

**UNINSURED AND UNDERINSURED MOTORIST COVERAGE**

**AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code by amending provisions relating to uninsured and underinsured motorist coverage.

**Highlighted Provisions:**

This bill:

- ▶ provides that a person is not barred from seeking recovery under the uninsured or underinsured motorist coverage provisions if the fault of the person exceeds the fault of any defendant or group of defendants; and

- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-22-305**, as last amended by Laws of Utah 2010, Chapter 354

**31A-22-305.3**, as last amended by Laws of Utah 2010, Chapters 10 and 354

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



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

29 **31A-22-305. Uninsured motorist coverage.**

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

31 (a) the named insured;

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

35 (c) any person occupying or using a motor vehicle:

36 (i) referred to in the policy; or

37 (ii) owned by a self-insured; and

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

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

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

44 (ii) (A) a motor vehicle covered with lower liability limits than required by Section  
45 31A-22-304; and

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

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

50 (c) a motor vehicle covered by a liability policy, but coverage for an accident is  
51 disputed by the liability insurer for more than 60 days or continues to be disputed for more than  
52 60 days; or

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

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

57 (3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides  
58 coverage for covered persons who are legally entitled to recover damages from owners or

59 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

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

65 (i) is filed with the department;

66 (ii) is provided by the insurer;

67 (iii) waives the higher coverage;

68 (iv) reasonably explains the purpose of uninsured motorist coverage; and

69 (v) discloses the additional premiums required to purchase uninsured motorist  
70 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability  
71 coverage or the maximum uninsured motorist coverage limits available by the insurer under the  
72 insured's motor vehicle policy.

73 (c) A self-insured, including a governmental entity, may elect to provide uninsured  
74 motorist coverage in an amount that is less than its maximum self-insured retention under  
75 Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from  
76 the chief financial officer or chief risk officer that declares the:

77 (i) self-insured entity's coverage level; and

78 (ii) process for filing an uninsured motorist claim.

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

81 (e) The acknowledgment under Subsection (3)(b) continues for that issuer of the  
82 uninsured motorist coverage until the insured, in writing, requests different uninsured motorist  
83 coverage from the insurer.

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

87 (A) the purpose of uninsured motorist coverage; and

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

90 (ii) The disclosure required under this Subsection (3)(f) shall be sent to all insureds that  
91 carry uninsured motorist coverage limits in an amount less than the insured's motor vehicle  
92 liability policy limits or the maximum uninsured motorist coverage limits available by the  
93 insurer under the insured's motor vehicle policy.

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

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

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

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

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

108 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

119 (C) while committing a felony; and

120 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:

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

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

125 (d) As used in this Subsection (4), "motor vehicle" has the same meaning as under  
126 Section 41-1a-102.

127 (e) Notwithstanding Section 78B-5-818, a person seeking recovery under this section is  
128 not barred from recovery if the fault of the person exceeds the fault of any defendant or group  
129 of defendants including those persons immune from suit and nonparties to whom fault is  
130 allocated.

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

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

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

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

144 (iii) This coverage shall be in addition to the coverage on the motor vehicle the covered  
145 person is occupying.

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

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

150 (7) (a) Uninsured motorist coverage under this section applies to bodily injury,  
151 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if

152 the motor vehicle is described in the policy under which a claim is made, or if the motor  
153 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.  
154 Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a  
155 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to  
156 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy  
157 under which the person is a covered person.

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

161 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and  
162 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying  
163 or using a motor vehicle that is not owned, leased, or furnished:

- 164 (A) to the covered person;
- 165 (B) to the covered person's spouse; or
- 166 (C) to the covered person's resident 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:

- 172 (I) to the covered person;
- 173 (II) to the covered person's resident parent; or
- 174 (III) to the covered person's resident sibling.

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

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

180 (e) A covered person in Subsection (7)(b) is not barred against making subsequent  
181 elections if recovery is unavailable under previous elections.

182 (f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a

183 single incident of loss under more than one insurance policy.

184 (ii) Except to the extent permitted by Subsection (6) and this Subsection (7),  
185 interpolicy stacking is prohibited for uninsured motorist coverage.

186 (8) (a) When a claim is brought by a named insured or a person described in  
187 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the  
188 claimant may elect to resolve the claim:

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

190 (ii) through litigation.

191 (b) Unless otherwise provided in the policy under which uninsured benefits are  
192 claimed, the election provided in Subsection (8)(a) is available to the claimant only.

193 (c) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii),  
194 the claimant may not elect to resolve the claim through binding arbitration under this section  
195 without the written consent of the uninsured motorist carrier.

196 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to  
197 binding arbitration under Subsection (8)(a)(i) shall be resolved by a single arbitrator.

198 (ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).

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

201 (e) If the parties select a panel of three arbitrators under Subsection (8)(d)(iii):

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

203 (ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional  
204 arbitrator to be included in the panel.

205 (f) Unless otherwise agreed to in writing:

206 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected  
207 under Subsection (8)(d)(i); or

208 (ii) if an arbitration panel is selected under Subsection (8)(d)(iii):

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

210 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected  
211 under Subsection (8)(e)(ii).

212 (g) Except as otherwise provided in this section or unless otherwise agreed to in  
213 writing by the parties, an arbitration proceeding conducted under this section shall be governed

214 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

215 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and  
216 68 of the Utah Rules of Civil Procedure.

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

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

220 (k) (i) The amount of an arbitration award may not exceed the uninsured motorist  
221 policy limits of all applicable uninsured motorist policies, including applicable uninsured  
222 motorist umbrella policies.

223 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all  
224 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount  
225 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist  
226 policies.

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

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

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

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

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

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

237 (o) An arbitration award issued under this section shall be the final resolution of all  
238 claims not excluded by Subsection (8)(l) between the parties unless:

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

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

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

242 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo  
243 under Subsection (8)(o)(ii)(A).

244 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), the claim

245 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules  
246 of Evidence in the district court.

247 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may  
248 request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

249 (q) (i) If the claimant, as the moving party in a trial de novo requested under  
250 Subsection (8)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater  
251 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

252 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested  
253 under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration  
254 award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.

255 (iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(q)  
256 shall include:

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

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

259 (iv) An award of costs under this Subsection (8)(q) may not exceed \$2,500.

260 (r) For purposes of determining whether a party's verdict is greater or less than the  
261 arbitration award under Subsection (8)(q), a court may not consider any recovery or other relief  
262 granted on a claim for damages if the claim for damages:

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

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

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

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

272 (u) If there are multiple uninsured motorist policies, as set forth in Subsection (7), the  
273 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist  
274 carriers.

275 (9) (a) Within 30 days after a covered person elects to submit a claim for uninsured

276 motorist benefits to binding arbitration or files litigation, the covered person shall provide to  
277 the uninsured motorist carrier:

278 (i) a written demand for payment of uninsured motorist coverage benefits, setting forth:

279 (A) the specific monetary amount of the demand; and

280 (B) the factual and legal basis and any supporting documentation for the demand;

281 (ii) a written statement under oath disclosing:

282 (A) (I) the names and last known addresses of all health care providers who have

283 rendered health care services to the covered person that are material to the claims for which

284 uninsured motorist benefits are sought for a period of five years preceding the date of the event

285 giving rise to the claim for uninsured motorist benefits up to the time the election for

286 arbitration or litigation has been exercised; and

287 (II) whether the covered person has seen other health care providers who have rendered

288 health care services to the covered person, which the covered person claims are immaterial to

289 the claims for which uninsured motorist benefits are sought, for a period of five years

290 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the

291 time the election for arbitration or litigation has been exercised that have not been disclosed

292 under Subsection (9)(a)(ii)(A)(I);

293 (B) (I) the names and last known addresses of all health insurers or other entities to

294 whom the covered person has submitted claims for health care services or benefits material to

295 the claims for which uninsured motorist benefits are sought, for a period of five years

296 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the

297 time the election for arbitration or litigation has been exercised; and

298 (II) whether the identity of any health insurers or other entities to whom the covered

299 person has submitted claims for health care services or benefits, which the covered person

300 claims are immaterial to the claims for which uninsured motorist benefits are sought, for a

301 period of five years preceding the date of the event giving rise to the claim for uninsured

302 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

303 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all

304 employers of the covered person for a period of five years preceding the date of the event

305 giving rise to the claim for uninsured motorist benefits up to the time the election for

306 arbitration or litigation has been exercised;

307 (D) other documents to reasonably support the claims being asserted; and

308 (E) all state and federal statutory lienholders including a statement as to whether the  
309 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health  
310 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,  
311 or if the claim is subject to any other state or federal statutory liens; and

312 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain records  
313 and billings from the individuals or entities disclosed.

314 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed  
315 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary,  
316 the uninsured motorist carrier may:

317 (A) make a request for the disclosure of the identity of the health care providers or  
318 health care insurers; and

319 (B) make a request for authorizations to allow the uninsured motorist carrier to only  
320 obtain records and billings from the individuals or entities not disclosed.

321 (ii) If the covered person does not provide the requested information within 10 days:

322 (A) the covered person shall disclose, in writing, the legal or factual basis for the  
323 failure to disclose the health care providers or health care insurers; and

324 (B) either the covered person or the uninsured motorist carrier may request the  
325 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be  
326 provided if the covered person has elected arbitration.

327 (iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of  
328 the dispute concerning the disclosure and production of records of the health care providers or  
329 health care insurers.

330 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice  
331 of filing litigation and the demand for payment of uninsured motorist benefits under Subsection  
332 (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and  
333 receipt of the items specified in Subsections (9)(a)(i) through (iii), to:

334 (A) provide a written response to the written demand for payment provided for in  
335 Subsection (9)(a)(i);

336 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the  
337 uninsured motorist carrier's determination of the amount owed to the covered person; and

338 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah  
339 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's  
340 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,  
341 tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed  
342 to the covered person less:

343 (I) if the amount of the state or federal statutory lien is established, the amount of the  
344 lien; or

345 (II) if the amount of the state or federal statutory lien is not established, two times the  
346 amount of the medical expenses subject to the state or federal statutory lien until such time as  
347 the amount of the state or federal statutory lien is established.

348 (ii) If the amount tendered by the uninsured motorist carrier under Subsection (9)(c)(i)  
349 is the total amount of the uninsured motorist policy limits, the tendered amount shall be  
350 accepted by the covered person.

351 (d) A covered person who receives a written response from an uninsured motorist  
352 carrier as provided for in Subsection (9)(c)(i), may:

353 (i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all  
354 uninsured motorist claims; or

355 (ii) elect to:

356 (A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all  
357 uninsured motorist claims; and

358 (B) litigate or arbitrate the remaining claim.

359 (e) If a covered person elects to accept the amount tendered under Subsection (9)(c)(i)  
360 as partial payment of all uninsured motorist claims, the final award obtained through  
361 arbitration, litigation, or later settlement shall be reduced by any payment made by the  
362 uninsured motorist carrier under Subsection (9)(c)(i).

363 (f) In an arbitration proceeding on the remaining uninsured claims:

364 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid  
365 under Subsection (9)(c)(i) until after the arbitration award has been rendered; and

366 (ii) the parties may not disclose the amount of the limits of uninsured motorist benefits  
367 provided by the policy.

