

**Representative Michael S. Kennedy** proposes the following substitute bill:

1                                   **UNINSURED AND UNDERINSURED MOTORIST**

2                                   **COVERAGE AMENDMENTS**

3                                   2017 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Michael S. Kennedy**

6                                   Senate Sponsor: Lyle W. Hillyard

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8                                   **LONG TITLE**

9                                   **General Description:**

10                                  This bill amends provisions related to motor vehicle insurance to disallow rejection of  
11                                  uninsured and underinsured motorist coverage in certain instances.

12                                  **Highlighted Provisions:**

13                                  This bill:

- 14                                  ▶ requires a business entity to maintain uninsured and underinsured motorist coverage  
15                                  if that business entity:
- 16    • employs an employee; and
  - 17    • the employee drives a vehicle insured by the employer; and
- 18                                  ▶ makes technical changes.

19                                  **Money Appropriated in this Bill:**

20                                  None

21                                  **Other Special Clauses:**

22                                  None

23                                  **Utah Code Sections Affected:**

24                                  AMENDS:

25                                  **31A-22-305**, as last amended by Laws of Utah 2014, Chapters 290 and 300 and further



26 amended by Revisor Instructions, Laws of Utah 2014, Chapters 290 and 300  
27 [31A-22-305.3](#), as last amended by Laws of Utah 2016, Chapter 361



28  
29 *Be it enacted by the Legislature of the state of Utah:*

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

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

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

33 (a) the named insured;

34 (b) for a claim arising on or after May 13, 2014, the named insured's dependent minor  
35 children;

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

39 (d) any person occupying or using a motor vehicle:

40 (i) referred to in the policy; or

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

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

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

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

48 (ii) (A) a motor vehicle covered with lower liability limits than required by Section  
49 [31A-22-304](#); and

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

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

54 (c) a motor vehicle covered by a liability policy, but coverage for an accident is  
55 disputed by the liability insurer for more than 60 days or continues to be disputed for more than  
56 60 days; or

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

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

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

64 (4) (a) ~~For~~ Except as provided in Subsection (4)(b), for new policies written on or  
65 after January 1, 2001, the limits of uninsured motorist coverage shall be equal to the lesser of  
66 the limits of the named insured's motor vehicle liability coverage or the maximum uninsured  
67 motorist coverage limits available by the insurer under the named insured's motor vehicle  
68 policy, unless a named insured rejects or purchases coverage in a lesser amount by signing an  
69 acknowledgment form that:

70 (i) is filed with the department;

71 (ii) is provided by the insurer;

72 (iii) waives the higher coverage;

73 (iv) need only state in this or similar language that uninsured motorist coverage  
74 provides benefits or protection to you and other covered persons for bodily injury resulting  
75 from an accident caused by the fault of another party where the other party has no liability  
76 insurance; and

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

81 (b) (i) Except as provided in Subsections (4)(i) and (5)(b), beginning on July 1, 2018,  
82 any policy of a business entity, other than a sole proprietor, that allows an employee to drive a  
83 vehicle owned by the business entity shall include uninsured motorist coverage for the  
84 employee.

85 (ii) The uninsured motorist coverage of a policy described in Subsection (4)(b)(i) shall  
86 be an amount not less than the lesser of:

87 (A) the business entity's motor vehicle liability coverage; or

88 (B) the maximum uninsured motorist coverage limits made available by the insurer  
89 under the business entity's motor vehicle policy, but not less than \$250,000 per person and  
90 \$500,000 per occurrence.

91 ~~(b)~~ (c) Any selection or rejection under this Subsection (4) continues for that issuer of  
92 the liability coverage until the insured requests, in writing, a change of uninsured motorist  
93 coverage from that liability insurer.

94 ~~(e)~~ (d) (i) Subsections (4)(a) and ~~(b)~~ (c) apply retroactively to any claim arising on  
95 or after January 1, 2001, for which, as of May 14, 2013, an insured has not made a written  
96 demand for arbitration or filed a complaint in a court of competent jurisdiction.

97 (ii) The Legislature finds that the retroactive application of Subsections (4)(a) and ~~(b)~~  
98 (c) clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

99 ~~(d)~~ (e) For purposes of this Subsection (4), "new policy" means:

100 (i) any policy that is issued which does not include a renewal or reinstatement of an  
101 existing policy; or

102 (ii) a change to an existing policy that results in:

103 (A) a named insured being added to or deleted from the policy; or

104 (B) a change in the limits of the named insured's motor vehicle liability coverage.

105 ~~(e)~~ (f) (i) As used in this Subsection (4)~~(e)~~(f), "additional motor vehicle" means a  
106 change that increases the total number of vehicles insured by the policy, and does not include  
107 replacement, substitute, or temporary vehicles.

