

**MOTOR VEHICLE INSURANCE - NAMED**

**DRIVER EXCLUSION**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: Jack R. Draxler

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**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 personal lines insurance or combination of personal lines 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, or revoked;

- ▶ provides that if the driver license of a person excluded from coverage has been

30 denied, suspended, revoked, or disqualified and the person excluded from coverage  
31 subsequently operates a motor vehicle, the exclusion shall:

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

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

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

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

43           ▶ makes technical changes.

44 **Monies Appropriated in this Bill:**

45           None

46 **Other Special Clauses:**

47           This bill provides an effective date.

48 **Utah Code Sections Affected:**

49 AMENDS:

50           **31A-22-303**, as last amended by Laws of Utah 2008, Chapters 3 and 314

51 ENACTS:

52           **31A-22-302.5**, Utah Code Annotated 1953



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

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

56           **31A-22-302.5. Named driver exclusions.**

57           (1) A policy of personal lines insurance or combination of personal lines policies

58 purchased to satisfy the owner's or operator's security requirement under Section 41-12a-301  
59 may specifically exclude from coverage:

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

62 or

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

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

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

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

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

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

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

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

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

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

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

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

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

92 (b) a pedestrian.

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

94 **31A-22-303. Motor vehicle liability coverage.**

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

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

101 (ii) (A) if it is an owner's policy, designate by appropriate reference all the motor  
102 vehicles on which coverage is granted, insure the person named in the policy, insure any other  
103 person using any named motor vehicle with the express or implied permission of the named  
104 insured, and, except as provided in [~~Subsection (7)~~] Section 31A-22-302.5, insure any person  
105 included in Subsection (1)(a)(iii) against loss from the liability imposed by law for damages  
106 arising out of the ownership, maintenance, or use of these motor vehicles within the United  
107 States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in  
108 amounts not less than the minimum limits specified under Section 31A-22-304; or

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

113 (iii) except as provided in [~~Subsection (7)~~] Section 31A-22-302.5, insure persons

114 related to the named insured by blood, marriage, adoption, or guardianship who are residents  
115 of the named insured's household, including those who usually make their home in the same  
116 household but temporarily live elsewhere, to the same extent as the named insured;

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

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

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

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

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

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

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

135 (B) the foster parent has signed to be jointly and severally liable for compensatory  
136 damages caused by the minor's operation of a motor vehicle in accordance with Section  
137 53-3-211.

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

141 (2) (a) A policy containing motor vehicle liability coverage under Subsection

142 31A-22-302(1)(a) may:

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

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

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

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

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

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

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

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

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

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

168 (4) An insurance carrier providing motor vehicle liability coverage has the right to  
169 settle any claim covered by the policy, and if the settlement is made in good faith, the amount

170 of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

225           (ii) the amount of all applicable liability insurance policy limits may not be disclosed



226 to the arbitration panel.

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

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

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

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

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

243 **Section 3. Effective date.**

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