368 (g) If the final award obtained through arbitration or litigation is greater than the

369 average of the covered person's initial written demand for payment provided for in Subsection  
370 (9)(a)(i) and the uninsured motorist carrier's initial written response provided for in Subsection  
371 (9)(c)(i), the uninsured motorist carrier shall pay:

372 (i) the final award obtained through arbitration or litigation, except that if the award  
373 exceeds the policy limits of the subject uninsured motorist policy by more than \$15,000, the  
374 amount shall be reduced to an amount equal to the policy limits plus \$15,000; and

375 (ii) any of the following applicable costs:

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

377 (B) the arbitrator or arbitration panel's fee; and

378 (C) the reasonable costs of expert witnesses and depositions used in the presentation of  
379 evidence during arbitration or litigation.

380 (h) (i) The covered person shall provide an affidavit of costs within five days of an  
381 arbitration award.

382 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to  
383 which the uninsured motorist carrier objects.

384 (B) The objection shall be resolved by the arbitrator or arbitration panel.

385 (iii) The award of costs by the arbitrator or arbitration panel under Subsection (9)(g)(ii)  
386 may not exceed \$5,000.

387 (i) (i) A covered person shall disclose all material information, other than rebuttal  
388 evidence, as specified in Subsection (9)(a).

389 (ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person  
390 may not recover costs or any amounts in excess of the policy under Subsection (9)(g).

391 (j) This Subsection (9) does not limit any other cause of action that arose or may arise  
392 against the uninsured motorist carrier from the same dispute.

393 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that  
394 occur on or after March 30, 2010.

395 Section 2. Section **31A-22-305.3** is amended to read:

396 **31A-22-305.3. Underinsured motorist coverage.**

397 (1) As used in this section:

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

399 (b) (i) "Underinsured motor vehicle" includes a motor vehicle, the operation,

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

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

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

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

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

408 (I) a named insured;

409 (II) a named insured's spouse; or

410 (III) a dependent of a named insured.

411 (2) (a) (i) Underinsured motorist coverage under Subsection 31A-22-302(1)(c)  
412 provides coverage for a covered person who is legally entitled to recover damages from an  
413 owner or operator of an underinsured motor vehicle because of bodily injury, sickness, disease,  
414 or death.

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

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

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

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

426 (i) is filed with the department;

427 (ii) is provided by the insurer;

428 (iii) waives the higher coverage;

429 (iv) reasonably explains the purpose of underinsured motorist coverage; and

430 (v) discloses the additional premiums required to purchase underinsured motorist

431 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability  
432 coverage or the maximum underinsured motorist coverage limits available by the insurer under  
433 the insured's motor vehicle policy.

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

438 (i) self-insured entity's coverage level; and

439 (ii) process for filing an underinsured motorist claim.

440 (d) Underinsured motorist coverage may not be sold with limits that are less than:

441 (i) \$10,000 for one person in any one accident; and

442 (ii) at least \$20,000 for two or more persons in any one accident.

443 (e) An acknowledgment under Subsection (2)(b) continues for that issuer of the  
444 underinsured motorist coverage until the insured, in writing, requests different underinsured  
445 motorist coverage from the insurer.

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

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

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

455 (ii) A written rejection under this Subsection (2)(g) shall be on a form provided by the  
456 insurer that includes a reasonable explanation of the purpose of underinsured motorist coverage  
457 and when it would be applicable.

458 (iii) A written rejection under this Subsection (2)(g) continues for that issuer of the  
459 liability coverage until the insured in writing requests underinsured motorist coverage from that  
460 liability insurer.

461 (3) (a) (i) Except as provided in this Subsection (3), a covered person injured in a

462 motor vehicle described in a policy that includes underinsured motorist benefits may not elect  
463 to collect underinsured motorist coverage benefits from another motor vehicle insurance policy.

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

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

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

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

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

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

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

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

486 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is  
487 primary coverage, and the coverage elected by a person described under Subsections  
488 31A-22-305(1)(a) and (b) is secondary coverage.

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

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

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

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

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

499 (c) Underinsured motorist coverage:

500 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'

501 Compensation Act;

502 (ii) may not be subrogated by a workers' compensation insurance carrier;

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

504 (iv) may be reduced by health insurance subrogation only after the covered person is  
505 made whole;

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

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

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

510 (C) while committing a felony; and

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

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

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

516 (d) Notwithstanding Section 78B-5-818, a person seeking recovery under this section is  
517 not barred from recovery if the fault of the person exceeds the fault of any defendant or group  
518 of defendants including those persons immune from suit and nonparties to whom fault is  
519 allocated.