108 (ii) The adding of an additional motor vehicle to an existing personal lines or  
109 commercial lines policy does not constitute a new policy for purposes of Subsection (4)~~(d)~~(e).

110 (iii) If an additional motor vehicle is added to a personal lines policy where uninsured  
111 motorist coverage has been rejected, or where uninsured motorist limits are lower than the  
112 named insured's motor vehicle liability limits, the insurer shall provide a notice to a named  
113 insured within 30 days that:

114 (A) in the same manner as described in Subsection (4)(a)(iv), explains the purpose of  
115 uninsured motorist coverage; and

116 (B) encourages the named insured to contact the insurance company or insurance  
117 producer for quotes as to the additional premiums required to purchase uninsured motorist  
118 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle

119 liability coverage or the maximum uninsured motorist coverage limits available by the insurer  
120 under the named insured's motor vehicle policy.

121 ~~[(f)]~~ (g) A change in policy number resulting from any policy change not identified  
122 under Subsection (4)~~[(d)]~~(e)(ii) does not constitute a new policy.

123 ~~[(g)]~~ (h) (i) Subsection (4)~~[(d)]~~(e) applies retroactively to any claim arising on or after  
124 January 1, 2001, for which, as of May 1, 2012, an insured has not made a written demand for  
125 arbitration or filed a complaint in a court of competent jurisdiction.

126 (ii) The Legislature finds that the retroactive application of Subsection (4):

127 (A) does not enlarge, eliminate, or destroy vested rights; and

128 (B) clarifies legislative intent.

129 ~~[(h)]~~ (i) A self-insured entity, including a governmental entity, may elect to provide  
130 uninsured motorist coverage in an amount that is less than its maximum self-insured retention  
131 under Subsections (4)(a) and (5)(a) by issuing a declaratory memorandum or policy statement  
132 from the chief financial officer or chief risk officer that declares the:

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

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

135 ~~[(i)]~~ (j) Uninsured motorist coverage may not be sold with limits that are less than the  
136 minimum bodily injury limits for motor vehicle liability policies under Section [31A-22-304](#).

137 ~~[(j)]~~ (k) The acknowledgment under Subsection (4)(a) continues for that issuer of the  
138 uninsured motorist coverage until the named insured requests, in writing, different uninsured  
139 motorist coverage from the insurer.

140 ~~[(k)]~~ (l) (i) In conjunction with the first two renewal notices sent after January 1, 2001,  
141 for policies existing on that date, the insurer shall disclose in the same medium as the premium  
142 renewal notice, an explanation of:

143 (A) the purpose of uninsured motorist coverage in the same manner as described in  
144 Subsection (4)(a)(iv); and

145 (B) a disclosure of the additional premiums required to purchase uninsured motorist  
146 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle  
147 liability coverage or the maximum uninsured motorist coverage limits available by the insurer  
148 under the named insured's motor vehicle policy.

149 (ii) The disclosure required under Subsection (4)~~[(k)]~~(l)(i) shall be sent to all named

150 insureds that carry uninsured motorist coverage limits in an amount less than the named  
151 insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage  
152 limits available by the insurer under the named insured's motor vehicle policy.

153 ~~(f)~~ (m) For purposes of this Subsection (4), a notice or disclosure sent to a named  
154 insured in a household constitutes notice or disclosure to all insureds within the household.

155 (5) (a) (i) Except as provided in Subsection (5)(b), the named insured may reject  
156 uninsured motorist coverage by an express writing to the insurer that provides liability  
157 coverage under Subsection 31A-22-302(1)(a).

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

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

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

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

169 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

180 (C) while committing a felony; and

181 (vi) notwithstanding Subsection (5)(c)(v), may be recovered:

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

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

186 (d) As used in this Subsection (5), "motor vehicle" has the same meaning as under  
187 Section 41-1a-102.

188 (6) When a covered person alleges that an uninsured motor vehicle under Subsection  
189 (2)(b) proximately caused an accident without touching the covered person or the motor  
190 vehicle occupied by the covered person, the covered person shall show the existence of the  
191 uninsured motor vehicle by clear and convincing evidence consisting of more than the covered  
192 person's testimony.

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

196 (b) (i) Subsection (7)(a) applies to all persons except a covered person as defined under  
197 Subsection (8)(b)(ii).

198 (ii) A covered person as defined under Subsection (8)(b)(ii) is entitled to the highest  
199 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered  
200 person is the named insured or an insured family member.

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

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

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

207 (8) (a) Uninsured motorist coverage under this section applies to bodily injury,  
208 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if  
209 the motor vehicle is described in the policy under which a claim is made, or if the motor  
210 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.  
211 Except as provided in Subsection (7) or this Subsection (8), a covered person injured in a

212 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to  
213 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy  
214 under which the person is a covered person.

