

TORTIOUS ACT ARBITRATION

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: _____

LONG TITLE

General Description:

This bill creates a new chapter in Title 78B to promote arbitration in tort cases.

Highlighted Provisions:

This bill:

- ▶ enacts a new chapter, Tort Arbitration, in Title 78B;
- ▶ creates filing and notice limits;
- ▶ prohibits claims for punitive damages;
- ▶ sets guidelines for rescinding an arbitration election;
- ▶ provides for the selection of a single arbitrator or panel of arbitrators;
- ▶ states that decisions by arbitrators are final, but still allows for a trial de novo;
- ▶ specifies payment obligations for parties; and
- ▶ addresses pre- and postjudgment interest.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-10a-101, Utah Code Annotated 1953

78B-10a-102, Utah Code Annotated 1953



- 28 78B-10a-103, Utah Code Annotated 1953
- 29 78B-10a-104, Utah Code Annotated 1953
- 30 78B-10a-105, Utah Code Annotated 1953
- 31 78B-10a-106, Utah Code Annotated 1953
- 32 78B-10a-107, Utah Code Annotated 1953
- 33 78B-10a-108, Utah Code Annotated 1953
- 34 78B-10a-109, Utah Code Annotated 1953

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

37 Section 1. Section 78B-10a-101 is enacted to read:

38 **CHAPTER 10a. TORT ARBITRATION**

39 **78B-10a-101. Title.**

40 This chapter is known as "Tort Arbitration."

41 Section 2. Section 78B-10a-102 is enacted to read:

42 **78B-10a-102. General provisions -- Filing -- Notice -- Limits.**

43 (1) Except for bodily injury cases involving a motor vehicle as described in Sections
 44 31A-22-303, 31A-22-305, and 31A-22-305.3, ~~§~~ **[and]** ~~←~~ **§** medical malpractice cases as described in
 45 Section 78B-3-401, ~~§~~ **→** and governmental claims described in section 63G-7-401, ~~←~~ **§** a person
 45a suffering personal injury or property damage as a result of tortious
 46 conduct may elect to submit all bodily injury claims and property damage claims to arbitration
 47 by filing a notice of the submission of the claim to binding arbitration in a district court if:

48 (a) ~~§~~ **→** all named defendants have liability insurance or are self-insured as evidenced
 48a by a separate fund to pay claims or by evidence of a retention liability policy that covers claims
 48b in excess of a certain monetary amount;

48c (b) ~~←~~ **§** the claimant or the claimant's representative has:

49 (i) previously and timely filed a complaint in a district court that includes a claim for
 50 bodily injury or property damage, or both; and

51 (ii) filed a notice to submit the claim to arbitration within 14 days after the complaint is
 52 answered; and

53 ~~§~~ **→** (b) (c) ~~←~~ **§** the notice required under Subsection (1)(a)(ii) is filed while the action under
 54 Subsection (1)(a)(i) is still pending.

54a ~~§~~ **→** (3) All parties to a claim may stipulate to submit the claim to arbitration under this
 54b chapter. If the claim is submitted to arbitration, the parties may not claim:

54c (a) a right of rescission under Section 78B-10a-104; or ~~←~~ **§**

54d **§→** (b) the right to a trial de novo under Section 78B-10a-108. **←§**

55 (2) If a party submits a bodily injury or property damage claim to arbitration under
56 Subsection (1), the party submitting the claim or the party's representative is limited to an
57 arbitration award not to exceed \$50,000.

58 Section 3. Section **78B-10a-103** is enacted to read:

59 **78B-10a-103. Punitive damages.**

60 A claim for punitive damages may not be made in an arbitration proceeding in
61 accordance with this chapter or any subsequent proceeding, even if the claim is later resolved
62 through a trial de novo in accordance with Section 78b-10a-108.

63 Section 4. Section **78B-10a-104** is enacted to read:

64 **78B-10a-104. Rescission -- Discovery.**

65 (1) (a) A ~~§~~→ [person] claimant ←~~§~~ who has elected arbitration in accordance with this
65a chapter may

66 rescind the election if the rescission is made within:

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

68 (ii) not less than 30 days before any scheduled arbitration hearing.

69 (b) A person seeking to rescind an election to arbitrate in accordance with this chapter
70 shall:

71 (i) file a notice of the rescission of the election to arbitrate with the district court where
72 the matter was filed; and

73 (ii) send copies of the notice of the rescission of the election to arbitrate to all counsel
74 of record in the action.

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

78 (d) A party who has elected to arbitrate in accordance with this chapter and then
79 rescinded the election to arbitrate may not elect to arbitrate the claim again.

80 (2) (a) Unless otherwise agreed to by the parties or by order of the court, an arbitration
81 process elected in accordance with this chapter is subject to Rule 26, Utah Rules of Civil
82 Procedure.

83 (b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be
84 completed within 150 days after the date arbitration is elected in accordance with this chapter
85 or the date the answer is filed, whichever is longer.

