

Attorney Fees Amendments
2026 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Anthony E. Loubet
Senate Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill addresses attorney fees.

Highlighted Provisions:

This bill:

- clarifies the meaning of "bad faith" throughout the Utah Code with regard to attorney fees;
- amends the requirements for awarding reasonable attorney fees in a civil action; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 18-1-4**, as last amended by Laws of Utah 2024, Chapter 158
- 31A-22-305**, as last amended by Laws of Utah 2025, Chapter 261
- 31A-22-305.3**, as last amended by Laws of Utah 2025, Chapter 261
- 31A-22-321**, as last amended by Laws of Utah 2024, Chapter 158
- 38-1a-308**, as last amended by Laws of Utah 2024, Chapter 158
- 78B-5-825**, as last amended by Laws of Utah 2022, Chapter 272
- 78B-10a-108**, as enacted by Laws of Utah 2011, Chapter 197

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

Section 1. Section **18-1-4** is amended to read:

18-1-4 . Use of arbitration in personal injury from dog attack cases.

- (1) A person injured as a result of a dog attack may elect to submit all third party bodily injury claims to arbitration by filing a notice of the submission of the claim to binding arbitration in a court if:

31 (a) the claimant or the claimant's representative has:

32 (i) previously and timely filed a complaint in a court that includes a third party bodily
33 injury claim; and

34 (ii) filed a notice to submit the claim to arbitration within 14 days after the complaint
35 has been answered; and

36 (b) the notice required under Subsection (1)(a)(ii) is filed while the action under
37 Subsection (1)(a)(i) is still pending.

38 (2)(a) If a party submits a bodily injury claim to arbitration under Subsection (1), the
39 party submitting the claim or the party's representative is limited to an arbitration
40 award that may not exceed \$50,000 in addition to any medical premise benefits and
41 any claim for property damage.

42 (b) A party who elects to proceed against a defendant under this section:

43 (i) waives the right to obtain a judgment against the personal assets of the defendant;
44 and

45 (ii) is limited to recovery only against available limits of insurance coverage.

46 (3) A claim for punitive damages may not be made in an arbitration proceeding under
47 Subsection (1) or any subsequent proceeding, even if the claim is later resolved through
48 a trial de novo under Subsection (11).

49 (4)(a) A party who has elected arbitration under this section may rescind the party's
50 election if the rescission is made within:

51 (i) 90 days after the election to arbitrate; and

52 (ii) no less than 30 days before any scheduled arbitration hearing.

53 (b) A party seeking to rescind an election to arbitrate under this Subsection (4) shall:

54 (i) file a notice of the rescission of the election to arbitrate with the court in which the
55 matter was filed; and

56 (ii) send copies of the notice of the rescission of the election to arbitrate to all counsel
57 of record to the action.

58 (c) All discovery completed in anticipation of the arbitration hearing shall be available
59 for use by the parties as allowed by the Utah Rules of Civil Procedure and the Utah
60 Rules of Evidence.

61 (d) A party who has elected to arbitrate under this section and then rescinded the
62 election to arbitrate under this Subsection (4) may not elect to arbitrate the claim
63 under this section again.

64 (5)(a) Unless otherwise agreed to by the parties or by order of the court, an arbitration

process elected under this section is subject to Rule 26, Utah Rules of Civil Procedure.

(b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be completed within 150 days after the date arbitration is elected under this section or the date the answer is filed, whichever is longer.

(6)(a) Unless otherwise agreed to in writing by the parties, a claim that is submitted to arbitration under this section shall be resolved by a single arbitrator.

(b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall agree on the single arbitrator selected under Subsection (6)(a) within 90 days of the answer of the defendant.

(c) If the parties are unable to agree on a single arbitrator as required under Subsection (6)(b), the parties shall select a panel of three arbitrators.

(d) If the parties select a panel of three arbitrators under Subsection (6)(c):

(i) each side shall select one arbitrator; and

(ii) the arbitrators selected under Subsection (6)(d)(i) shall select one additional arbitrator to be included in the panel.

(7) Unless otherwise agreed to in writing:

(a) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (6)(a); and

(b) if an arbitration panel is selected under Subsection (6)(d):

(i) each party shall pay the fees and costs of the arbitrator selected by that party's side; and

(ii) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (6)(d)(ii).

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

(9)(a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and the Utah Rules of Evidence apply to the arbitration proceeding.

(b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied liberally with the intent of concluding the claim in a timely and cost-efficient manner.