215 (b) Each of the following persons may also recover uninsured motorist benefits under  
216 any one other policy in which they are described as a "covered person" as defined in Subsection  
217 (1):

218 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and  
219 (ii) except as provided in Subsection (8)(c), a covered person injured while occupying  
220 or using a motor vehicle that is not owned, leased, or furnished:

- 221 (A) to the covered person;
- 222 (B) to the covered person's spouse; or
- 223 (C) to the covered person's resident parent or resident sibling.

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

- 226 (A) a dependent minor of parents who reside in separate households; and
- 227 (B) injured while occupying or using a motor vehicle that is not owned, leased, or  
228 furnished:

- 229 (I) to the covered person;
- 230 (II) to the covered person's resident parent; or
- 231 (III) to the covered person's resident sibling.

232 (ii) Each parent's policy under this Subsection (8)(c) is liable only for the percentage of  
233 the damages that the limit of liability of each parent's policy of uninsured motorist coverage  
234 bears to the total of both parents' uninsured coverage applicable to the accident.

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

237 (e) A covered person in Subsection (8)(b) is not barred against making subsequent  
238 elections if recovery is unavailable under previous elections.

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

241 (ii) Except to the extent permitted by Subsection (7) and this Subsection (8),  
242 interpolicy stacking is prohibited for uninsured motorist coverage.



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

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

247 (ii) through litigation.

248 (b) Unless otherwise provided in the policy under which uninsured benefits are  
249 claimed, the election provided in Subsection (9)(a) is available to the claimant only, except that  
250 if the policy under which insured benefits are claimed provides that either an insured or the  
251 insurer may elect arbitration, the insured or the insurer may elect arbitration and that election to  
252 arbitrate shall stay the litigation of the claim under Subsection (9)(a)(ii).

253 (c) Once the claimant has elected to commence litigation under Subsection (9)(a)(ii),  
254 the claimant may not elect to resolve the claim through binding arbitration under this section  
255 without the written consent of the uninsured motorist carrier.

256 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to  
257 binding arbitration under Subsection (9)(a)(i) shall be resolved by a single arbitrator.

258 (ii) All parties shall agree on the single arbitrator selected under Subsection (9)(d)(i).

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

261 (e) If the parties select a panel of three arbitrators under Subsection (9)(d)(iii):

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

263 (ii) the arbitrators appointed under Subsection (9)(e)(i) shall select one additional  
264 arbitrator to be included in the panel.

265 (f) Unless otherwise agreed to in writing:

266 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected  
267 under Subsection (9)(d)(i); or

268 (ii) if an arbitration panel is selected under Subsection (9)(d)(iii):

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

270 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected  
271 under Subsection (9)(e)(ii).

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

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

275 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),  
276 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of  
277 Subsections (10)(a) through (c) are satisfied.

278 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure  
279 shall be determined based on the claimant's specific monetary amount in the written demand  
280 for payment of uninsured motorist coverage benefits as required in Subsection (10)(a)(i)(A).

281 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to  
282 arbitration claims under this part.

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

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

286 (k) (i) Except as provided in Subsection (10), the amount of an arbitration award may  
287 not exceed the uninsured motorist policy limits of all applicable uninsured motorist policies,  
288 including applicable uninsured motorist umbrella policies.

289 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all  
290 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount  
291 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist  
292 policies.

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

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

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

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

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

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

303 (o) An arbitration award issued under this section shall be the final resolution of all  
304 claims not excluded by Subsection (9)(l) between the parties unless:

305 (i) the award was procured by corruption, fraud, or other undue means;  
306 (ii) either party, within 20 days after service of the arbitration award:  
307 (A) files a complaint requesting a trial de novo in the district court; and  
308 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo  
309 under Subsection (9)(o)(ii)(A).

310 (p) (i) Upon filing a complaint for a trial de novo under Subsection (9)(o), the claim  
311 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules  
312 of Evidence in the district court.

313 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may  
314 request a jury trial with a complaint requesting a trial de novo under Subsection (9)(o)(ii)(A).

315 (q) (i) If the claimant, as the moving party in a trial de novo requested under  
316 Subsection (9)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater  
317 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

318 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested  
319 under Subsection (9)(o), does not obtain a verdict that is at least 20% less than the arbitration  
320 award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.

321 (iii) Except as provided in Subsection (9)(q)(iv), the costs under this Subsection (9)(q)  
322 shall include:

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

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

325 (iv) An award of costs under this Subsection (9)(q) may not exceed \$2,500 unless  
326 Subsection (10)(h)(iii) applies.

327 (r) For purposes of determining whether a party's verdict is greater or less than the  
328 arbitration award under Subsection (9)(q), a court may not consider any recovery or other relief  
329 granted on a claim for damages if the claim for damages:

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

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

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

336 party.

