

**MOTOR VEHICLE INSURANCE - NAMED
DRIVER EXCLUSION**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Jack R. Draxler

LONG TITLE

General Description:

This bill modifies the Insurance Code by amending provisions relating to named driver exclusions for motor vehicle insurance coverage.

Highlighted Provisions:

This bill:

- ▶ provides that a policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement may specifically exclude from coverage a person who is a resident of the named insured's household or a person who usually or customarily operates the motor vehicle;
- ▶ provides that the named driver exclusion is only effective if:
 - each person excluded from coverage satisfies the owner's or operator's security requirement independently of the named insured;
 - the named insured and the person excluded from coverage each provide written consent to the exclusion; and
 - the insurer includes the name of each person excluded from coverage in the evidence of insurance provided to an additional insured or loss payee;
- ▶ provides that the named driver exclusion requirement to obtain owner's or operator's security does not apply if the excluded person's license has been denied, suspended, revoked, or disqualified;



28 ▶ provides that if the driver license of a person excluded from coverage has been
29 denied, suspended, revoked, or disqualified and the person excluded from coverage
30 subsequently operates a motor vehicle, the exclusion shall:

31 • exclude all liability coverage and all physical damage coverage without regard
32 to the comparative fault of the excluded driver;

33 • proportionately reduce any benefits otherwise payable to the person excluded
34 from coverage and by any named insured for certain motor vehicle insurance
35 benefits payable to the extent the person excluded from coverage was
36 comparatively at fault; and

37 • if the person excluded from coverage is 50% or more at fault in causing the
38 accident, bar both the excluded driver and any named insured from recovering
39 any benefits under certain motor vehicle insurance coverage;

40 ▶ provides that the named driver exclusion does not apply when the person excluded
41 from coverage is a non-driving passenger in a motor vehicle or a pedestrian; and

42 ▶ makes technical changes.

43 **Monies Appropriated in this Bill:**

44 None

45 **Other Special Clauses:**

46 This bill provides an effective date.

47 **Utah Code Sections Affected:**

48 AMENDS:

49 **31A-22-303**, as last amended by Laws of Utah 2008, Chapters 3 and 314

50 ENACTS:

51 **31A-22-302.5**, Utah Code Annotated 1953

52

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

54 Section 1. Section **31A-22-302.5** is enacted to read:

55 **31A-22-302.5. Named driver exclusions.**

56 (1) A policy of insurance or combination of policies purchased to satisfy the owner's or
57 operator's security requirement under Section 41-12a-301 may specifically exclude from
58 coverage:

59 (a) a person who is a resident of the named insured's household, including a person
60 who usually makes the person's home in the same household but temporarily lives elsewhere;

61 or

62 (b) a person who usually or customarily operates the motor vehicle.

63 (2) The named driver exclusion under Subsection (1) is effective only if:

64 (a) at the time of the proposed exclusion, each person excluded from coverage satisfies
65 the owner's or operator's security requirement under Section 41-12a-301, independently of the
66 named insured's proof of owner's or operator's security;

67 (b) any named insured and the person excluded from coverage each provide written
68 consent to the exclusion; and

69 (c) the insurer includes the name of each person excluded from coverage in the
70 evidence of insurance provided to an additional insured or loss payee.

71 (3) The provisions of Subsection (2)(a) do not apply to the named driver exclusion of
72 the person excluded from coverage if the person's driver license has been denied, suspended,
73 revoked, or disqualified.

74 (4) The named driver exclusion shall remain effective until removed by the insurer.

75 (5) If the driver license of a person excluded from coverage under Subsection (1) has
76 been denied, suspended, revoked, or disqualified and the person excluded from coverage
77 subsequently operates a motor vehicle, the exclusion shall:

78 (a) exclude all liability coverage and all physical damage coverage without regard to
79 the comparative fault of the excluded driver;

80 (b) proportionately reduce any benefits otherwise payable to the person excluded from
81 coverage and to any named insured under Subsection (2)(b) for benefits payable under
82 uninsured motorist coverage, underinsured motorist coverage, personal injury protection
83 coverage, and first party medical coverage to the extent the person excluded from coverage was
84 comparatively at fault; and

85 (c) if the person excluded from coverage is 50% or more at fault in causing the
86 accident, bar both the excluded driver and any named insured under Subsection (2)(b) from
87 recovering any benefits under any coverage listed under Subsection (5)(b).

88 (6) The named driver exclusion under Subsection (1) does not apply when the person
89 excluded from coverage is:

90 (a) a non-driving passenger in a motor vehicle; or

91 (b) a pedestrian.