(c) Discovery shall be conducted in accordance with the Utah Rules of Civil Procedure and shall be subject to the jurisdiction of the court in which the matter is filed.

(d) Dispositive motions shall be filed, heard, and decided by the court prior to the

- 99 arbitration proceeding in accordance with the court's scheduling order.
- 100 (10) A written decision by a single arbitrator or by a majority of the arbitration panel shall
101 constitute a final decision.
- 102 (11) An arbitration award issued under this section shall be the final resolution of all bodily
103 injury claims between the parties and may be reduced to judgment by the court upon
104 motion and notice unless:
- 105 (a) either party, within 20 days after service of the arbitration award:
- 106 (i) files a notice requesting a trial de novo in the court; and
- 107 (ii) serves the nonmoving party with a copy of the notice requesting a trial de novo
108 under Subsection (11)(a)(i); or
- 109 (b) the arbitration award has been satisfied.
- 110 (12)(a) Upon filing a notice requesting a trial de novo under Subsection (11):
- 111 (i) unless otherwise stipulated to by the parties or ordered by the court, an additional
112 90 days shall be allowed for further discovery;
- 113 (ii) the additional discovery time under Subsection (12)(a)(i) shall run from the notice
114 of appeal; and
- 115 (iii) the claim shall proceed through litigation [~~pursuant to~~] in accordance with the
116 Utah Rules of Civil Procedure and the Utah Rules of Evidence in the court.
- 117 (b) In accordance with the Utah Rules of Civil Procedure, either party may request a jury
118 trial with a request for trial de novo filed under Subsection (11).
- 119 (13)(a) If the plaintiff, as the moving party in a trial de novo requested under Subsection
120 (11), does not obtain a verdict that is at least \$5,000 and is at least 30% greater than
121 the arbitration award, the plaintiff is responsible for all of the nonmoving party's
122 costs.
- 123 (b) Except as provided in Subsection (13)(c), the costs under Subsection (13)(a) shall
124 include:
- 125 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and
- 126 (ii) the costs of expert witnesses and depositions.
- 127 (c) An award of costs under this Subsection (13) may not exceed \$6,000.
- 128 (14)(a) If a defendant, as the moving party in a trial de novo requested under Subsection
129 (11), does not obtain a verdict that is at least 30% less than the arbitration award, the
130 defendant is responsible for all of the nonmoving party's costs.
- 131 (b) Except as provided in Subsection (14)(c), the costs under Subsection (14)(a) shall
132 include:

- (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and
- (ii) the costs of expert witnesses and depositions.
- (c) An award of costs under this Subsection (14) may not exceed \$6,000.
- (15) For purposes of determining whether a party's verdict is greater or less than the arbitration award under Subsections (13) and (14), a court may not consider any recovery or other relief granted on a claim for damages if the claim for damages was not disclosed in:
- (a) writing prior to the arbitration proceeding; or
- (b) response to discovery contrary to the Utah Rules of Civil Procedure.
- ~~[(16) If a court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith, as described in Section 78B-5-825, the court may award reasonable attorney fees to the nonmoving party.]~~
- (16) Upon a motion of the nonmoving party, the court may award reasonable attorney fees to the nonmoving party if the court determines that:
- (a) the moving party lacked an honest belief that the request for a trial de novo was proper;
- (b) the moving party intended to take unconscionable advantage of another by requesting a trial de novo; or
- (c) the moving party intended to, or acted with, the knowledge that the request for a trial de novo would hinder, delay, or defraud another.
- (17) Nothing in this section is intended to affect or prevent any first party claim from later being brought under any first party insurance policy under which the injured person is a covered person.
- (18)(a) If a defendant requests a trial de novo under Subsection (11), the total verdict at trial may not exceed \$15,000 above any available limits of insurance coverage and the total verdict may not exceed \$65,000.
- (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may not exceed \$50,000.
- (19) All arbitration awards issued under this section shall bear postjudgment interest [~~pursuant to~~] in accordance with Section 15-1-4.
- Section 2. Section **31A-22-305** is amended to read:
- 31A-22-305 . Uninsured motorist coverage.**
- (1) As used in this section, "covered persons" includes:
- (a) the named insured;

- 167 (b) for a claim arising on or after May 13, 2014, the named insured's dependent minor
168 children;
- 169 (c) persons related to the named insured by blood, marriage, adoption, or guardianship,
170 who are residents of the named insured's household, including those who usually
171 make their home in the same household but temporarily live elsewhere;
- 172 (d) any person occupying or using a motor vehicle:
173 (i) referred to in the policy; or
174 (ii) owned by a self-insured; and
- 175 (e) any person who is entitled to recover damages against the owner or operator of the
176 uninsured or underinsured motor vehicle because of bodily injury to or death of
177 persons under Subsection (1)(a), (b), (c), or (d).