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

522 (5) (a) Within five business days after notification that all liability insurers have  
523 tendered their liability policy limits, the underinsured carrier shall either:

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

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

527 (b) If neither option is exercised under Subsection (5)(a), the subrogation claim is  
528 considered to be waived by the underinsured carrier.

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

531 (a) that provides coverage for damages resulting from motor vehicle accidents; and  
532 (b) that is not required to conform to Section 31A-22-302.

533 (7) (a) When a claim is brought by a named insured or a person described in  
534 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist  
535 carrier, the claimant may elect to resolve the claim:

536 (i) by submitting the claim to binding arbitration; or  
537 (ii) through litigation.

538 (b) Unless otherwise provided in the policy under which underinsured benefits are  
539 claimed, the election provided in Subsection (7)(a) is available to the claimant only.

540 (c) Once a claimant elects to commence litigation under Subsection (7)(a)(ii), the  
541 claimant may not elect to resolve the claim through binding arbitration under this section  
542 without the written consent of the underinsured motorist coverage carrier.

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

545 (ii) All parties shall agree on the single arbitrator selected under Subsection (7)(d)(i).  
546 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection  
547 (7)(d)(ii), the parties shall select a panel of three arbitrators.

548 (e) If the parties select a panel of three arbitrators under Subsection (7)(d)(iii):  
549 (i) each side shall select one arbitrator; and  
550 (ii) the arbitrators appointed under Subsection (7)(e)(i) shall select one additional  
551 arbitrator to be included in the panel.

552 (f) Unless otherwise agreed to in writing:  
553 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected  
554 under Subsection (7)(d)(i); or

555 (ii) if an arbitration panel is selected under Subsection (7)(d)(iii):  
556 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and  
557 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected  
558 under Subsection (7)(e)(ii).  
559 (g) Except as otherwise provided in this section or unless otherwise agreed to in  
560 writing by the parties, an arbitration proceeding conducted under this section is governed by  
561 Title 78B, Chapter 11, Utah Uniform Arbitration Act.  
562 (h) An arbitration shall be conducted in accordance with Rules 26 through 37, 54, and  
563 68 of the Utah Rules of Civil Procedure.  
564 (i) An issue of discovery shall be resolved by the arbitrator or the arbitration panel.  
565 (j) A written decision by a single arbitrator or by a majority of the arbitration panel  
566 constitutes a final decision.  
567 (k) (i) The amount of an arbitration award may not exceed the underinsured motorist  
568 policy limits of all applicable underinsured motorist policies, including applicable underinsured  
569 motorist umbrella policies.  
570 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all  
571 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount  
572 equal to the combined underinsured motorist policy limits of all applicable underinsured  
573 motorist policies.  
574 (l) The arbitrator or arbitration panel may not decide an issue of coverage or  
575 extra-contractual damages, including:  
576 (i) whether the claimant is a covered person;  
577 (ii) whether the policy extends coverage to the loss; or  
578 (iii) an allegation or claim asserting consequential damages or bad faith liability.  
579 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or  
580 class-representative basis.  
581 (n) If the arbitrator or arbitration panel finds that the arbitration is not brought, pursued,  
582 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees  
583 and costs against the party that failed to bring, pursue, or defend the arbitration in good faith.  
584 (o) An arbitration award issued under this section shall be the final resolution of all  
585 claims not excluded by Subsection (7)(l) between the parties unless:

586 (i) the award is procured by corruption, fraud, or other undue means; or  
587 (ii) either party, within 20 days after service of the arbitration award:  
588 (A) files a complaint requesting a trial de novo in the district court; and  
589 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo  
590 under Subsection (7)(o)(ii)(A).