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

339 (u) If there are multiple uninsured motorist policies, as set forth in Subsection (8), the  
340 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist  
341 carriers.

342 (10) (a) Within 30 days after a covered person elects to submit a claim for uninsured  
343 motorist benefits to binding arbitration or files litigation, the covered person shall provide to  
344 the uninsured motorist carrier:

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

346 (A) subject to Subsection (10)(l), the specific monetary amount of the demand,  
347 including a computation of the covered person's claimed past medical expenses, claimed past  
348 lost wages, and the other claimed past economic damages; and

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

350 (ii) a written statement under oath disclosing:

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

356 (II) the names and last known addresses of the health care providers who have rendered  
357 health care services to the covered person, which the covered person claims are immaterial to  
358 the claims for which uninsured motorist benefits are sought, for a period of five years  
359 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the  
360 time the election for arbitration or litigation has been exercised that have not been disclosed  
361 under Subsection (10)(a)(ii)(A)(I);

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

367 (II) the names and last known addresses of the health insurers or other entities to whom  
368 the covered person has submitted claims for health care services or benefits, which the covered  
369 person claims are immaterial to the claims for which uninsured motorist benefits are sought,  
370 for a period of five years preceding the date of the event giving rise to the claim for uninsured  
371 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

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

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

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

381 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain records  
382 and billings from the individuals or entities disclosed under Subsections (10)(a)(ii)(A)(I),  
383 (B)(I), and (C).

384 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed  
385 health care providers or health care insurers under Subsection (10)(a)(ii) is reasonably  
386 necessary, the uninsured motorist carrier may:

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

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

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

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

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

397 (iii) The time periods imposed by Subsection (10)(c)(i) are tolled pending resolution of

398 the dispute concerning the disclosure and production of records of the health care providers or  
399 health care insurers.

400 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice  
401 of filing litigation and the demand for payment of uninsured motorist benefits under Subsection  
402 (10)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and  
403 receipt of the items specified in Subsections (10)(a)(i) through (iii), to:

404 (A) provide a written response to the written demand for payment provided for in  
405 Subsection (10)(a)(i);

406 (B) except as provided in Subsection (10)(c)(i)(C), tender the amount, if any, of the  
407 uninsured motorist carrier's determination of the amount owed to the covered person; and

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

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

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

418 (ii) If the amount tendered by the uninsured motorist carrier under Subsection (10)(c)(i)  
419 is the total amount of the uninsured motorist policy limits, the tendered amount shall be  
420 accepted by the covered person.

421 (d) A covered person who receives a written response from an uninsured motorist  
422 carrier as provided for in Subsection (10)(c)(i), may:

423 (i) elect to accept the amount tendered in Subsection (10)(c)(i) as payment in full of all  
424 uninsured motorist claims; or

425 (ii) elect to:

426 (A) accept the amount tendered in Subsection (10)(c)(i) as partial payment of all  
427 uninsured motorist claims; and

428 (B) continue to litigate or arbitrate the remaining claim in accordance with the election

429 made under Subsections (9)(a), (b), and (c).

430 (e) If a covered person elects to accept the amount tendered under Subsection (10)(c)(i)  
431 as partial payment of all uninsured motorist claims, the final award obtained through  
432 arbitration, litigation, or later settlement shall be reduced by any payment made by the  
433 uninsured motorist carrier under Subsection (10)(c)(i).

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

435 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid  
436 under Subsection (10)(c)(i) until after the arbitration award has been rendered; and

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

439 (g) If the final award obtained through arbitration or litigation is greater than the  
440 average of the covered person's initial written demand for payment provided for in Subsection  
441 (10)(a)(i) and the uninsured motorist carrier's initial written response provided for in  
442 Subsection (10)(c)(i), the uninsured motorist carrier shall pay:

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

446 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

458 (i) (i) A covered person shall disclose all material information, other than rebuttal  
459 evidence, within 30 days after a covered person elects to submit a claim for uninsured motorist

460 coverage benefits to binding arbitration or files litigation as specified in Subsection (10)(a).

461 (ii) If the information under Subsection (10)(i)(i) is not disclosed, the covered person  
462 may not recover costs or any amounts in excess of the policy under Subsection (10)(g).

463 (j) This Subsection (10) does not limit any other cause of action that arose or may arise  
464 against the uninsured motorist carrier from the same dispute.

465 (k) The provisions of this Subsection (10) only apply to motor vehicle accidents that  
466 occur on or after March 30, 2010.

