

1 **UNDERINSURED MOTORIST COVERAGE**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stephen H. Urquhart**

6 House Sponsor: Lorie D. Fowlke

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Insurance Code by amending provisions relating to underinsured
11 motorist coverage.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides that for an insurance policy or combination of policies providing
15 underinsured motorist coverage issued or renewed on or after July 1, 2009, an
16 underinsured motorist coverage carrier has no subrogation claim against the person
17 liable for the injuries caused in the accident; and

18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **31A-22-305.3**, as last amended by Laws of Utah 2008, Chapter 3

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



28 Section 1. Section **31A-22-305.3** is amended to read:

29 **31A-22-305.3. Underinsured motorist coverage.**

30 (1) As used in this section:

31 (a) "Covered person" has the same meaning as defined in Section 31A-22-305.

32 (b) (i) "Underinsured motor vehicle" includes a motor vehicle, the operation,
33 maintenance, or use of which is covered under a liability policy at the time of an injury-causing
34 occurrence, but which has insufficient liability coverage to compensate fully the injured party
35 for all special and general damages.

36 (ii) The term "underinsured motor vehicle" does not include:

37 (A) a motor vehicle that is covered under the liability coverage of the same policy that
38 also contains the underinsured motorist coverage;

39 (B) an uninsured motor vehicle as defined in Subsection 31A-22-305(2); or

40 (C) a motor vehicle owned or leased by:

41 (I) the named insured;

42 (II) the named insured's spouse; or

43 (III) any dependent of the named insured.

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

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

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

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

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

59 (i) is filed with the department;
60 (ii) is provided by the insurer;
61 (iii) waives the higher coverage;
62 (iv) reasonably explains the purpose of underinsured motorist coverage; and
63 (v) discloses the additional premiums required to purchase underinsured motorist
64 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
65 coverage or the maximum underinsured motorist coverage limits available by the insurer under
66 the insured's motor vehicle policy.

67 (c) A self-insured, including a governmental entity, may elect to provide underinsured
68 motorist coverage in an amount that is less than its maximum self-insured retention under
69 Subsections (2)(b) and (2)(g) by issuing a declaratory memorandum or policy statement from
70 the chief financial officer or chief risk officer that declares the:

- 71 (i) self-insured entity's coverage level; and
 - 72 (ii) process for filing an underinsured motorist claim.
- 73 (d) Underinsured motorist coverage may not be sold with limits that are less than:
- 74 (i) \$10,000 for one person in any one accident; and
 - 75 (ii) at least \$20,000 for two or more persons in any one accident.

76 (e) The acknowledgment under Subsection (2)(b) continues for that issuer of the
77 underinsured motorist coverage until the insured, in writing, requests different underinsured
78 motorist coverage from the insurer.

79 (f) (i) The named insured's underinsured motorist coverage, as described in Subsection
80 (2)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor
81 vehicle, as described in Subsection (1).

82 (ii) Underinsured motorist coverage may not be set off against the liability coverage of
83 the owner or operator of an underinsured motor vehicle, but shall be added to, combined with,
84 or stacked upon the liability coverage of the owner or operator of the underinsured motor
85 vehicle to determine the limit of coverage available to the injured person.

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

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

90 applicable.

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

93 (h) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for
94 policies existing on that date, the insurer shall disclose in the same medium as the premium
95 renewal notice, an explanation of:

96 (A) the purpose of underinsured motorist coverage; and

97 (B) the costs associated with increasing the coverage in amounts up to and including
98 the maximum amount available by the insurer under the insured's motor vehicle policy.

99 (ii) The disclosure required by this Subsection (2)(h) shall be sent to all insureds that
100 carry underinsured motorist coverage limits in an amount less than the insured's motor vehicle
101 liability policy limits or the maximum underinsured motorist coverage limits available by the
102 insurer under the insured's motor vehicle policy.

103 (3) (a) (i) Except as provided in this Subsection (3), a covered person injured in a
104 motor vehicle described in a policy that includes underinsured motorist benefits may not elect
105 to collect underinsured motorist coverage benefits from any other motor vehicle insurance
106 policy.

