

1 **MOTOR VEHICLE INSURANCE POLICY**

2 **COVERAGE**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Michael G. Waddoups**

6 AN ACT RELATING TO INSURANCE; AMENDING UNINSURED AND UNDERINSURED
7 MOTORIST COVERAGE PROVISIONS.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **31A-22-305**, as last amended by Chapter 158, Laws of Utah 1999

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

12 Section 1. Section **31A-22-305** is amended to read:

13 **31A-22-305. Uninsured and underinsured motorist coverage.**

14 (1) As used in this section, "covered persons" includes:

15 (a) the named insured;

16 (b) persons related to the named insured by blood, marriage, adoption, or guardianship,
17 who are residents of the named insured's household, including those who usually make their home
18 in the same household but temporarily live elsewhere;

19 (c) any person occupying or using a motor vehicle referred to in the policy or owned by
20 a self-insurer; and

21 (d) any person who is entitled to recover damages against the owner or operator of the
22 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under
23 Subsection (1)(a), (b), or (c).

24 (2) As used in this section, "uninsured motor vehicle" includes:

25 (a) (i) a vehicle, the operation, maintenance, or use of which is not covered under a
26 liability policy at the time of an injury-causing occurrence; or

27 (ii) (A) a vehicle covered with lower liability limits than required by Section 31A-22-304;

28 (B) the vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of the
29 deficiency;

30 (b) an unidentified vehicle that left the scene of an accident proximately caused by the
31 vehicle operator;

32 (c) a vehicle covered by a liability policy, but coverage for an accident is disputed by the
33 liability insurer for more than 60 days or, beginning with the effective date of this act, continues
34 to be disputed for more than 60 days; or

35 (d) (i) an insured vehicle if, before or after the accident, the liability insurer of the vehicle
36 is declared insolvent by a court of competent jurisdiction;

37 (ii) the vehicle described in Subsection (2)(d)(i) is uninsured only to the extent that the
38 claim against the insolvent insurer is not paid by a guaranty association or fund.

39 (3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides
40 coverage for covered persons who are legally entitled to recover damages from owners or operators
41 of uninsured motor vehicles because of bodily injury, sickness, disease, or death [~~in limits that at~~
42 ~~least equal the minimum bodily injury limits for motor vehicle liability policies under Section~~
43 ~~31A-22-304~~].

44 (b) For new policies written on or after January 1, 2001, the limits of uninsured motorist
45 coverage are equal to the limits of the insured's motor vehicle liability policy unless the insured
46 purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer
47 that:

48 (i) waives the higher coverage;

49 (ii) reasonably explains the purpose of uninsured motorist coverage; and

50 (iii) discloses the additional premiums required to purchase uninsured motorist coverage
51 with limits equal to the limits of the insured's motor vehicle liability policy.

52 (c) Uninsured motorist coverage may not be sold with limits that are less than the
53 minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

54 (d) The acknowledgment under Subsection (3)(b) continues for that issuer of the uninsured
55 motorist coverage until the insured, in writing, requests different uninsured motorist coverage from
56 the insurer.

57 (e) In conjunction with the first three renewal notices sent after January 1, 2000, for
58 policies existing on that date, the insurer shall provide notice to the insured that reasonably

59 explains the purpose of uninsured motorist coverage and discloses the additional premiums
60 required to purchase uninsured motorist coverage with limits equal to the limits of the insured's
61 motor vehicle liability policy.

62 (4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject uninsured
63 motorist coverage by an express writing to the insurer that provides liability coverage under
64 Subsection 31A-22-302(1)(a).

65 (ii) This rejection shall be on a form provided by the insurer that includes a reasonable
66 explanation of the purpose of uninsured motorist coverage.

67 (iii) This rejection continues for that issuer of the liability coverage until the insured in
68 writing requests uninsured motorist coverage from that liability insurer.

69 (b) (i) All persons, including governmental entities, that are engaged in the business of,
70 or that accept payment for, transporting natural persons by motor vehicle, and all school districts
71 that provide transportation services for their students, shall provide coverage for all vehicles used
72 for that purpose, by purchase of a policy of insurance or by self-insurance, uninsured motorist
73 coverage of at least \$25,000 per person and \$500,000 per accident.

74 [(†)] (ii) This coverage is secondary to any other insurance covering an injured covered
75 person.