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

- 179 (a)(i) a motor vehicle, the operation, maintenance, or use of which is not covered
180 under a liability policy at the time of an injury-causing occurrence; or
181 (ii)(A) a motor vehicle covered with lower liability limits than required by Section
182 31A-22-304; and
183 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the
184 extent of the deficiency;
- 185 (b) an unidentified motor vehicle that left the scene of an accident proximately caused
186 by the motor vehicle operator;
- 187 (c) a motor vehicle covered by a liability policy, but coverage for an accident is disputed
188 by the liability insurer for more than 60 days or continues to be disputed for more
189 than 60 days; or
- 190 (d)(i) an insured motor vehicle if, before or after the accident, the liability insurer of
191 the motor vehicle is declared insolvent by a court of competent jurisdiction; and
192 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent
193 that the claim against the insolvent insurer is not paid by a guaranty association or
194 fund.

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

198 (4)(a) For new policies written on or after January 1, 2001, the limits of uninsured
199 motorist coverage shall be equal to the lesser of the limits of the named insured's
200 motor vehicle liability coverage or the maximum uninsured motorist coverage limits

201 available by the insurer under the named insured's motor vehicle policy, unless a
202 named insured rejects or purchases coverage in a lesser amount by signing an
203 acknowledgment form that:

- 204 (i) is filed with the department;
- 205 (ii) is provided by the insurer;
- 206 (iii) waives the higher coverage;
- 207 (iv) need only state in this or similar language that uninsured motorist coverage
208 provides benefits or protection to you and other covered persons for bodily injury
209 resulting from an accident caused by the fault of another party where the other
210 party has no liability insurance; and
- 211 (v) discloses the additional premiums required to purchase uninsured motorist
212 coverage with limits equal to the lesser of the limits of the named insured's motor
213 vehicle liability coverage or the maximum uninsured motorist coverage limits
214 available by the insurer under the named insured's motor vehicle policy.

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

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

221 (ii) The Legislature finds that the retroactive application of Subsections (4)(a) and (b)
222 clarifies the application of law and does not enlarge, eliminate, or destroy vested
223 rights.

224 (d) For purposes of this Subsection (4), "new policy" means:

- 225 (i) any policy that is issued which does not include a renewal or reinstatement of an
226 existing policy; or
- 227 (ii) a change to an existing policy that results in:
 - 228 (A) a named insured being added to or deleted from the policy; or
 - 229 (B) a change in the limits of the named insured's motor vehicle liability coverage.

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

233 (ii) The adding of an additional motor vehicle to an existing personal lines or
234 commercial lines policy does not constitute a new policy for purposes of

- 235 Subsection (4)(d).
- 236 (iii) If an additional motor vehicle is added to a personal lines policy where uninsured
237 motorist coverage has been rejected, or where uninsured motorist limits are lower
238 than the named insured's motor vehicle liability limits, the insurer shall provide a
239 notice to a named insured within 30 days that:
- 240 (A) in the same manner as described in Subsection (4)(a)(iv), explains the purpose
241 of uninsured motorist coverage; and
- 242 (B) encourages the named insured to contact the insurance company or insurance
243 producer for quotes as to the additional premiums required to purchase
244 uninsured motorist coverage with limits equal to the lesser of the limits of the
245 named insured's motor vehicle liability coverage or the maximum uninsured
246 motorist coverage limits available by the insurer under the named insured's
247 motor vehicle policy.
- 248 (f) A change in policy number resulting from any policy change not identified under
249 Subsection (4)(d)(ii) does not constitute a new policy.
- 250 (g)(i) Subsection (4)(d) applies retroactively to any claim arising on or after January
251 1, 2001, for which, as of May 1, 2012, an insured has not made a written demand
252 for arbitration or filed a complaint in a court of competent jurisdiction.
- 253 (ii) The Legislature finds that the retroactive application of this Subsection (4):
- 254 (A) does not enlarge, eliminate, or destroy vested rights; and
- 255 (B) clarifies the application of law.
- 256 (h) A self-insured, including a governmental entity, may elect to provide uninsured
257 motorist coverage in an amount that is less than its maximum self-insured retention
258 under Subsections (4)(a) and (5)(a) by issuing a declaratory memorandum or policy
259 statement from the chief financial officer or chief risk officer that declares the:
- 260 (i) self-insured entity's coverage level; and
- 261 (ii) process for filing an uninsured motorist claim.
- 262 (i) Uninsured motorist coverage may not be sold with limits that are less than the
263 minimum bodily injury limits for motor vehicle liability policies under Section
264 31A-22-304.
- 265 (j) The acknowledgment under Subsection (4)(a) continues for that issuer of the
266 uninsured motorist coverage until the named insured requests, in writing, different
267 uninsured motorist coverage from the insurer.
- 268 (k)(i) In conjunction with the first two renewal notices sent after January 1, 2001, for