467 (l) (i) The written demand requirement in Subsection (10)(a)(i)(A) does not affect the  
468 covered person's requirement to provide a computation of any other economic damages  
469 claimed, and the one or more respondents shall have a reasonable time after the receipt of the  
470 computation of any other economic damages claimed to conduct fact and expert discovery as to  
471 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,  
472 Section 10, and Chapter 300, Section 10, to this Subsection (10)(l) and Subsection  
473 (10)(a)(i)(A) apply to a claim submitted to binding arbitration or through litigation on or after  
474 May 13, 2014.

475 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 10, and Chapter  
476 300, Section 10, to Subsections (10)(a)(ii)(A)(II) and (B)(II) apply to any claim submitted to  
477 binding arbitration or through litigation on or after May 13, 2014.

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

479 **31A-22-305.3. Underinsured motorist coverage.**

480 (1) As used in this section:

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

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

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

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

489 (B) an uninsured motor vehicle as defined in Subsection [31A-22-305\(2\)](#); or

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



- 491 (I) a named insured;
- 492 (II) a named insured's spouse; or
- 493 (III) a dependent of a named insured.

494 (2) (a) Underinsured motorist coverage under Subsection [31A-22-302\(1\)\(c\)](#) provides  
495 coverage for a covered person who is legally entitled to recover damages from an owner or  
496 operator of an underinsured motor vehicle because of bodily injury, sickness, disease, or death.

497 (b) A covered person occupying or using a motor vehicle owned, leased, or furnished  
498 to the covered person, the covered person's spouse, or covered person's resident relative may  
499 recover underinsured benefits only if the motor vehicle is:

- 500 (i) described in the policy under which a claim is made; or
- 501 (ii) a newly acquired or replacement motor vehicle covered under the terms of the  
502 policy.

503 (3) (a) For purposes of this Subsection (3), "new policy" means:

- 504 (i) any policy that is issued that does not include a renewal or reinstatement of an  
505 existing policy; or
- 506 (ii) a change to an existing policy that results in:
  - 507 (A) a named insured being added to or deleted from the policy; or
  - 508 (B) a change in the limits of the named insured's motor vehicle liability coverage.

509 (b) ~~[For]~~ Except as provided in Subsection (3)(c) below, for new policies written on or  
510 after January 1, 2001, the limits of underinsured motorist coverage shall be equal to the lesser  
511 of the limits of the named insured's motor vehicle liability coverage or the maximum  
512 underinsured motorist coverage limits available by the insurer under the named insured's motor  
513 vehicle policy, unless a named insured rejects or purchases coverage in a lesser amount by  
514 signing an acknowledgment form that:

- 515 (i) is filed with the department;
- 516 (ii) is provided by the insurer;
- 517 (iii) waives the higher coverage;
- 518 (iv) need only state in this or similar language that "underinsured motorist coverage  
519 provides benefits or protection to you and other covered persons for bodily injury resulting  
520 from an accident caused by the fault of another party where the other party has insufficient  
521 liability insurance"; and

522 (v) discloses the additional premiums required to purchase underinsured motorist  
523 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle  
524 liability coverage or the maximum underinsured motorist coverage limits available by the  
525 insurer under the named insured's motor vehicle policy.

526 (c) (i) Except as provided in Subsection (3)(i), beginning on July 1, 2018, any policy of  
527 a business entity, other than a sole proprietor, that allows an employee to drive a vehicle owned  
528 by the business entity shall include underinsured motorist coverage for the employee.

529 (ii) The underinsured motorist coverage of a policy described in Subsection (3)(c)(i)  
530 shall be an amount not less than the lesser of:

531 (A) the business entity's motor vehicle liability coverage; or

532 (B) the maximum underinsured motorist coverage limits made available by the insurer  
533 under the business entity's motor vehicle policy, but not less than \$250,000 per person and  
534 \$500,000 per occurrence.

535 ~~(c)~~ (d) Any selection or rejection under Subsection (3)(b) continues for that issuer of  
536 the liability coverage until the insured requests, in writing, a change of underinsured motorist  
537 coverage from that liability insurer.

538 ~~(d)~~ (e) (i) Subsections (3)(b) and ~~(c)~~ (d) apply retroactively to any claim arising on  
539 or after January 1, 2001, for which, as of May 14, 2013, an insured has not made a written  
540 demand for arbitration or filed a complaint in a court of competent jurisdiction.

541 (ii) The Legislature finds that the retroactive application of Subsections (3)(b) and ~~(c)~~  
542 (d) clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

543 ~~(c)~~ (f) (i) As used in this Subsection (3)~~(c)~~(f), "additional motor vehicle" means a  
544 change that increases the total number of vehicles insured by the policy, and does not include  
545 replacement, substitute, or temporary vehicles.

546 (ii) The adding of an additional motor vehicle to an existing personal lines or  
547 commercial lines policy does not constitute a new policy for purposes of Subsection (3)(a).

