

141       (d) A reduction in coverage as described in Subsection (7)(a) does not apply to an  
142 individual under the age of 21 who is a relative of the insured and a resident of the insured's  
143 household.

144       (8) (a) When a claim is brought exclusively by a named insured or a person described  
145 in Subsection (1)(a)(iii) and asserted exclusively against a named insured or an individual  
146 described in Subsection (1)(a)(iii), the claimant may elect to resolve the claim:

147       (i) by submitting the claim to binding arbitration; or

148       (ii) through litigation.

149       (b) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii),

the claimant may not elect to resolve the claim through binding arbitration under this section without the written consent of both parties and the defendant's liability insurer.

(c) (i) Unless otherwise agreed on in writing by the parties, a claim that is submitted to binding arbitration under Subsection (8)(a)(i) shall be resolved by a panel of three arbitrators.

(ii) Unless otherwise agreed on in writing by the parties, each party shall select an arbitrator. The arbitrators selected by the parties shall select a third arbitrator.

(d) Unless otherwise agreed on in writing by the parties, each party will pay the fees and costs of the arbitrator that party selects. Both parties shall share equally the fees and costs of the third arbitrator.

(e) Except as otherwise provided in this section, an arbitration procedure conducted under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act, unless otherwise agreed on in writing by the parties.

(f) (i) Discovery shall be conducted in accordance with Rules 26b through 36, Utah Rules of Civil Procedure.

(ii) All issues of discovery shall be resolved by the arbitration panel.

(g) A written decision of two of the three arbitrators shall constitute a final decision of the arbitration panel.

(h) Prior to the rendering of the arbitration award:

(i) the existence of a liability insurance policy may be disclosed to the arbitration panel; and

(ii) the amount of all applicable liability insurance policy limits may not be disclosed to the arbitration panel.

(i) The amount of the arbitration award may not exceed the liability limits of all the defendant's applicable liability insurance policies, including applicable liability umbrella policies. If the initial arbitration award exceeds the liability limits of all applicable liability insurance policies, the arbitration award shall be reduced to an amount equal to the liability limits of all applicable liability insurance policies.

(j) The arbitration award is the final resolution of all claims between the parties unless the award was procured by corruption, fraud, or other undue means.

(k) If the arbitration panel finds that the action was not brought, pursued, or defended in good faith, the arbitration panel may award reasonable fees and costs against the party that

181 failed to bring, pursue, or defend the claim in good faith.

182 (l) Nothing in this section is intended to limit any claim under any other portion of an  
183 applicable insurance policy.

184 (9) An at-fault driver or an insurer issuing a policy of insurance under this part that is  
185 covering an at-fault driver may not reduce compensation to an injured party based on the  
186 injured party not being covered by a policy of insurance that provides personal injury  
187 protection coverage under Sections [31A-22-306](#) through [31A-22-309](#).