92 Section 2. Section **31A-22-303** is amended to read:

93 **31A-22-303. Motor vehicle liability coverage.**

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

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

100 (ii) (A) if it is an owner's policy, designate by appropriate reference all the motor
101 vehicles on which coverage is granted, insure the person named in the policy, insure any other
102 person using any named motor vehicle with the express or implied permission of the named
103 insured, and, except as provided in Subsection (7), insure any person included in Subsection
104 (1)(a)(iii) against loss from the liability imposed by law for damages arising out of the
105 ownership, maintenance, or use of these motor vehicles within the United States and Canada,
106 subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less
107 than the minimum limits specified under Section 31A-22-304; or

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

112 (iii) except as provided in Subsection (7), insure persons related to the named insured
113 by blood, marriage, adoption, or guardianship who are residents of the named insured's
114 household, including those who usually make their home in the same household but
115 temporarily live elsewhere, to the same extent as the named insured;

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

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

120 (B) the named insured or any of the persons described in this Subsection (1)(a)(iii)

121 driving a covered motor vehicle is at fault in causing an accident; and

122 (v) cover damages or injury resulting from a covered driver of a motor vehicle who is
123 stricken by an unforeseeable paralysis, seizure, or other unconscious condition and who is not
124 reasonably aware that paralysis, seizure, or other unconscious condition is about to occur to the
125 extent that a person of ordinary prudence would not attempt to continue driving.

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

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

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

133 (B) the foster parent has signed to be jointly and severally liable for compensatory
134 damages caused by the minor's operation of a motor vehicle in accordance with Section
135 53-3-211.

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

139 (2) (a) A policy containing motor vehicle liability coverage under Subsection
140 31A-22-302(1)(a) may:

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

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

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

150 (iv) if issued to a motor vehicle business, restrict coverage afforded to anyone other
151 than the motor vehicle business or its officers, agents, or employees to the minimum limits

152 under Section 31A-22-304, and to those instances when there is no other valid and collectible
153 insurance with at least those limits, whether the other insurance is primary, excess, or
154 contingent.

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

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

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

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

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

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

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

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

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

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

180 ~~[(7) A policy of motor vehicle liability coverage under Subsection 31A-22-302(1) may~~
181 ~~specifically exclude from coverage a person who is a resident of the named insured's~~
182 ~~household, including a person who usually makes his home in the same household but~~

183 temporarily lives elsewhere, if:]

184 [~~(a)~~ at the time of the proposed exclusion, each person excluded from coverage
185 satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of
186 the named insured's proof of owner's or operator's security;]

187 [~~(b)~~ the named insured and the person excluded from coverage each provide written
188 consent to the exclusion; and]

189 [~~(c)~~ the insurer includes the name of each person excluded from coverage in the
190 evidence of insurance provided to an additional insured or loss payee.]

191 [~~(8)~~ (7)] A policy of motor vehicle liability coverage may limit coverage to the policy
192 minimum limits under Section 31A-22-304 if the insured motor vehicle is operated by a person
193 who has consumed any alcohol or any illegal drug or illegal substance if the policy or a
194 specifically reduced premium was extended to the insured upon express written declaration
195 executed by the insured that the insured motor vehicle would not be so operated.

196 [~~(9)~~ (8)] (a) When a claim is brought exclusively by a named insured or a person
197 described in Subsection (1)(a)(iii) and asserted exclusively against a named insured or an
198 individual described in Subsection (1)(a)(iii), the claimant may elect to resolve the claim:

- 199 (i) by submitting the claim to binding arbitration; or
200 (ii) through litigation.

201 (b) Once the claimant has elected to commence litigation under Subsection [~~(9)~~
202 (8)](a)(ii), the claimant may not elect to resolve the claim through binding arbitration under this
203 section without the written consent of both parties and the defendant's liability insurer.

204 (c) (i) Unless otherwise agreed on in writing by the parties, a claim that is submitted to
205 binding arbitration under Subsection [~~(9)~~ (8)](a)(i) shall be resolved by a panel of three
206 arbitrators.

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

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

212 (e) Except as otherwise provided in this section, an arbitration procedure conducted
213 under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act,

214 unless otherwise agreed on in writing by the parties.

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

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

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

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

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

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

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

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

232 (k) If the arbitration panel finds that the action was not brought, pursued, or defended
233 in good faith, the arbitration panel may award reasonable fees and costs against the party that
234 failed to bring, pursue, or defend the claim in good faith.

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

237 ~~[(10)]~~ (9) An at-fault driver or an insurer issuing a policy of insurance under this part
238 that is covering an at-fault driver may not reduce compensation to an injured party based on the
239 injured party not being covered by a policy of insurance that provides personal injury
240 protection coverage under Sections 31A-22-306 through 31A-22-309.

241 **Section 3. Effective date.**

242 This bill takes effect on July 1, 2010, and applies to all driver exclusions entered into
243 on or after that date.

Legislative Review Note
as of 2-11-10 5:24 PM

Office of Legislative Research and General Counsel

S.B. 225 - Motor Vehicle Insurance - Named Driver Exclusion

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

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