548 (iii) If an additional motor vehicle is added to a personal lines policy where  
549 underinsured motorist coverage has been rejected, or where underinsured motorist limits are  
550 lower than the named insured's motor vehicle liability limits, the insurer shall provide a notice  
551 to a named insured within 30 days that:

552 (A) in the same manner described in Subsection (3)(b)(iv), explains the purpose of

553 underinsured motorist coverage; and

554 (B) encourages the named insured to contact the insurance company or insurance  
555 producer for quotes as to the additional premiums required to purchase underinsured motorist  
556 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle  
557 liability coverage or the maximum underinsured motorist coverage limits available by the  
558 insurer under the named insured's motor vehicle policy.

559 ~~[(f)]~~ (g) A change in policy number resulting from any policy change not identified  
560 under Subsection (3)(a)(ii) does not constitute a new policy.

561 ~~[(g)]~~ (h) (i) Subsection (3)(a) applies retroactively to any claim arising on or after  
562 January 1, 2001 for which, as of May 1, 2012, an insured has not made a written demand for  
563 arbitration or filed a complaint in a court of competent jurisdiction.

564 (ii) The Legislature finds that the retroactive application of Subsection (3)(a):

565 (A) does not enlarge, eliminate, or destroy vested rights; and

566 (B) clarifies legislative intent.

567 ~~[(h)]~~ (i) A self-insured, including a governmental entity, may elect to provide  
568 underinsured motorist coverage in an amount that is less than its maximum self-insured  
569 retention under Subsections (3)(b) and ~~[(h)]~~ (m) by issuing a declaratory memorandum or policy  
570 statement from the chief financial officer or chief risk officer that declares the:

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

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

573 ~~[(i)]~~ (j) Underinsured motorist coverage may not be sold with limits that are less than:

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

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

576 ~~[(j)]~~ (k) An acknowledgment under Subsection (3)(b) continues for that issuer of the  
577 underinsured motorist coverage until the named insured, in writing, requests different  
578 underinsured motorist coverage from the insurer.

579 ~~[(k)]~~ (l) (i) The named insured's underinsured motorist coverage, as described in  
580 Subsection (2), is secondary to the liability coverage of an owner or operator of an  
581 underinsured motor vehicle, as described in Subsection (1).

582 (ii) Underinsured motorist coverage may not be set off against the liability coverage of  
583 the owner or operator of an underinsured motor vehicle, but shall be added to, combined with,

584 or stacked upon the liability coverage of the owner or operator of the underinsured motor  
585 vehicle to determine the limit of coverage available to the injured person.

586 ~~(+)~~ (m) (i) In conjunction with the first two renewal notices sent after January 1, 2001,  
587 for policies existing on that date, the insurer shall disclose in the same medium as the premium  
588 renewal notice, an explanation of:

589 (A) the purpose of underinsured motorist coverage in the same manner as described in  
590 Subsection (3)(b)(iv); and

591 (B) a disclosure of the additional premiums required to purchase underinsured motorist  
592 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle  
593 liability coverage or the maximum underinsured motorist coverage limits available by the  
594 insurer under the named insured's motor vehicle policy.

595 (ii) The disclosure required under this Subsection (3)~~(+)~~(m) shall be sent to all named  
596 insureds that carry underinsured motorist coverage limits in an amount less than the named  
597 insured's motor vehicle liability policy limits or the maximum underinsured motorist coverage  
598 limits available by the insurer under the named insured's motor vehicle policy.

599 ~~(m)~~ (n) For purposes of this Subsection (3), a notice or disclosure sent to a named  
600 insured in a household constitutes notice or disclosure to all insureds within the household.

601 (4) (a) (i) Except as provided in this Subsection (4), a covered person injured in a  
602 motor vehicle described in a policy that includes underinsured motorist benefits may not elect  
603 to collect underinsured motorist coverage benefits from another motor vehicle insurance policy.

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

607 (iii) Subsection (4)(a)(ii) applies to all persons except a covered person described  
608 under Subsections (4)(b)(i) and (ii).

609 (b) (i) Except as provided in Subsection (4)(b)(ii), a covered person injured while  
610 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the  
611 covered person, the covered person's spouse, or the covered person's resident parent or resident  
612 sibling, may also recover benefits under any one other policy under which the covered person is  
613 also a covered person.

614 (ii) (A) A covered person may recover benefits from no more than two additional

615 policies, one additional policy from each parent's household if the covered person is:

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

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

620 (B) Each parent's policy under this Subsection (4)(b)(ii) is liable only for the  
621 percentage of the damages that the limit of liability of each parent's policy of underinsured  
622 motorist coverage bears to the total of both parents' underinsured coverage applicable to the  
623 accident.

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

626 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is  
627 primary coverage, and the coverage elected by a person described under Subsections  
628 [31A-22-305\(1\)\(a\), \(b\), and \(c\)](#) is secondary coverage.