107 (ii) The limit of liability for underinsured motorist coverage for two or more motor
108 vehicles may not be added together, combined, or stacked to determine the limit of insurance
109 coverage available to an injured person for any one accident.

110 (iii) Subsection (3)(a)(ii) applies to all persons except a covered person described
111 under Subsections (3)(b)(i) and (ii).

112 (b) (i) Except as provided in Subsection (3)(b)(ii), a covered person injured while
113 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the
114 covered person, the covered person's spouse, or the covered person's resident parent or resident
115 sibling, may also recover benefits under any one other policy under which they are a covered
116 person.

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

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

120 (II) injured while occupying or using a motor vehicle that is not owned, leased, or

121 furnished to the covered person, the covered person's resident parent, or the covered person's
122 resident sibling.

123 (B) Each parent's policy under this Subsection (3)(b)(ii) is liable only for the
124 percentage of the damages that the limit of liability of each parent's policy of underinsured
125 motorist coverage bears to the total of both parents' underinsured coverage applicable to the
126 accident.

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

129 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident shall
130 be primary coverage, and the coverage elected by a person described under Subsections
131 31A-22-305(1)(a) and (b) shall be secondary coverage.

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

133 (vi) A covered person as described under Subsection (3)(b)(i) is entitled to the highest
134 limits of underinsured motorist coverage under only one additional policy per household
135 applicable to that covered person as a named insured, spouse, or relative.

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

138 (viii) (A) As used in this section, "interpolicy stacking" means recovering benefits for a
139 single incident of loss under more than one insurance policy.

140 (B) Except to the extent permitted by this Subsection (3), interpolicy stacking is
141 prohibited for underinsured motorist coverage.

142 (c) Underinsured motorist coverage:

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

145 (ii) may not be subrogated by the workers' compensation insurance carrier;

146 (iii) may not be reduced by any benefits provided by workers' compensation insurance;

147 (iv) may be reduced by health insurance subrogation only after the covered person has
148 been made whole;

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

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

151 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated

152 in violation of Section 41-1a-1314; or

153 (C) while committing a felony; and

154 (vi) notwithstanding Subsection (3)(c)(v), may be recovered:

155 (A) for a person under 18 years of age who is injured within the scope of Subsection

156 (3)(c)(v) but limited to medical and funeral expenses; or

157 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured

158 within the course and scope of the law enforcement officer's duties.

159 (4) The inception of the loss under Subsection 31A-21-313(1) for underinsured

160 motorist claims occurs upon the date of the last liability policy payment.

161 (5) (a) ~~Within~~ Except as provided in Subsection (5)(c), within five business days after

162 notification in a manner specified by the department that all liability insurers have tendered

163 their liability policy limits, the underinsured carrier shall either:

164 (i) waive any subrogation claim the underinsured carrier may have against the person

165 liable for the injuries caused in the accident; or

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

167 (b) If neither option is exercised under Subsection (5)(a), the subrogation claim is

168 considered to be waived by the underinsured carrier.

169 (c) For an insurance policy or combination of policies providing underinsured motorist

170 coverage issued or renewed on or after July 1, 2009, the underinsured motorist coverage carrier

171 has no subrogation claim against the person liable for the injuries caused in the accident.

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

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

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

176 (7) (a) When a claim is brought by a named insured or a person described in

177 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist

178 carrier, the claimant may elect to resolve the claim:

179 (i) by submitting the claim to binding arbitration; or

180 (ii) through litigation.

181 (b) Unless otherwise provided in the policy under which underinsured benefits are

182 claimed, the election provided in Subsection (7)(a) is available to the claimant only.

183 (c) Once the claimant has elected to commence litigation under Subsection (7)(a)(ii),
184 the claimant may not elect to resolve the claim through binding arbitration under this section
185 without the written consent of the underinsured motorist coverage carrier.

186 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
187 binding arbitration under Subsection (7)(a)(i) shall be resolved by a single arbitrator.

188 (ii) All parties shall agree on the single arbitrator selected under Subsection (7)(d)(i).

189 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection
190 (7)(d)(ii), the parties shall select a panel of three arbitrators.

191 (e) If the parties select a panel of three arbitrators under Subsection (7)(d)(iii):

192 (i) each side shall select one arbitrator; and

193 (ii) the arbitrators appointed under Subsection (7)(e)(i) shall select one additional
194 arbitrator to be included in the panel.

195 (f) Unless otherwise agreed to in writing:

196 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
197 under Subsection (7)(d)(i); or

198 (ii) if an arbitration panel is selected under Subsection (7)(d)(iii):

199 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and

200 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
201 under Subsection (7)(e)(ii).

202 (g) Except as otherwise provided in this section or unless otherwise agreed to in
203 writing by the parties, an arbitration proceeding conducted under this section shall be governed
204 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

205 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and
206 68 of the Utah Rules of Civil Procedure.

207 (i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.

208 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
209 shall constitute a final decision.

210 (k) (i) The amount of an arbitration award may not exceed the underinsured motorist
211 policy limits of all applicable underinsured motorist policies, including applicable underinsured
212 motorist umbrella policies.

213 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all

214 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
215 equal to the combined underinsured motorist policy limits of all applicable underinsured
216 motorist policies.

217 (l) The arbitrator or arbitration panel may not decide the issues of coverage or
218 extra-contractual damages, including:

219 (i) whether the claimant is a covered person;

220 (ii) whether the policy extends coverage to the loss; or

221 (iii) any allegations or claims asserting consequential damages or bad faith liability.

222 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
223 class-representative basis.

224 (n) If the arbitrator or arbitration panel finds that the action was not brought, pursued,
225 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees
226 and costs against the party that failed to bring, pursue, or defend the claim in good faith.

227 (o) An arbitration award issued under this section shall be the final resolution of all
228 claims not excluded by Subsection (7)(l) between the parties unless:

229 (i) the award was procured by corruption, fraud, or other undue means; or

230 (ii) either party, within 20 days after service of the arbitration award:

231 (A) files a complaint requesting a trial de novo in the district court; and

232 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
233 under Subsection (7)(o)(ii)(A).

234 (p) (i) Upon filing a complaint for a trial de novo under Subsection (7)(o), the claim
235 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules
236 of Evidence in the district court.

237 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
238 request a jury trial with a complaint requesting a trial de novo under Subsection (7)(o)(ii)(A).

239 (q) (i) If the claimant, as the moving party in a trial de novo requested under
240 Subsection (7)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater
241 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

242 (ii) If the underinsured motorist carrier, as the moving party in a trial de novo requested
243 under Subsection (7)(o), does not obtain a verdict that is at least 20% less than the arbitration
244 award, the underinsured motorist carrier is responsible for all of the nonmoving party's costs.

245 (iii) Except as provided in Subsection (7)(q)(iv), the costs under this Subsection (7)(q)
246 shall include:

247 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

248 (B) the costs of expert witnesses and depositions.

249 (iv) An award of costs under this Subsection (7)(q) may not exceed \$2,500.

250 (r) For purposes of determining whether a party's verdict is greater or less than the
251 arbitration award under Subsection (7)(q), a court may not consider any recovery or other relief
252 granted on a claim for damages if the claim for damages:

253 (i) was not fully disclosed in writing prior to the arbitration proceeding; or

254 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil
255 Procedure.

256 (s) If a district court determines, upon a motion of the nonmoving party, that the
257 moving party's use of the trial de novo process was filed in bad faith in accordance with
258 Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving
259 party.

260 (t) Nothing in this section is intended to limit any claim under any other portion of an
261 applicable insurance policy.

262 (u) If there are multiple underinsured motorist policies, as set forth in Subsection (3),
263 the claimant may elect to arbitrate in one hearing the claims against all the underinsured
264 motorist carriers.

Legislative Review Note
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