policies existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of:

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

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

(ii) The disclosure required under Subsection (4)(k)(i) shall be sent to all named insureds that carry uninsured motorist coverage limits in an amount less than the named insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage limits available by the insurer under the named insured's motor vehicle policy.

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

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

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

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

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

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

(c) Uninsured motorist coverage:

(i) in order to avoid double recovery, does not cover any benefit under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah

- Occupational Disease Act, provided by the workers' compensation insurance carrier, uninsured employer, the Uninsured Employers' Fund created in Section 34A-2-704, or the Employers' Reinsurance Fund created in Section 34A-2-702, except that:
- (A) the covered person is credited an amount described in Subsection 34A-2-106(5); and
 - (B) the benefits described in this Subsection (5)(c)(i) do not need to be paid before an uninsured motorist claim may be pursued and resolved;
- (ii) may not be subrogated by the workers' compensation insurance carrier, uninsured employer, the Uninsured Employers' Fund created in Section 34A-2-704, or the Employers' Reinsurance Fund created in Section 34A-2-702;
- (iii) may not be reduced by any benefits provided by the workers' compensation insurance carrier, uninsured employer, the Uninsured Employers' Fund created in Section 34A-2-704, or the Employers' Reinsurance Fund created in Section 34A-2-702;
- (iv) notwithstanding Subsection 31A-1-103(3)(f), may be reduced by health insurance subrogation only after the covered person has been made whole;
- (v) may not be collected for bodily injury or death sustained by a person:
- (A) while committing a violation of Section 41-1a-1314;
 - (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated in violation of Section 41-1a-1314; or
 - (C) while committing a felony; and
- (vi) notwithstanding Subsection (5)(c)(v), may be recovered:
- (A) for a person under 18 years old who is injured within the scope of Subsection (5)(c)(v) but limited to medical and funeral expenses; or
 - (B) by a law enforcement officer as defined in Section 53-13-103, who is injured within the course and scope of the law enforcement officer's duties.
- (d) As used in this Subsection (5), "motor vehicle" means the same as that term is defined in Section 41-1a-102.
- (6) When a covered person alleges that an uninsured motor vehicle under Subsection (2)(b) proximately caused an accident without touching the covered person or the motor vehicle occupied by the covered person, the covered person shall show the existence of the uninsured motor vehicle by clear and convincing evidence consisting of more than the covered person's testimony.

- (7)(a) The limit of liability for uninsured motorist coverage for two or more motor vehicles may not be added together, combined, or stacked to determine the limit of insurance coverage available to an injured person for any one accident.
- (b)(i) Subsection (7)(a) applies to all persons except a covered person as defined under Subsection (8)(b).
- (ii) A covered person as defined under Subsection (8)(b)(ii) is entitled to the highest limits of uninsured motorist coverage afforded for any one motor vehicle that the covered person is the named insured or an insured family member.
- (iii) This coverage shall be in addition to the coverage on the motor vehicle the covered person is occupying.
- (iv) Neither the primary nor the secondary coverage may be set off against the other.
- (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary coverage, and the coverage elected by a person described under Subsections (1)(a) through (c) shall be secondary coverage.
- (8)(a) Uninsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of covered persons while occupying or using a motor vehicle only if the motor vehicle is described in the policy under which a claim is made, or if the motor vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy. Except as provided in Subsection (7) or this Subsection (8), a covered person injured in a motor vehicle described in a policy that includes uninsured motorist benefits may not elect to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy under which the person is a covered person.
- (b) Each of the following persons may also recover uninsured motorist benefits under any one other policy in which they are described as a "covered person" as defined in Subsection (1):
- (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and
- (ii) except as provided in Subsection (8)(c), a covered person injured while occupying or using a motor vehicle that is not owned, leased, or furnished:
- (A) to the covered person;
- (B) to the covered person's spouse; or
- (C) to the covered person's resident parent or resident sibling.
- (c)(i) A covered person may recover benefits from no more than two additional policies, one additional policy from each parent's household if the covered person

371 is:

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

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

375 (I) to the covered person;

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

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

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

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

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

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

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

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

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

394 (ii) through litigation.

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

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

404 (d) For purposes of the statute of limitations applicable to a claim described in

Subsection (9)(a), if the claimant does not elect to resolve the claim through litigation, the claim is considered filed when the claimant submits the claim to binding arbitration in accordance with this Subsection (9).

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

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

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

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

(i) each side shall select one arbitrator; and

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

(g) Unless otherwise agreed to in writing:

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

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

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

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

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

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

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

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

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

- (k) A written decision by a single arbitrator or by a majority of the arbitration panel shall constitute a final decision.
- (l)(i) Except as provided in Subsection (10), the amount of an arbitration award may not exceed the uninsured motorist policy limits of all applicable uninsured motorist policies, including applicable uninsured motorist umbrella policies.
- (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all applicable uninsured motorist policies, the arbitration award shall be reduced to an amount equal to the combined uninsured motorist policy limits of all applicable uninsured motorist policies.
- (m) The arbitrator or arbitration panel may not decide the issues of coverage or extra-contractual damages, including:
- (i) whether the claimant is a covered person;
 - (ii) whether the policy extends coverage to the loss; or
 - (iii) any allegations or claims asserting consequential damages or bad faith liability.
- (n) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or class-representative basis.
- (o) If the arbitrator or arbitration panel finds that the action was not brought, pursued, or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees and costs against the party that failed to bring, pursue, or defend the claim in good faith.
- (p) An arbitration award issued under this section shall be the final resolution of all claims not excluded by Subsection (9)(m) between the parties unless:
- (i) the award was procured by corruption, fraud, or other undue means; and
 - (ii) within 20 days after service of the arbitration award, a party:
 - (A) files a complaint requesting a trial de novo in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration; and
 - (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo under Subsection (9)(p)(ii)(A).
- (q)(i) Upon filing a complaint for a trial de novo under Subsection (9)(p), the claim shall proceed through litigation in accordance with the Utah Rules of Civil Procedure and Utah Rules of Evidence.
- (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, a party may request a jury trial with a complaint requesting a trial de novo under Subsection (9)(p)(ii)(A).
- (r)(i) If the claimant, as the moving party in a trial de novo requested under

Subsection (9)(p), does not obtain a verdict that is at least \$5,000 and is at least 20% greater than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

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

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

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

(B) the costs of expert witnesses and depositions.

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

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

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

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

~~[(t) If a court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith in accordance with Section 78B-5-825, the court may award reasonable attorney fees to the nonmoving party.]~~

(t) Upon a motion of the nonmoving party, the court may award reasonable attorney fees to the nonmoving party if the court determines that:

(i) the moving party lacked an honest belief that the request for a trial de novo was proper;

(ii) the moving party intended to take unconscionable advantage of another by requesting a trial de novo; or

(iii) the moving party intended to, or acted with, the knowledge that the request for a trial de novo would hinder, delay, or defraud another.

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

(v) If there are multiple uninsured motorist policies, as set forth in Subsection (8), the claimant may elect to arbitrate in one hearing the claims against all the uninsured

motorist carriers.

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

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

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

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

(ii) a written statement under oath disclosing:

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

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

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

(II) the names and last known addresses of the health insurers or other entities to whom the covered person has submitted claims for health care services or benefits, which the covered person claims are immaterial to the claims for