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

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

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

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

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

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

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

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

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

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

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

613 (s) If a district court determines, upon a motion of the nonmoving party, that a moving  
614 party's use of the trial de novo process is filed in bad faith in accordance with Section  
615 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

616 (t) Nothing in this section is intended to limit a claim under another portion of an

617 applicable insurance policy.

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

621 (8) (a) Within 30 days after a covered person elects to submit a claim for underinsured  
622 motorist benefits to binding arbitration or files litigation, the covered person shall provide to  
623 the underinsured motorist carrier:

624 (i) a written demand for payment of underinsured motorist coverage benefits, setting  
625 forth:

626 (A) the specific monetary amount of the demand; and

627 (B) the factual and legal basis and any supporting documentation for the demand;

628 (ii) a written statement under oath disclosing:

629 (A) (I) the names and last known addresses of all health care providers who have  
630 rendered health care services to the covered person that are material to the claims for which the  
631 underinsured motorist benefits are sought for a period of five years preceding the date of the  
632 event giving rise to the claim for underinsured motorist benefits up to the time the election for  
633 arbitration or litigation has been exercised; and

634 (II) whether the covered person has seen other health care providers who have rendered  
635 health care services to the covered person, which the covered person claims are immaterial to  
636 the claims for which underinsured motorist benefits are sought, for a period of five years  
637 preceding the date of the event giving rise to the claim for underinsured motorist benefits up to  
638 the time the election for arbitration or litigation has been exercised that have not been disclosed  
639 under Subsection (8)(a)(ii)(A)(I);

640 (B) (I) the names and last known addresses of all health insurers or other entities to  
641 whom the covered person has submitted claims for health care services or benefits material to  
642 the claims for which underinsured motorist benefits are sought, for a period of five years  
643 preceding the date of the event giving rise to the claim for underinsured motorist benefits up to  
644 the time the election for arbitration or litigation has been exercised; and

645 (II) whether the identity of any health insurers or other entities to whom the covered  
646 person has submitted claims for health care services or benefits, which the covered person  
647 claims are immaterial to the claims for which underinsured motorist benefits are sought, for a

648 period of five years preceding the date of the event giving rise to the claim for underinsured  
649 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

650 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all  
651 employers of the covered person for a period of five years preceding the date of the event  
652 giving rise to the claim for underinsured motorist benefits up to the time the election for  
653 arbitration or litigation has been exercised;

654 (D) other documents to reasonably support the claims being asserted; and

655 (E) all state and federal statutory lienholders including a statement as to whether the  
656 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health  
657 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,  
658 or if the claim is subject to any other state or federal statutory liens; and

659 (iii) signed authorizations to allow the underinsured motorist carrier to only obtain  
660 records and billings from the individuals or entities disclosed.

661 (b) (i) If the underinsured motorist carrier determines that the disclosure of undisclosed  
662 health care providers or health care insurers under Subsection (8)(a)(ii) is reasonably necessary,  
663 the underinsured motorist carrier may:

664 (A) make a request for the disclosure of the identity of the health care providers or  
665 health care insurers; and

666 (B) make a request for authorizations to allow the underinsured motorist carrier to only  
667 obtain records and billings from the individuals or entities not disclosed.

668 (ii) If the covered person does not provide the requested information within 10 days:

669 (A) the covered person shall disclose, in writing, the legal or factual basis for the  
670 failure to disclose the health care providers or health care insurers; and

671 (B) either the covered person or the underinsured motorist carrier may request the  
672 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be  
673 provided if the covered person has elected arbitration.

674 (iii) The time periods imposed by Subsection (8)(c)(i) are tolled pending resolution of  
675 the dispute concerning the disclosure and production of records of the health care providers or  
676 health care insurers.