76 [(ii)] (c) [This coverage does not apply to an employee, who is injured by an uninsured
77 motorist, whose exclusive remedy is] Uninsured motorist coverage:

78 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation
79 Act[-];

80 (ii) may not be subrogated by the Workers' Compensation insurance carrier;

81 (iii) may not be reduced by any benefits provided by Workers' Compensation insurance;

82 and

83 (iv) may be reduced by health insurance subrogation only after the covered person has
84 been made whole.

85 [(e)] (d) As used in this Subsection (4):

86 (i) "Governmental entity" has the same meaning as under Section 63-30-2.

87 (ii) "Motor vehicle" has the same meaning as under Section 41-1a-102.

88 (5) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b)
89 proximately caused an accident without touching the covered person or the vehicle occupied by

90 the covered person, the covered person must show the existence of the uninsured motor vehicle
91 by clear and convincing evidence consisting of more than the covered person's testimony.

92 (6) (a) The limit of liability for uninsured motorist coverage for two or more motor
93 vehicles may not be added together, combined, or stacked to determine the limit of insurance
94 coverage available to an injured person for any one accident.

95 (b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under
96 Subsection (7)(b)(ii).

97 (ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest limits
98 of uninsured motorist coverage afforded for any one vehicle that the covered person is the named
99 insured or an insured family member.

100 (iii) This coverage shall be in addition to the coverage on the vehicle the covered person
101 is occupying.

102 (iv) Neither the primary nor the secondary coverage may be set off against the other.

103 (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary
104 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall
105 be secondary coverage.

106 (7) (a) Uninsured motorist coverage under this section applies to bodily injury, sickness,
107 disease, or death of covered persons while occupying or using a motor vehicle only if the motor
108 vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly
109 acquired or replacement vehicle covered under the terms of the policy. Except as provided in
110 Subsection (6) or (7), a covered person injured in a vehicle described in a policy that includes
111 uninsured motorist benefits may not elect to collect uninsured motorist coverage benefits from any
112 other motor vehicle insurance policy under which he is a covered person.

113 (b) Each of the following persons may also recover uninsured motorist benefits under any
114 other policy in which they are described as a "covered person" as defined in Subsection (1):

115 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

116 (ii) a covered person injured while occupying or using a motor vehicle that is not owned
117 by, furnished, or available for the regular use of the covered person, the covered person's resident
118 spouse, or the covered person's resident relative.

119 (c) A covered person in Subsection (7)(b) is not barred against making subsequent
120 elections if recovery is unavailable under previous elections.

121 (8) (a) As used in this section, "underinsured motor vehicle" includes a vehicle, the
122 operation, maintenance, or use of which is covered under a liability policy at the time of an
123 injury-causing occurrence, but which has insufficient liability coverage to compensate fully the
124 injured party for all special and general damages.

125 (b) The term "underinsured motor vehicle" does not include:

126 (i) a motor vehicle that is covered under the liability coverage of the same policy that also
127 contains the underinsured motorist coverage; or

128 (ii) an uninsured motor vehicle as defined in Subsection (2).

129 (9) (a) Underinsured motorist coverage under Subsection 31A-22-302(1)(c) provides
130 coverage for covered persons who are legally entitled to recover damages from owners or operators
131 of underinsured motor vehicles because of bodily injury, sickness, disease, or death [~~in limits of~~
132 ~~at least \$10,000 for one person in any one accident, and at least \$20,000 for two or more persons~~
133 ~~in any one accident~~].

134 (b) For new policies written on or after January 1, 2001, the limits of underinsured
135 motorist coverage are equal to the limits of the insured's motor vehicle liability policy unless the
136 insured purchases coverage in a lesser amount by signing an acknowledgment form provided by
137 the insurer that:

138 (i) waives the higher coverage;

139 (ii) reasonably explains the purpose of underinsured motorist coverage; and

140 (iii) discloses the additional premiums required to purchase underinsured motorist
141 coverage with limits equal to the limits of the insured's motor vehicle liability policy.

142 (c) Underinsured motorist coverage may not be sold with limits that are less than \$10,000
143 for one person in any one accident and at least \$20,000 for two or more persons in any one
144 accident.

145 (d) The acknowledgment under Subsection (9)(b) continues for that issuer of the
146 underinsured motorist coverage until the insured, in writing, requests different underinsured
147 motorist coverage from the insurer.

