

**MOTOR VEHICLE INSURANCE COVERAGE AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

House Sponsor: James A. Dunnigan

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code by amending provisions relating to arbitration for motor vehicle insurance coverage.

**Highlighted Provisions:**

This bill:

- ▶ clarifies that certain caps on the amount of an arbitration award for certain uninsured and underinsured motorist claims apply only in certain circumstances;
- ▶ clarifies that the caps on the award of fees and costs for certain uninsured and underinsured motorist claims only apply in certain circumstances; 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 (5) When a covered person alleges that an uninsured motor vehicle under Subsection  
128 (2)(b) proximately caused an accident without touching the covered person or the motor  
129 vehicle occupied by the covered person, the covered person must show the existence of the  
130 uninsured motor vehicle by clear and convincing evidence consisting of more than the covered  
131 person's testimony.

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

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

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

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

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

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

146 (7) (a) Uninsured motorist coverage under this section applies to bodily injury,  
147 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if  
148 the motor vehicle is described in the policy under which a claim is made, or if the motor  
149 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.  
150 Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a  
151 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to

152 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy  
153 under which the person is a covered person.

154 (b) Each of the following persons may also recover uninsured motorist benefits under  
155 any one other policy in which they are described as a "covered person" as defined in Subsection  
156 (1):

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

158 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying  
159 or using a motor vehicle that is not owned, leased, or furnished:

160 (A) to the covered person;

161 (B) to the covered person's spouse; or

162 (C) to the covered person's resident parent or resident sibling.

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

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

166 (B) injured while occupying or using a motor vehicle that is not owned, leased, or  
167 furnished:

168 (I) to the covered person;

169 (II) to the covered person's resident parent; or

170 (III) to the covered person's resident sibling.

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

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

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

178 (f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a  
179 single incident of loss under more than one insurance policy.

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

182 (8) (a) When a claim is brought by a named insured or a person described in

183 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the  
184 claimant may elect to resolve the claim:

- 185 (i) by submitting the claim to binding arbitration; or
- 186 (ii) through litigation.

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

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

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

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

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

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

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

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

201 (f) Unless otherwise agreed to in writing:

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

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

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

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

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

211 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and  
212 68 of the Utah Rules of Civil Procedure.

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

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

216 (k) (i) [~~The~~] Except as provided in Subsection (9), the amount of an arbitration award  
217 may not exceed the uninsured motorist policy limits of all applicable uninsured motorist  
218 policies, including applicable uninsured motorist umbrella policies.

219 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all  
220 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount  
221 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist  
222 policies.

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

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

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

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

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

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

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

235 (i) the award was procured by corruption, fraud, or other undue means; [~~or~~]

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

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

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

240 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), the claim  
241 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules  
242 of Evidence in the district court.

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



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

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

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

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

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

255 (iv) An award of costs under this Subsection (8)(q) may not exceed \$2,500 unless  
256 Subsection (9)(h)(iii) applies.

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

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

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

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

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

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

272 (9) (a) Within 30 days after a covered person elects to submit a claim for uninsured  
273 motorist benefits to binding arbitration or files litigation, the covered person shall provide to  
274 the uninsured motorist carrier:

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

- 276 (A) the specific monetary amount of the demand; and
- 277 (B) the factual and legal basis and any supporting documentation for the demand;
- 278 (ii) a written statement under oath disclosing:

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

284 (II) whether the covered person has seen other health care providers who have rendered  
285 health care services to the covered person, which the covered person claims are immaterial to  
286 the claims for which uninsured motorist benefits are sought, for a period of five years  
287 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the  
288 time the election for arbitration or litigation has been exercised that have not been disclosed  
289 under Subsection (9)(a)(ii)(A)(I);

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

295 (II) whether the identity of any health insurers or other entities to whom the covered  
296 person has submitted claims for health care services or benefits, which the covered person  
297 claims are immaterial to the claims for which uninsured motorist benefits are sought, for a  
298 period of five years preceding the date of the event giving rise to the claim for uninsured  
299 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

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

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

305 (E) all state and federal statutory lienholders including a statement as to whether the  
306 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health

307 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,  
308 or if the claim is subject to any other state or federal statutory liens; and

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

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

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

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

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

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

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

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

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

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

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

335 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah  
336 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's  
337 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,

338 tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed  
339 to the covered person less:

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

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

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

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

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

352 (ii) elect to:

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

355 (B) litigate or arbitrate the remaining claim.

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

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

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

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

365 (g) If the final award obtained through arbitration or litigation is greater than the  
366 average of the covered person's initial written demand for payment provided for in Subsection  
367 (9)(a)(i) and the uninsured motorist carrier's initial written response provided for in Subsection  
368 (9)(c)(i), the uninsured motorist carrier shall pay:

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

372 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

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

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

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

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

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

393 **31A-22-305.3. Underinsured motorist coverage.**

394 (1) As used in this section:

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

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

400 (ii) The term "underinsured motor vehicle" does not include:  
401 (A) a motor vehicle that is covered under the liability coverage of the same policy that  
402 also contains the underinsured motorist coverage;  
403 (B) an uninsured motor vehicle as defined in Subsection 31A-22-305(2); or  
404 (C) a motor vehicle owned or leased by:  
405 (I) a named insured;  
406 (II) a named insured's spouse; or  
407 (III) a dependent of a named insured.  
408 (2) (a) (i) Underinsured motorist coverage under Subsection 31A-22-302(1)(c)  
409 provides coverage for a covered person who is legally entitled to recover damages from an  
410 owner or operator of an underinsured motor vehicle because of bodily injury, sickness, disease,  
411 or death.  
412 (ii) A covered person occupying or using a motor vehicle owned, leased, or furnished  
413 to the covered person, the covered person's spouse, or covered person's resident relative may  
414 recover underinsured benefits only if the motor vehicle is:  
415 (A) described in the policy under which a claim is made; or  
416 (B) a newly acquired or replacement motor vehicle covered under the terms of the  
417 policy.  
418 (b) For new policies written on or after January 1, 2001, the limits of underinsured  
419 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle  
420 liability coverage or the maximum underinsured motorist coverage limits available by the  
421 insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a  
422 lesser amount by signing an acknowledgment form that:  
423 (i) is filed with the department;  
424 (ii) is provided by the insurer;  
425 (iii) waives the higher coverage;  
426 (iv) reasonably explains the purpose of underinsured motorist coverage; and  
427 (v) discloses the additional premiums required to purchase underinsured motorist  
428 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability  
429 coverage or the maximum underinsured motorist coverage limits available by the insurer under  
430 the insured's motor vehicle policy.

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

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

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

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

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

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

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

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

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

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

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

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

458 (3) (a) (i) Except as provided in this Subsection (3), a covered person injured in a  
459 motor vehicle described in a policy that includes underinsured motorist benefits may not elect  
460 to collect underinsured motorist coverage benefits from another motor vehicle insurance policy.

461 (ii) The limit of liability for underinsured motorist coverage for two or more motor

462 vehicles may not be added together, combined, or stacked to determine the limit of insurance  
463 coverage available to an injured person for any one accident.

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

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

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

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

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

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

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

483 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is  
484 primary coverage, and the coverage elected by a person described under Subsections  
485 31A-22-305(1)(a) and (b) is secondary coverage.

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

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

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

492 (viii) (A) As used in this section, "interpolicy stacking" means recovering benefits for a



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

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

496 (c) Underinsured motorist coverage:

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

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

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

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

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

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

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

507 (C) while committing a felony; and

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

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

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

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

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

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

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

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

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

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

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

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

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

530 (ii) through litigation.

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

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

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

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

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

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

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

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

545 (f) Unless otherwise agreed to in writing:

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

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

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

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

552 (g) Except as otherwise provided in this section or unless otherwise agreed to in  
553 writing by the parties, an arbitration proceeding conducted under this section is governed by  
554 Title 78B, Chapter 11, Utah Uniform Arbitration Act.

555 (h) An arbitration shall be conducted in accordance with Rules 26 through 37, 54, and  
556 68 of the Utah Rules of Civil Procedure.

557 (i) An issue of discovery shall be resolved by the arbitrator or the arbitration panel.

558 (j) A written decision by a single arbitrator or by a majority of the arbitration panel  
559 constitutes a final decision.

