

MOTOR VEHICLE INSURANCE AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the Insurance Code by limiting underinsured motorist insurance coverage subrogation and clarifying the conditions for making an uninsured motorist claim.

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

AMENDS:

31A-22-305, as last amended by Chapter 188, Laws of Utah 2000

31A-22-307, as last amended by Chapter 71, Laws of Utah 1994

31A-22-309, as last amended by Chapter 222, Laws of Utah 2000

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

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

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

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

(a) the named insured;

(b) 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;

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

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

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

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



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

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

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

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

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

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

40 (3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides
41 coverage for covered persons who are legally entitled to recover damages from owners or operators
42 of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

43 (b) For new policies written on or after January 1, 2001, the limits of uninsured motorist
44 coverage shall be equal to the lesser of the limits of the insured's motor vehicle liability coverage
45 or the maximum uninsured motorist coverage limits available by the insurer under the insured's
46 motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an
47 acknowledgment form provided by the insurer 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 lesser of the limits of the insured's motor vehicle liability coverage or the
52 maximum uninsured motorist coverage limits available by the insurer under the insured's motor
53 vehicle policy.

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

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

59 (e) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for
60 policies existing on that date, the insurer shall disclose in the same medium as the premium
61 renewal notice, an explanation of the purpose of uninsured motorist coverage and the costs
62 associated with increasing the coverage in amounts up to and including the maximum amount
63 available by the insurer under the insured's motor vehicle policy.

64 (ii) The disclosure shall be sent to all insureds that carry uninsured motorist coverage
65 limits in an amount less than the insured's motor vehicle liability policy limits or the maximum
66 uninsured motorist coverage limits available by the insurer under the insured's motor vehicle
67 policy.

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

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

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

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

80 (ii) This coverage is secondary to any other insurance covering an injured covered person.

81 (c) Uninsured motorist coverage:

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

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

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

86 and

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

89 (d) As used in this Subsection (4):

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

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

92 (5) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b)
93 proximately caused an accident without touching the covered person or the vehicle occupied by
94 the covered person, the covered person must show the existence of the uninsured motor vehicle
95 by clear and convincing evidence consisting of more than the covered person's testimony.

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

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

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

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

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

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

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

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

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

120 (ii) a covered person injured while occupying or using a motor vehicle that is not owned

121 by, furnished, or available for the regular use of the covered person, the covered person's resident
122 spouse, or the covered person's resident relative.

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

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

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

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

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

133 (9) (a) Underinsured motorist coverage under Subsection 31A-22-302(1)(c) provides
134 coverage for covered persons who are legally entitled to recover damages from owners or operators
135 of underinsured motor vehicles because of bodily injury, sickness, disease, or death.

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

141 (i) waives the higher coverage;

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

143 (iii) discloses the additional premiums required to purchase underinsured motorist
144 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
145 coverage or the maximum underinsured motorist coverage limits available by the insurer under the
146 insured's motor vehicle policy.

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

150 (d) The acknowledgment under Subsection (9)(b) continues for that issuer of the
151 underinsured motorist coverage until the insured, in writing, requests different underinsured

152 motorist coverage from the insurer.

153 (e) The named insured's underinsured motorist coverage, as described in Subsection (9)(a),
154 is secondary to the liability coverage of an owner or operator of an underinsured motor vehicle,
155 as described in Subsection (8). Underinsured motorist coverage may not be set off against the
156 liability coverage of the owner or operator of an underinsured motor vehicle, but shall be added
157 to, combined with, or stacked upon the liability coverage of the owner or operator of the
158 underinsured motor vehicle to determine the limit of coverage available to the injured person.

159 (f) (i) A named insured may reject underinsured motorist coverage by an express writing
160 to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

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

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

166 (g) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for
167 policies existing on that date, the insurer shall disclose in the same medium as the premium
168 renewal notice, an explanation of the purpose of underinsured motorist coverage and the costs
169 associated with increasing the coverage in amounts up to and including the maximum amount
170 available by the insurer under the insured's motor vehicle policy.

171 (ii) The disclosure shall be sent to all insureds that carry underinsured motorist coverage
172 limits in an amount less than the insured's motor vehicle liability policy limits or the maximum
173 underinsured motorist coverage limits available by the insurer under the insured's motor vehicle
174 policy.

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

183 named insured.

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

187 (ii) Subsection (10)(b)(i) applies to all persons except a covered person as defined under
188 Subsection (10)~~(c)~~ (d)(i)(B).

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

192 (c) Underinsured motorist coverage:

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

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

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

197 and

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

200 (d) (i) Each of the following persons may also recover underinsured motorist coverage
201 benefits under any other policy in which they are described as a "covered person" as defined under
202 Subsection (1):

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

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

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

208 (iii) A covered person as defined under Subsection (10)~~(b)~~(d)(i)(B) is entitled to the
209 highest limits of underinsured motorist coverage afforded for any one vehicle that the covered
210 person is the named insured or an insured family member.

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

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

214 (e) A covered injured person is not barred against making subsequent elections if recovery
215 is unavailable under previous elections.

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

218 ~~§ [(12) Underinsured motorist coverage may not include rights of subrogation by the~~
219 ~~underinsured motorist insurer against any person liable for the injuries caused in the accident.] (12)(a)~~

219a ~~WITHIN § [TWO] FIVE § BUSINESS DAYS AFTER NOTIFICATION IN A MANNER SPECIFIED BY THE~~
219b ~~DEPARTMENT THAT § [THE LIABILITY INSURER HAS TENDERED ITS] ALL LIABILITY INSURERS~~
219b1 ~~HAVE TENDERED THEIR § LIABILITY POLICY LIMITS,~~

219c ~~THE UNDERINSURED CARRIER SHALL EITHER:~~

219d ~~(i) WAIVE ANY SUBROGATION CLAIM THE UNDERINSURED CARRIER MAY HAVE AGAINST~~
219e ~~THE PERSON LIABLE FOR THE INJURIES CAUSED IN THE ACCIDENT; OR~~

219f ~~(ii) PAY THE INSURED AN AMOUNT EQUAL TO THE POLICY LIMITS TENDERED BY THE~~
219g ~~LIABILITY CARRIER.~~

219h ~~(b) IF NEITHER OPTION IS EXERCISED UNDER SUBSECTION (12)(a), THE SUBROGATION~~
219i ~~CLAIM IS DEEMED TO BE WAIVED BY THE UNDERINSURED CARRIER. §~~

220 Section 2. Section 31A-22-307 is amended to read:

221 **31A-22-307. Personal injury protection coverages and benefits.**

222 (1) Personal injury protection coverages and benefits include:

223 (a) the reasonable value of all expenses for necessary medical, surgical, X-ray, dental,
224 rehabilitation, including prosthetic devices, ambulance, hospital, and nursing services, not to
225 exceed a total of \$3,000 per person;

226 (b) (i) the lesser of \$250 per week or 85% of any loss of gross income and loss of earning
227 capacity per person from inability to work, for a maximum of 52 consecutive weeks after the loss,
228 except that this benefit need not be paid for the first three days of disability, unless the disability
229 continues for longer than two consecutive weeks after the date of injury; and

230 (ii) a special damage allowance not exceeding \$20 per day for a maximum of 365 days,
231 for services actually rendered or expenses reasonably incurred for services that, but for the injury,
232 the injured person would have performed for his household, except that this benefit need not be
233 paid for the first three days after the date of injury unless the person's inability to perform these
234 services continues for more than two consecutive weeks;

235 (c) funeral, burial, or cremation benefits not to exceed a total of \$1,500 per person; and

236 (d) compensation on account of death of a person, payable to his heirs, in the total of
237 \$3,000.

238 (2) (a) To determine the reasonable value of the medical expenses provided for in
239 Subsection (1) and under Subsection 31A-22-309 (1)[~~(e)~~](a)(v), the commissioner shall conduct

240 a relative value study of services and accommodations for the diagnosis, care, recovery, or
241 rehabilitation of an injured person in the most populous county in the state to assign a unit value
242 and determine the 75th percentile charge for each type of service and accommodation. The study
243 shall be updated every other year. In conducting the study, the department may consult or contract
244 with appropriate public and private medical and health agencies or other technical experts. The

245 costs and expenses incurred in conducting, maintaining, and administering the relative value study
246 shall be funded by the tax created under Section 59-9-105. Upon completion of the study, the
247 department shall prepare and publish a relative value study which sets forth the unit value and the
248 75th percentile charge assigned to each type of service and accommodation.

249 (b) The reasonable value of any service or accommodation is determined by applying the
250 unit value and the 75th percentile charge assigned to the service or accommodation under the
251 relative value study. If a service or accommodation is not assigned a unit value or the 75th
252 percentile charge under the relative value study, the value of the service or accommodation shall
253 equal the reasonable cost of the same or similar service or accommodation in the most populous
254 county of this state.

255 (c) This Subsection (2) does not preclude the department from adopting a schedule already
256 established or a schedule prepared by persons outside the department, if it meets the requirements
257 of this subsection.

258 (d) Every insurer shall report to the Commissioner of Insurance any patterns of
259 overcharging, excessive treatment, or other improper actions by a health provider within 30 days
260 after such insurer has knowledge of such pattern.

261 (e) In disputed cases, a court on its own motion or on the motion of either party may
262 designate an impartial medical panel of not more than three licensed physicians to examine the
263 claimant and testify on the issue of the reasonable value of the claimant's medical services or
264 expenses.

265 (3) Medical expenses as provided for in Subsection (1)(a) and in Subsection 31A-22-309
266 (1)~~(c)~~(a)(v) include expenses for any nonmedical remedial care and treatment rendered in
267 accordance with a recognized religious method of healing.