148 [(b)] (e) The named insured's underinsured motorist coverage, as described in Subsection
149 (9)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor
150 vehicle, as described in Subsection (8). Underinsured motorist coverage may not be set off against
151 the liability coverage of the owner or operator of an underinsured motor vehicle, but shall be added

152 to, combined with, or stacked upon the liability coverage of the owner or operator of the
153 underinsured motor vehicle to determine the limit of coverage available to the injured person.

154 ~~[(c)]~~ (f) (i) ~~[For new policies or contracts written after January 1, 1993, a]~~ A named insured
155 may reject underinsured motorist coverage by an express writing to the insurer that provides
156 liability coverage under Subsection 31A-22-302(1)(a).

157 (ii) This written rejection shall be on a form provided by the insurer that includes a
158 reasonable explanation of the purpose of underinsured motorist coverage and when it would be
159 applicable.

160 (iii) This rejection continues for that issuer of the liability coverage until the insured in
161 writing requests underinsured motorist coverage from that liability insurer.

162 ~~[(ii)]~~ (g) In conjunction with the first three renewal notices sent after January 1, ~~[1993]~~
163 2000, for policies existing on that date, the insurer shall ~~[notify]~~ provide notice to the insured ~~[of~~
164 ~~the availability]~~ that reasonably explains the purpose of underinsured motorist coverage ~~[along~~
165 ~~with estimated ranges of premiums for the coverage. The department shall provide standard~~
166 ~~language to be used by insurers to fulfill the insurers' duty under this Subsection (9).]~~ and discloses
167 the additional premiums required to purchase underinsured motorist coverage with limits equal to
168 the limits of the insured's motor vehicle liability policy.

169 (10) (a) Underinsured motorist coverage under this section applies to bodily injury,
170 sickness, disease, or death of an insured while occupying or using a motor vehicle owned by,
171 furnished, or available for the regular use of the insured, a resident spouse, or resident relative of
172 the insured, only if the motor vehicle is described in the policy under which a claim is made, or
173 if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of the
174 policy. Except as provided in this Subsection (10), a covered person injured in a vehicle described
175 in a policy that includes underinsured motorist benefits may not elect to collect underinsured
176 motorist coverage benefits from any other motor vehicle insurance policy under which he is a
177 named insured.

178 (b) (i) The limit of liability for underinsured motorist coverage for two or more motor
179 vehicles may not be added together, combined, or stacked to determine the limit of insurance
180 coverage available to an injured person for any one accident.

181 (ii) Subsection (10)(b)(i) applies to all persons except a covered person as defined under
182 Subsection (10)(c)(i)(B).

183 (iii) Coverage on a motor vehicle occupied at the time of an accident shall be primary
184 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall
185 be secondary coverage.

186 (c) Underinsured motorist coverage:

187 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers' Compensation
188 Act;

189 (ii) may not be subrogated by the Workers' Compensation insurance carrier;

190 (iii) may not be reduced by any benefits provided by Workers' Compensation insurance;

191 and

192 (iv) may be reduced by health insurance subrogation only after the covered person has
193 been made whole.

194 [~~(c)~~] (d) (i) Each of the following persons may also recover underinsured motorist
195 coverage benefits under any other policy in which they are described as a "covered person" as
196 defined under Subsection (1):

197 (A) a covered person injured as a pedestrian by an underinsured motor vehicle; or

198 (B) a covered person injured while occupying or using a motor vehicle that is not owned
199 by, furnished, or available for the regular use of the covered person, the covered person's resident
200 spouse, or the covered person's resident relative.

201 (ii) This coverage shall only be available as a secondary source of coverage.

202 (iii) A covered person as defined under Subsection (10)[~~(c)~~] (b)(i)(B) is entitled to the
203 highest limits of underinsured motorist coverage afforded for any one vehicle that the covered
204 person is the named insured or an insured family member.

205 (iv) This coverage shall be in addition to the coverage on the vehicle the covered person
206 is occupying.

207 (v) Neither the primary nor the secondary coverage may be set off against the other.

208 [~~(d)~~] (e) A covered injured person is not barred against making subsequent elections if
209 recovery is unavailable under previous elections.

210 (11) A claim may not be brought by a covered person against a motor vehicle underinsured
211 motorist policy more than three years after the date of the liability policy payment document.

Legislative Review Note

as of 2-1-00 3:50 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel