

Senator Dan R. Eastman proposes the following substitute bill:

1 **UNINSURED AND UNDERINSURED MOTORIST**
2 **COVERAGE**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Dan R. Eastman**

6 **This act modifies the Motor Vehicles Code by amending uninsured and underinsured**
7 **motorists provisions. This act provides that a person who exercises unauthorized control**
8 **over a vehicle, a passenger who has knowledge that the driver is exercising unauthorized**
9 **control, or a person who is committing a felony may not collect uninsured or**
10 **underinsured motorist coverage. This act provides that a dependent minor of parents**
11 **who reside in separate households may recover uninsured or underinsured benefits from**
12 **each parent's policy and each parent's policy is liable only for the percentage of damage**
13 **that the limit bears to the total of all uninsured coverage applicable to the accident. This**
14 **act provides that an underinsured motor vehicle does not include a named insured's own**
15 **vehicle. This act makes technical changes.**

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

17 **AMENDS:**

18 **31A-22-302**, as last amended by Chapter 1, Laws of Utah 2000

19 **31A-22-305**, as last amended by Chapter 59, Laws of Utah 2001

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

21 Section 1. Section **31A-22-302** is amended to read:

22 **31A-22-302. Required components of motor vehicle insurance policies --**

23 **Exceptions.**

24 (1) Every policy of insurance or combination of policies purchased to satisfy the
25 owner's or operator's security requirement of Section 41-12a-301 shall include:



26 (a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;

27 (b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively
28 waived under Subsection 31A-22-305(4); and

29 (c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively
30 waived under Subsection 31A-22-305(9)[(e)].

31 (2) Every policy of insurance or combination of policies, purchased to satisfy the
32 owner's or operator's security requirement of Section 41-12a-301, except for motorcycles,
33 trailers, and semitrailers, shall also include personal injury protection under Sections
34 31A-22-306 through 31A-22-309.

35 (3) (a) First party medical coverages may be offered or included in policies issued to
36 motorcycle, trailer, and semitrailer owners or operators.

37 (b) Owners and operators of motorcycles, trailers, and semitrailers are not covered by
38 personal injury protection coverages in connection with injuries incurred while operating any
39 of these vehicles.

40 Section 2. Section **31A-22-305** is amended to read:

41 **31A-22-305. Uninsured and underinsured motorist coverage.**

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

43 (a) the named insured;

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

47 (c) any person occupying or using a motor vehicle;

48 (i) referred to in the policy; or

49 (ii) owned by a self-insurer; and

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

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

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

56 (ii) (A) a motor vehicle covered with lower liability limits than required by Section

57 31A-22-304; and

58 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of
59 the deficiency;

60 (b) an unidentified motor vehicle that left the scene of an accident proximately caused
61 by the motor vehicle operator;

62 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
63 disputed by the liability insurer for more than 60 days or~~[-beginning with the effective date of~~
64 ~~this act,]~~ continues to be disputed for more than 60 days; or

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

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

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

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

77 (i) waives the higher coverage;

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

79 (iii) discloses the additional premiums required to purchase uninsured motorist
80 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
81 coverage or the maximum uninsured motorist coverage limits available by the insurer under the
82 insured's motor vehicle policy.

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

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

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

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

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

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

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

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

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

111 (c) Uninsured motorist coverage:

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

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

115 (iii) may not be reduced by any benefits provided by Workers' Compensation
116 insurance; [~~and~~]

117 (iv) may be reduced by health insurance subrogation only after the covered person has
118 been made whole[-];

- 119 (v) may not be collected for bodily injury or death sustained by a person:
120 (A) while committing a violation of Section 41-1a-1314;
121 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
122 in violation of Section 41-1a-1314; or
123 (C) while committing a felony; and
124 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:
125 (A) for a person under 18 years of age who is injured within the scope of Subsection
126 (4)(c)(v) but limited to medical and funeral expenses; or
127 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
128 within the course and scope of the law enforcement officer's duties.
129 (d) As used in this Subsection (4):
130 (i) "Governmental entity" has the same meaning as under Section 63-30-2.
131 (ii) "Motor vehicle" has the same meaning as under Section 41-1a-102.
132 (5) When a covered person alleges that an uninsured motor vehicle under Subsection
133 (2)(b) proximately caused an accident without touching the covered person or the motor
134 vehicle occupied by the covered person, the covered person must show the existence of the
135 uninsured motor vehicle by clear and convincing evidence consisting of more than the covered
136 person's testimony.
137 (6) (a) The limit of liability for uninsured motorist coverage for two or more motor
138 vehicles may not be added together, combined, or stacked to determine the limit of insurance
139 coverage available to an injured person for any one accident.
140 (b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under
141 Subsection (7)(b)(ii).
142 (ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest
143 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered
144 person is the named insured or an insured family member.
145 (iii) This coverage shall be in addition to the coverage on the motor vehicle the covered
146 person is occupying.
147 (iv) Neither the primary nor the secondary coverage may be set off against the other.
148 (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary
149 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall

150 be secondary coverage.

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

159 (b) Each of the following persons may also recover uninsured motorist benefits under
160 any one other policy in which they are described as a "covered person" as defined in Subsection
161 (1):

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

163 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying
164 or using a motor vehicle that is not owned [~~by~~], leased, or furnished, [~~or available for the~~
165 ~~regular use of~~] to the covered person, to the covered person's [~~resident~~] spouse, or to the
166 covered person's resident [~~relative~~] parent or resident sibling.

167 (c) (i) A covered person may recover benefits from no more than two additional
168 policies, one additional policy from each parent's household if the covered person is:

169 (A) a dependent minor of parents who reside in separate households; and

170 (B) injured while occupying or using a motor vehicle that is not owned, leased, or
171 furnished to the covered person, the covered person's resident parent, or to the covered person's
172 resident sibling.

173 (ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of
174 the damages that the limit of liability of each parent's policy of uninsured motorist coverage
175 bears to the total of all uninsured coverage applicable to the accident.

176 (d) A covered person's recovery under any available policies may not exceed the full
177 amount of damages.

178 [~~(e)~~] (e) A covered person in Subsection (7)(b) is not barred against making subsequent
179 elections if recovery is unavailable under previous elections.

180 (8) (a) As used in this section, "underinsured motor vehicle" includes a motor vehicle,

181 the operation, maintenance, or use of which is covered under a liability policy at the time of an
182 injury-causing occurrence, but which has insufficient liability coverage to compensate fully the
183 injured party for all special and general damages.

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

185 (i) a motor vehicle that is covered under the liability coverage of the same policy that
186 also contains the underinsured motorist coverage; ~~[or]~~

187 (ii) an uninsured motor vehicle as defined in Subsection (2)~~[-];~~ or

188 (iii) a motor vehicle owned or leased by the named insured, the named insured's
189 spouse, or any dependant of the named insured.

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

194 (ii) A covered person occupying or using a motor vehicle owned, leased, or furnished
195 to the covered person, the covered person's spouse, or covered person's resident relative may
196 recover underinsured benefits only if the motor vehicle is:

197 (A) described in the policy under which a claim is made; or

198 (B) a newly acquired or replacement motor vehicle covered under the terms of the
199 policy.

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

205 (i) waives the higher coverage;

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

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

211 (c) Underinsured motorist coverage may not be sold with limits that are less than

212 \$10,000 for one person in any one accident and at least \$20,000 for two or more persons in any
213 one accident.

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

217 (e) The named insured's underinsured motorist coverage, as described in Subsection
218 (9)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor
219 vehicle, as described in Subsection (8). Underinsured motorist coverage may not be set off
220 against the liability coverage of the owner or operator of an underinsured motor vehicle, but
221 shall be added to, combined with, or stacked upon the liability coverage of the owner or
222 operator of the underinsured motor vehicle to determine the limit of coverage available to the
223 injured person.

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

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

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

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

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

240 (10) (a) ~~[Underinsured motorist coverage under this section applies to bodily injury,~~
241 ~~sickness, disease, or death of an insured while occupying or using a motor vehicle owned by,~~
242 ~~furnished, or available for the regular use of the insured, a resident spouse, or resident relative~~

243 of the insured, only if the motor vehicle is described in the policy under which a claim is made,
244 or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of
245 the policy.]

246 (i) Except as provided in this Subsection (10), a covered person injured in a motor
247 vehicle described in a policy that includes underinsured motorist benefits may not elect to
248 collect underinsured motorist coverage benefits from any other motor vehicle insurance policy
249 [under which he is a named insured].

250 ~~[(b)-(i)]~~ (ii) The limit of liability for underinsured motorist coverage for two or more
251 motor vehicles may not be added together, combined, or stacked to determine the limit of
252 insurance coverage available to an injured person for any one accident.

253 ~~[(ii) Subsection (10)(b)(i) applies to all persons except a covered person as defined~~
254 ~~under Subsection (10)(d)(i)(B).]~~

255 (iii) Subsection (10)(a)(ii) applies to all persons except a covered person as defined
256 under Subsections (10)(b)(i) and (ii).

257 (b) (i) Except as provided in Subsection (10)(b)(ii), a covered person injured while
258 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the
259 covered person, the covered person's spouse, or the covered person's resident parent or resident
260 sibling, may also recover benefits under any one other policy under which they are a covered
261 person.

262 (ii) (A) A covered person may recover benefits from no more than two additional
263 policies, one additional policy from each parent's household if the covered person is:

264 (I) a dependent minor of parents who reside in separate households; and

265 (II) injured while occupying or using a motor vehicle that is not owned, leased, or
266 furnished to the covered person, the covered person's resident parent, or the covered person's
267 resident sibling.

268 (B) Each parent's policy under this Subsection (10)(b)(ii) is liable only for the
269 percentage of the damages that the limit of liability of each parent's policy of underinsured
270 motorist coverage bears to the total of all underinsured coverage applicable to the accident.

271 (iii) A covered person's recovery under any available policies may not exceed the full
272 amount of damages.

273 ~~[(iii) Coverage]~~ (iv) Underinsured coverage on a motor vehicle occupied at the time of

274 an accident shall be primary coverage, and the coverage elected by a person described under
275 Subsections (1)(a) and (b) shall be secondary coverage.

276 (v) The primary and the secondary coverage may not be set off against the other.

277 (vi) A covered person as defined under Subsection (10)(b)(i) is entitled to the highest
278 limits of underinsured motorist coverage under only one additional policy per household
279 applicable to that covered person as a named insured, spouse, or relative.

280 (vii) A covered injured person is not barred against making subsequent elections if
281 recovery is unavailable under previous elections.

282 (c) Underinsured motorist coverage:

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

285 (ii) may not be [~~subrogated~~] subrogated by the Workers' Compensation insurance
286 carrier;

287 (iii) may not be reduced by any benefits provided by Workers' Compensation
288 insurance; [~~and~~]

289 (iv) may be reduced by health insurance subrogation only after the covered person has
290 been made whole[:];

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

294 [~~(A) a covered person injured as a pedestrian by an underinsured motor vehicle; or]~~

295 [~~(B) a covered person injured while occupying or using a motor vehicle that is not~~
296 ~~owned by, furnished, or available for the regular use of the covered person, the covered~~
297 ~~person's resident spouse, or the covered person's resident relative:]~~

298 [~~(ii) This coverage shall only be available as a secondary source of coverage:]~~

299 [~~(iii) A covered person as defined under Subsection (10)(d)(i)(B) is entitled to the~~
300 ~~highest limits of underinsured motorist coverage afforded for any one vehicle that the covered~~
301 ~~person is the named insured or an insured family member:]~~

302 [~~(iv) This coverage shall be in addition to the coverage on the vehicle the covered~~
303 ~~person is occupying:]~~

304 [~~(v) Neither the primary nor the secondary coverage may be set off against the other:]~~

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

307 ~~[(11) A claim may not be brought by a covered person against a motor vehicle~~
308 ~~underinsured motorist policy more than three years after the date of the last liability policy~~
309 ~~payment.]~~

310 (v) may not be collected for bodily injury or death sustained by a person:

311 (A) while committing a violation of Section 41-1a-1314;

312 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
313 in violation of Section 41-1a-1314; or

314 (C) while committing a felony; and

315 (vi) notwithstanding Subsection (10)(c)(v), may be recovered:

316 (A) for a person under 18 years of age who is injured within the scope of Subsection
317 (10)(c)(v) but limited to medical and funeral expenses; or

318 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
319 within the course and scope of the law enforcement officer's duties.

320 (11) The inception of the loss under Subsection 31A-21-313(1) for underinsured
321 motorist claims occurs upon the date of the last liability policy payment.

322 (12) (a) Within five business days after notification in a manner specified by the
323 department that all liability insurers have tendered their liability policy limits, the underinsured
324 carrier shall either:

325 (i) waive any subrogation claim the underinsured carrier may have against the person
326 liable for the injuries caused in the accident; or

327 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.

328 (b) If neither option is exercised under Subsection (12)(a), the subrogation claim is
329 deemed to be waived by the underinsured carrier.

330 (13) Except as otherwise provided in this section, a covered person may seek, subject
331 to the terms and conditions of the policy, additional coverage under any policy:

332 (a) that provides coverage for damages resulting from motor vehicle accidents; and

333 (b) that is not required to conform to Section 31A-22-302.