86 Section 5. Section **78B-10a-105** is enacted to read:

87 **78B-10a-105. Selection of arbitrator or panel -- Costs.**

88 (1) (a) Unless otherwise agreed to in writing by the parties, a claim submitted to
89 arbitration shall be resolved by a single arbitrator.

90 (b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall
91 agree on a single arbitrator within 90 days of the answer of the defendant.

92 (c) If the parties are unable to agree on a single arbitrator as required by Subsection
93 (1)(b), a panel of three arbitrators shall be selected in accordance with Subsection (1)(d).

94 (d) If a panel of three arbitrators is selected:

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

96 (ii) the arbitrators appointed under Subsection (1)(d)(i) shall jointly select one
97 additional arbitrator to be included on the panel.

98 (2) Unless otherwise agreed to in writing:

99 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
100 under Subsection (1)(a); and

101 (b) if an arbitration panel is selected under Subsection (1)(d), each party shall pay:

102 (i) the fees and costs of the arbitrator selected by that party's side; and

103 (ii) an equal share of the fees and costs of the arbitrator selected under Subsection
104 (1)(d)(ii).

105 Section 6. Section **78B-10a-106** is enacted to read:

106 **78B-10a-106. Governing provisions.**

107 (1) Except as otherwise provided in this chapter and unless otherwise agreed to in
108 writing by the parties, an arbitration proceeding conducted in accordance with this chapter shall
109 be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

110 (2) (a) Subject to the provisions of this chapter, the Utah Rules of Civil Procedure and
111 Utah Rules of Evidence apply to arbitration proceedings.

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

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

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

119 Section 7. Section **78B-10a-107** is enacted to read:

120 **78B-10a-107. Decision -- Award -- Court action.**

121 (1) A written decision by a single arbitrator or by a majority of the arbitration panel
122 shall constitute a final decision.

123 (2) An arbitration award issued in accordance with this chapter shall be the final
124 resolution of all property damage or bodily injury claims between the parties and may be
125 reduced to judgment by the court upon motion and notice unless:

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

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

128 (ii) serves the nonmoving party with a copy of the notice requesting a trial de novo; or

129 (b) the arbitration award has been satisfied.

130 Section 8. Section **78B-10a-108** is enacted to read:

131 **78B-10a-108. Trial de novo.**

132 (1) (a) Upon filing a notice requesting a trial de novo in accordance with Subsection
133 78B-10a-107(2):

134 (i) unless otherwise stipulated to by the parties or ordered by the court, an additional 90
135 days shall be allowed for further discovery;

136 (ii) the additional discovery time under Subsection (1)(a)(i) shall run from the notice of
137 the request for a trial de novo; and

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

140 (b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
141 request a jury trial with a request for trial de novo filed in accordance with Subsection
142 78B-10a-107(2)(a)(i).

143 (2) (a) If the plaintiff, as the moving party in a trial de novo requested under Subsection
144 78B-10a-107(2), does not obtain a verdict that is at least \$5,000 and 30% greater than the
145 arbitration award, the plaintiff is responsible for all of the nonmoving party's costs.

146 (b) Except as provided in Subsection (2)(c), the costs under Subsection (2)(a) shall
147 include:

148 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

149 (ii) the costs of expert witnesses and depositions.

150 (c) An award of costs under this Subsection (2) may not exceed \$6,000.

151 (3) (a) If a defendant, as the moving party in a trial de novo requested in accordance

152 with Subsection 78B-10a-107(2), does not obtain a verdict that is at least \$→ [35%] 30% ←\$ less
 152a than the

153 arbitration award, the defendant is responsible for all of the nonmoving party's costs.

154 (b) Except as provided in Subsection (3)(c), the costs under Subsection (3)(a) shall
 155 include:

156 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

157 (ii) the costs of expert witnesses and depositions.

158 (c) An award of costs in accordance with this Subsection (3) may not exceed \$6,000.

159 (4) For purposes of determining whether a party's verdict is greater or less than the
 160 arbitration award under Subsections (2) and (3), a court may not consider any recovery or other
 161 relief granted on a claim for damages if the claim for damages:

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

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

165 (5) If a district court determines, upon a motion of the nonmoving party, that the
 166 moving party's use of the trial de novo process was filed in bad faith as defined in Section
 167 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

168 (6) (a) If a defendant requests a trial de novo under Subsection 78B-10a-107(2), the
 169 total verdict at trial may not exceed \$15,000 above any available limits of insurance coverage
 170 and the total verdict may not exceed \$65,000.

171 (b) If a plaintiff requests a trial de novo under Subsection 78B-10a-107(2), the verdict
 172 at trial may not exceed \$50,000.

173 Section 9. Section **78B-10a-109** is enacted to read:

174 **78B-10a-109. Interest.**

175 All arbitration awards issued in accordance with this chapter shall bear prejudgment
 176 interest pursuant to Sections 15-1-1 and 78B-5-824, and postjudgment interest pursuant to
 177 Section 15-1-4.

Legislative Review Note
as of 1-11-11 3:18 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 52

SHORT TITLE: **Tortious Act Arbitration**

SPONSOR: **Urquhart, S.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.