560 (k) (i) [~~The~~] Except as provided in Subsection (8), the amount of an arbitration award  
561 may not exceed the underinsured motorist policy limits of all applicable underinsured motorist  
562 policies, including applicable underinsured motorist umbrella policies.

563 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all  
564 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount  
565 equal to the combined underinsured motorist policy limits of all applicable underinsured  
566 motorist policies.

567 (l) The arbitrator or arbitration panel may not decide an issue of coverage or  
568 extra-contractual damages, including:

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

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

571 (iii) an allegation or claim asserting consequential damages or bad faith liability.

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

574 (n) If the arbitrator or arbitration panel finds that the arbitration is not brought, pursued,  
575 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees  
576 and costs against the party that failed to bring, pursue, or defend the arbitration in good faith.

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

579 (i) the award is procured by corruption, fraud, or other undue means; [~~or~~]

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

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

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

584 (p) (i) Upon filing a complaint for a trial de novo under Subsection (7)(o), a claim shall  
585 proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of

586 Evidence in the district court.

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

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

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

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

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

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

599 (iv) An award of costs under this Subsection (7)(q) may not exceed \$2,500 unless  
600 Subsection (8)(h)(iii) applies.

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

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

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

607 (s) If a district court determines, upon a motion of the nonmoving party, that a moving  
608 party's use of the trial de novo process is filed in bad faith in accordance with Section  
609 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

610 (t) Nothing in this section is intended to limit a claim under another portion of an  
611 applicable insurance policy.

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

615 (8) (a) Within 30 days after a covered person elects to submit a claim for underinsured  
616 motorist benefits to binding arbitration or files litigation, the covered person shall provide to

617 the underinsured motorist carrier:

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

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

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

622 (ii) a written statement under oath disclosing:

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

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

634 (B) (I) the names and last known addresses of all health insurers or other entities to  
635 whom the covered person has submitted claims for health care services or benefits material 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; and

639 (II) whether the identity of any health insurers or other entities to whom the covered  
640 person has submitted claims for health care services or benefits, which the covered person  
641 claims are immaterial to the claims for which underinsured motorist benefits are sought, for a  
642 period of five years preceding the date of the event giving rise to the claim for underinsured  
643 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

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

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

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

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

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

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

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

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

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

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

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

671 (c) (i) An underinsured motorist carrier that receives an election for arbitration or a  
672 notice of filing litigation and the demand for payment of underinsured motorist benefits under  
673 Subsection (8)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the  
674 demand and receipt of the items specified in Subsections (8)(a)(i) through (iii), to:

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

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

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

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

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

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

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

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

696 (ii) elect to:

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

699 (B) litigate or arbitrate the remaining claim.

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

704 (f) In an arbitration proceeding on the remaining underinsured claims:

705 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid  
706 under Subsection (8)(c)(i) until after the arbitration award has been rendered; and

707 (ii) the parties may not disclose the amount of the limits of underinsured motorist  
708 benefits provided by the policy.

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

710 average of the covered person's initial written demand for payment provided for in Subsection  
711 (8)(a)(i) and the underinsured motorist carrier's initial written response provided for in  
712 Subsection (8)(c)(i), the underinsured motorist carrier shall pay:

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

716 (ii) any of the following applicable costs:

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

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

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

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

723 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to  
724 which the underinsured motorist carrier objects.

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

726 (iii) The award of costs by the arbitrator or arbitration panel under Subsection (8)(g)(ii)  
727 may not exceed \$5,000.

728 (i) (i) A covered person shall disclose all material information, other than rebuttal  
729 evidence, as specified in Subsection (8)(a).

730 (ii) If the information under Subsection (8)(i)(i) is not disclosed, the covered person  
731 may not recover costs or any amounts in excess of the policy under Subsection (8)(g).

732 (j) This Subsection (8) does not limit any other cause of action that arose or may arise  
733 against the underinsured motorist carrier from the same dispute.

734 (k) The provisions of this Subsection (8) only apply to motor vehicle accidents that  
735 occur on or after March 30, 2010.

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**Legislative Review Note**  
**as of 2-28-11 4:55 PM**

**Office of Legislative Research and General Counsel**