677 (c) (i) An underinsured motorist carrier that receives an election for arbitration or a  
678 notice of filing litigation and the demand for payment of underinsured motorist benefits under

679 Subsection (8)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the  
680 demand and receipt of the items specified in Subsections (8)(a)(i) through (iii), to:

681 (A) provide a written response to the written demand for payment provided for in  
682 Subsection (8)(a)(i);

683 (B) except as provided in Subsection (8)(c)(i)(C), tender the amount, if any, of the  
684 underinsured motorist carrier's determination of the amount owed to the covered person; and

685 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah  
686 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's  
687 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,  
688 tender the amount, if any, of the underinsured motorist carrier's determination of the amount  
689 owed to the covered person less:

690 (I) if the amount of the state or federal statutory lien is established, the amount of the  
691 lien; or

692 (II) if the amount of the state or federal statutory lien is not established, two times the  
693 amount of the medical expenses subject to the state or federal statutory lien until such time as  
694 the amount of the state or federal statutory lien is established.

695 (ii) If the amount tendered by the underinsured motorist carrier under Subsection  
696 (8)(c)(i) is the total amount of the underinsured motorist policy limits, the tendered amount  
697 shall be accepted by the covered person.

698 (d) A covered person who receives a written response from an underinsured motorist  
699 carrier as provided for in Subsection (8)(c)(i), may:

700 (i) elect to accept the amount tendered in Subsection (8)(c)(i) as payment in full of all  
701 underinsured motorist claims; or

702 (ii) elect to:

703 (A) accept the amount tendered in Subsection (8)(c)(i) as partial payment of all  
704 underinsured motorist claims; and

705 (B) litigate or arbitrate the remaining claim.

706 (e) If a covered person elects to accept the amount tendered under Subsection (8)(c)(i)  
707 as partial payment of all underinsured motorist claims, the final award obtained through  
708 arbitration, litigation, or later settlement shall be reduced by any payment made by the  
709 underinsured motorist carrier under Subsection (8)(c)(i).

710 (f) In an arbitration proceeding on the remaining underinsured claims:  
711 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid  
712 under Subsection (8)(c)(i) until after the arbitration award has been rendered; and  
713 (ii) the parties may not disclose the amount of the limits of underinsured motorist  
714 benefits provided by the policy.

715 (g) If the final award obtained through arbitration or litigation is greater than the  
716 average of the covered person's initial written demand for payment provided for in Subsection  
717 (8)(a)(i) and the underinsured motorist carrier's initial written response provided for in  
718 Subsection (8)(c)(i), the underinsured motorist carrier shall pay:

719 (i) the final award obtained through arbitration or litigation, except that if the award  
720 exceeds the policy limits of the subject underinsured motorist policy by more than \$15,000, the  
721 amount shall be reduced to an amount equal to the policy limits plus \$15,000; and  
722 (ii) any of the following applicable costs:  
723 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;  
724 (B) the arbitrator or arbitration panel's fee; and  
725 (C) the reasonable costs of expert witnesses and depositions used in the presentation of  
726 evidence during arbitration or litigation.

727 (h) (i) The covered person shall provide an affidavit of costs within five days of an  
728 arbitration award.  
729 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to  
730 which the underinsured motorist carrier objects.  
731 (B) The objection shall be resolved by the arbitrator or arbitration panel.  
732 (iii) The award of costs by the arbitrator or arbitration panel under Subsection (8)(g)(ii)  
733 may not exceed \$5,000.

734 (i) (i) A covered person shall disclose all material information, other than rebuttal  
735 evidence, as specified in Subsection (8)(a).  
736 (ii) If the information under Subsection (8)(i)(i) is not disclosed, the covered person  
737 may not recover costs or any amounts in excess of the policy under Subsection (8)(g).  
738 (j) This Subsection (8) does not limit any other cause of action that arose or may arise  
739 against the underinsured motorist carrier from the same dispute.  
740 (k) The provisions of this Subsection (8) only apply to motor vehicle accidents that

741 occur on or after March 30, 2010.

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**Legislative Review Note**  
as of **2-4-11 3:08 PM**

**Office of Legislative Research and General Counsel**