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

630 (vi) A covered person as described under Subsection (4)(b)(i) is entitled to the highest  
631 limits of underinsured motorist coverage under only one additional policy per household  
632 applicable to that covered person as a named insured, spouse, or relative.

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

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

637 (B) Except to the extent permitted by this Subsection (4), interpolicy stacking is  
638 prohibited for underinsured motorist coverage.

639 (c) Underinsured motorist coverage:

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

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

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

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

646 (v) may not be collected for bodily injury or death sustained by a person:  
647 (A) while committing a violation of Section 41-1a-1314;  
648 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated  
649 in violation of Section 41-1a-1314; or  
650 (C) while committing a felony; and  
651 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:  
652 (A) for a person under 18 years of age who is injured within the scope of Subsection  
653 (4)(c)(v), but is limited to medical and funeral expenses; or  
654 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured  
655 within the course and scope of the law enforcement officer's duties.  
656 (5) The inception of the loss under Subsection 31A-21-313(1) for underinsured  
657 motorist claims occurs upon the date of the last liability policy payment.  
658 (6) (a) Except as provided in Subsection (6)(d), within five business days after  
659 notification that all liability insurers have tendered the liability insurers' policy limits, the  
660 underinsured carrier shall either:  
661 (i) waive any subrogation claim the underinsured carrier may have against the person  
662 liable for the injuries caused in the accident; or  
663 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.  
664 (b) If neither option is exercised under Subsection (6)(a), the subrogation claim is  
665 considered to be waived by the underinsured carrier.  
666 (c) The notification under Subsection (6)(a) shall include:  
667 (i) the name, address, and phone number for all liability insurers;  
668 (ii) the liability insurers' liability policy limits; and  
669 (iii) the claim number associated with each liability insurer.  
670 (d) (i) A claimant may demand payment of policy limits from all liability insurers by  
671 sending notice to all applicable underinsured motorist insurers demanding payment.  
672 (ii) The notice under Subsection (6)(d)(i) shall include the name, address, and claim  
673 number of all liability insurers from which the claimant has demanded policy limits.  
674 (iii) The claimant shall send a copy of the notice to all liability insurers from which the  
675 claimant has demanded policy limits.  
676 (e) Upon the liability insurer tendering limits to a claimant, the liability insurer shall

677 provide notice of the tender to all underinsured motorist insurers for which the liability insurer  
678 received notice under Subsection (6)(d).

679 (f) If a claimant accepts the policy limits tender of each liability insurer, the liability  
680 insurer shall pay the claimant the accepted policy limits.

681 (g) (i) The subrogation rights of an underinsured motorist insurer are waived, unless:

682 (A) within five days of delivery of the notice of tender from the liability insurer, the  
683 underinsured motorist insurer affirmatively asserts the underinsured motorist insurer's rights to  
684 subrogation by delivering notice to the liability insurer of the underinsured motorist insurer's  
685 rights to subrogate; and

686 (B) the underinsured motorist insurer reimburses the liability insurer for the policy  
687 limits paid to the claimant.

688 (ii) If the subrogation rights of an underinsured motorist insurer are not waived under  
689 Subsection (6)(g)(i), any liability release signed by the claimant or the claimant's representative  
690 is rescinded.

691 (iii) A claimant's underinsured motorist coverage is preserved if the claimant provides  
692 notice to the underinsured motorist insurer as described in Subsection (6)(d).

693 (h) A person providing a notice required in this Subsection (6) shall deliver the notice  
694 by a service that provides proof of delivery.

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

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

698 (b) that is not required to conform to Section [31A-22-302](#).

699 (8) (a) When a claim is brought by a named insured or a person described in  
700 Subsection [31A-22-305](#)(1) and is asserted against the covered person's underinsured motorist  
701 carrier, the claimant may elect to resolve the claim:

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

703 (ii) through litigation.

704 (b) Unless otherwise provided in the policy under which underinsured benefits are  
705 claimed, the election provided in Subsection (8)(a) is available to the claimant only, except that  
706 if the policy under which insured benefits are claimed provides that either an insured or the  
707 insurer may elect arbitration, the insured or the insurer may elect arbitration and that election to

708 arbitrate shall stay the litigation of the claim under Subsection (8)(a)(ii).

709 (c) Once a claimant elects to commence litigation under Subsection (8)(a)(ii), the  
710 claimant may not elect to resolve the claim through binding arbitration under this section  
711 without the written consent of the underinsured motorist coverage carrier.

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

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

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

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

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

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

721 (f) Unless otherwise agreed to in writing:

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

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

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

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

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

731 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),  
732 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of  
733 Subsections (9)(a) through (c) are satisfied.