268 (4) The insured may waive for the named insured and the named insured's spouse only the
269 loss of gross income benefits of Subsection (1)(b)(i) if the insured states in writing that:

270 (a) within 31 days of applying for coverage, neither the insured nor the insured's spouse
271 received any earned income from regular employment; and

272 (b) for at least 180 days from the date of the writing and during the period of insurance,
273 neither the insured nor the insured's spouse will receive earned income from regular employment.

274 (5) This section does not prohibit the issuance of policies of insurance providing coverages
275 greater than the minimum coverage required under this chapter nor does it require the segregation

276 of those minimum coverages from other coverages in the same policy.

277 (6) Deductibles are not permitted with respect to the insurance coverages required under
278 this section.

279 Section 3. Section **31A-22-309** is amended to read:

280 **31A-22-309. Limitations, exclusions, and conditions to personal injury protection.**

281 (1) ~~(a)~~ A person who has or is required to have direct benefit coverage under a policy
282 which includes personal injury protection may not maintain a cause of action for general damages
283 arising out of personal injuries alleged to have been caused by an automobile accident, except
284 where the person has sustained one or more of the following:

285 ~~(a)~~ (i) death;

286 ~~(b)~~ (ii) dismemberment;

287 ~~(c)~~ (iii) permanent disability or permanent impairment based upon objective findings;

288 ~~(d)~~ (iv) permanent disfigurement; or

289 ~~(e)~~ (v) medical expenses to a person in excess of \$3,000.

290 (b) Subsection (1)(a) does not apply to a person making an uninsured motorist claim.

291 (2) (a) Any insurer issuing personal injury protection coverage under this part may only
292 exclude from this coverage benefits:

293 (i) for any injury sustained by the insured while occupying another motor vehicle owned
294 by or furnished for the regular use of the insured or a resident family member of the insured and
295 not insured under the policy;

296 (ii) for any injury sustained by any person while operating the insured motor vehicle
297 without the express or implied consent of the insured or while not in lawful possession of the
298 insured motor vehicle;

299 (iii) to any injured person, if the person's conduct contributed to his injury:

300 (A) by intentionally causing injury to himself; or

301 (B) while committing a felony;

302 (iv) for any injury sustained by any person arising out of the use of any motor vehicle
303 while located for use as a residence or premises;

304 (v) for any injury due to war, whether or not declared, civil war, insurrection, rebellion or
305 revolution, or to any act or condition incident to any of the foregoing; or

306 (vi) for any injury resulting from the radioactive, toxic, explosive, or other hazardous

307 properties of nuclear materials.

308 (b) The provisions of this subsection do not limit the exclusions which may be contained
309 in other types of coverage.

310 (3) The benefits payable to any injured person under Section 31A-22-307 are reduced by:

311 (a) any benefits which that person receives or is entitled to receive as a result of an
312 accident covered in this code under any workers' compensation or similar statutory plan; and

313 (b) any amounts which that person receives or is entitled to receive from the United States
314 or any of its agencies because that person is on active duty in the military service.

315 (4) When a person injured is also an insured party under any other policy, including those
316 policies complying with this part, primary coverage is given by the policy insuring the motor
317 vehicle in use during the accident.

318 (5) (a) Payment of the benefits provided for in Section 31A-22-307 shall be made on a
319 monthly basis as expenses are incurred.

320 (b) Benefits for any period are overdue if they are not paid within 30 days after the insurer
321 receives reasonable proof of the fact and amount of expenses incurred during the period. If
322 reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof
323 is overdue if not paid within 30 days after that proof is received by the insurer. Any part or all of
324 the remainder of the claim that is later supported by reasonable proof is also overdue if not paid
325 within 30 days after the proof is received by the insurer.

326 (c) If the insurer fails to pay the expenses when due, these expenses shall bear interest at
327 the rate of 1-1/2% per month after the due date.

328 (d) The person entitled to the benefits may bring an action in contract to recover the
329 expenses plus the applicable interest. If the insurer is required by the action to pay any overdue
330 benefits and interest, the insurer is also required to pay a reasonable attorney's fee to the claimant.

331 (6) Every policy providing personal injury protection coverage is subject to the following:

332 (a) that where the insured under the policy is or would be held legally liable for the
333 personal injuries sustained by any person to whom benefits required under personal injury
334 protection have been paid by another insurer, including the Workers' Compensation Fund created
335 under Chapter 33, the insurer of the person who would be held legally liable shall reimburse the
336 other insurer for the payment, but not in excess of the amount of damages recoverable; and

337 (b) that the issue of liability for that reimbursement and its amount shall be decided by

338 mandatory, binding arbitration between the insurers.

Legislative Review Note
as of 1-16-01 3:56 PM

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

Office of Legislative Research and General Counsel