734 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure  
735 shall be determined based on the claimant's specific monetary amount in the written demand  
736 for payment of uninsured motorist coverage benefits as required in Subsection (9)(a)(i)(A).

737 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to  
738 arbitration claims under this part.



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

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

742 (k) (i) Except as provided in Subsection (9), the amount of an arbitration award may  
743 not exceed the underinsured motorist policy limits of all applicable underinsured motorist  
744 policies, including applicable underinsured motorist umbrella policies.

745 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all  
746 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount  
747 equal to the combined underinsured motorist policy limits of all applicable underinsured  
748 motorist policies.

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

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

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

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

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

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

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

761 (i) the award is procured by corruption, fraud, or other undue means;

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

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

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

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

769 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may

770 request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

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

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

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

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

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

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

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

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

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

789 (s) If a district court determines, upon a motion of the nonmoving party, that a moving  
790 party's use of the trial de novo process is filed in bad faith in accordance with Section  
791 [78B-5-825](#), the district court may award reasonable attorney fees to the nonmoving party.

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

794 (u) If there are multiple underinsured motorist policies, as set forth in Subsection (4),  
795 the claimant may elect to arbitrate in one hearing the claims against all the underinsured  
796 motorist carriers.

797 (9) (a) Within 30 days after a covered person elects to submit a claim for underinsured  
798 motorist benefits to binding arbitration or files litigation, the covered person shall provide to  
799 the underinsured motorist carrier:

800 (i) a written demand for payment of underinsured motorist coverage benefits, setting

801 forth:

802 (A) subject to Subsection (9)(l), the specific monetary amount of the demand,  
803 including a computation of the covered person's claimed past medical expenses, claimed past  
804 lost wages, and all other claimed past economic damages; and

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

806 (ii) a written statement under oath disclosing:

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

812 (II) the names and last known addresses of the health care providers who have rendered  
813 health care services to the covered person, which the covered person claims are immaterial to  
814 the claims for which underinsured motorist benefits are sought, for a period of five years  
815 preceding the date of the event giving rise to the claim for underinsured motorist benefits up to  
816 the time the election for arbitration or litigation has been exercised that have not been disclosed  
817 under Subsection (9)(a)(ii)(A)(I);

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

823 (II) the names and last known addresses of the health insurers or other entities to whom  
824 the covered person has submitted claims for health care services or benefits, which the covered  
825 person claims are immaterial to the claims for which underinsured motorist benefits are sought,  
826 for a period of five years preceding the date of the event giving rise to the claim for  
827 underinsured motorist benefits up to the time the election for arbitration or litigation have not  
828 been disclosed;

829 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all  
830 employers of the covered person for a period of five years preceding the date of the event  
831 giving rise to the claim for underinsured motorist benefits up to the time the election for

832 arbitration or litigation has been exercised;

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

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

838 (iii) signed authorizations to allow the underinsured motorist carrier to only obtain  
839 records and billings from the individuals or entities disclosed under Subsections  
840 (9)(a)(ii)(A)(I), (B)(I), and (C).

841 (b) (i) If the underinsured motorist carrier determines that the disclosure of undisclosed  
842 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary,  
843 the underinsured motorist carrier may:

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

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

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

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

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

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

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

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

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

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

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

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

875 (ii) If the amount tendered by the underinsured motorist carrier under Subsection  
876 (9)(c)(i) is the total amount of the underinsured motorist policy limits, the tendered amount  
877 shall be accepted by the covered person.

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

880 (i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all  
881 underinsured motorist claims; or

882 (ii) elect to:

883 (A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all  
884 underinsured motorist claims; and

885 (B) continue to litigate or arbitrate the remaining claim in accordance with the election  
886 made under Subsections (8)(a), (b), and (c).

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

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

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

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

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

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

903 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

915 (i) (i) A covered person shall disclose all material information, other than rebuttal  
916 evidence, within 30 days after a covered person elects to submit a claim for underinsured  
917 motorist coverage benefits to binding arbitration or files litigation as specified in Subsection  
918 (9)(a).

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

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

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

925           (1) (i) The written demand requirement in Subsection (9)(a)(i)(A) does not affect the  
926 covered person's requirement to provide a computation of any other economic damages  
927 claimed, and the one or more respondents shall have a reasonable time after the receipt of the  
928 computation of any other economic damages claimed to conduct fact and expert discovery as to  
929 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,  
930 Section 11, and Chapter 300, Section 11, to this Subsection (9)(l) and Subsection (9)(a)(i)(A)  
931 apply to a claim submitted to binding arbitration or through litigation on or after May 13, 2014.

932           (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter  
933 300, Section 11, under Subsections (9)(a)(ii)(A)(II) and (B)(II) apply to a claim submitted to  
934 binding arbitration or through litigation on or after May 13, 2014.