- 541 which uninsured motorist benefits are sought, for a period of five years
542 preceding the date of the event giving rise to the claim for uninsured
543 motorist benefits up to the time the election for arbitration or litigation have
544 not been disclosed;
- 545 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
546 employers of the covered person for a period of five years preceding the date
547 of the event giving rise to the claim for uninsured motorist benefits up to the
548 time the election for arbitration or litigation has been exercised;
- 549 (D) other documents to reasonably support the claims being asserted; and
- 550 (E) all state and federal statutory lienholders including a statement as to whether
551 the covered person is a recipient of Medicare or Medicaid benefits or Utah
552 Children's Health Insurance Program benefits under Title 26B, Chapter 3, Part 9,
553 Utah Children's Health Insurance Program, or if the claim is subject to any
554 other state or federal statutory liens; and
- 555 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain
556 records and billings from the individuals or entities disclosed under Subsections
557 (10)(a)(ii)(A)(I), (B)(I), and (C).
- 558 (b)(i) If the uninsured motorist carrier determines that the disclosure of undisclosed
559 health care providers or health care insurers under Subsection (10)(a)(ii) is
560 reasonably necessary, the uninsured motorist carrier may:
- 561 (A) make a request for the disclosure of the identity of the health care providers or
562 health care insurers; and
- 563 (B) make a request for authorizations to allow the uninsured motorist carrier to
564 only obtain records and billings from the individuals or entities not disclosed.
- 565 (ii) If the covered person does not provide the requested information within 10 days:
- 566 (A) the covered person shall disclose, in writing, the legal or factual basis for the
567 failure to disclose the health care providers or health care insurers; and
- 568 (B) either the covered person or the uninsured motorist carrier may request the
569 arbitrator or arbitration panel to resolve the issue of whether the identities or
570 records are to be provided if the covered person has elected arbitration.
- 571 (iii) The time periods imposed by Subsection (10)(c)(i) are tolled pending resolution
572 of the dispute concerning the disclosure and production of records of the health
573 care providers or health care insurers.
- 574 (c)(i) An uninsured motorist carrier that receives an election for arbitration or a notice

of filing litigation and the demand for payment of uninsured motorist benefits under Subsection (10)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and receipt of the items specified in Subsections (10)(a)(i) through (iii), to:

- (A) provide a written response to the written demand for payment provided for in Subsection (10)(a)(i);
- (B) except as provided in Subsection (10)(c)(i)(C), tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed to the covered person; and
- (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health Insurance Program benefits under Title 26B, Chapter 3, Part 9, Utah Children's Health Insurance Program, or if the claim is subject to any other state or federal statutory liens, tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed to the covered person less:
 - (I) if the amount of the state or federal statutory lien is established, the amount of the lien; or
 - (II) if the amount of the state or federal statutory lien is not established, two times the amount of the medical expenses subject to the state or federal statutory lien until such time as the amount of the state or federal statutory lien is established.
- (ii) If the amount tendered by the uninsured motorist carrier under Subsection (10)(c)(i) is the total amount of the uninsured motorist policy limits, the tendered amount shall be accepted by the covered person.
- (d) A covered person who receives a written response from an uninsured motorist carrier as provided for in Subsection (10)(c)(i), may:
 - (i) elect to accept the amount tendered in Subsection (10)(c)(i) as payment in full of all uninsured motorist claims; or
 - (ii) elect to:
 - (A) accept the amount tendered in Subsection (10)(c)(i) as partial payment of all uninsured motorist claims; and
 - (B) continue to litigate or arbitrate the remaining claim in accordance with the election made under Subsections (9)(a) through (c).
- (e) If a covered person elects to accept the amount tendered under Subsection (10)(c)(i) as partial payment of all uninsured motorist claims, the final award obtained through

arbitration, litigation, or later settlement shall be reduced by any payment made by the uninsured motorist carrier under Subsection (10)(c)(i).

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

- (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid under Subsection (10)(c)(i) until after the arbitration award has been rendered; and
- (ii) the parties may not disclose the amount of the limits of uninsured motorist benefits provided by the policy.

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

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

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

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

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

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

(i)(i) A covered person shall disclose all material information, other than rebuttal evidence, within 30 days after a covered person elects to submit a claim for uninsured motorist coverage benefits to binding arbitration or files litigation as specified in Subsection (10)(a).

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

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

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

(l)(i)(A) The written demand requirement in Subsection (10)(a)(i)(A) does not affect the covered person's requirement to provide a computation of any other economic damages claimed, and the one or more respondents shall have a reasonable time after the receipt of the computation of any other economic damages claimed to conduct fact and expert discovery as to any additional damages claimed.

(B) The changes made by Laws of Utah 2014, Chapter 290, Section 10, and[-] [Chapter 300, Section 10, to this Subsection (10)(l) and Subsection (10)(a)(i)(A) apply to a claim submitted to binding arbitration or through litigation on or after May 13, 2014.

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

(11)(a) A person shall commence an action on a written policy or contract for uninsured motorist coverage within four years after the inception of loss.

(b) Subsection (11)(a) shall apply to all claims that have not been time barred by Subsection 31A-21-313(1)(a) as of May 14, 2019.

Section 3. Section **31A-22-305.3** is amended to read:

31A-22-305.3 . Underinsured motorist coverage.

(1) As used in this section:

(a) "Covered person" means the same as that term is defined in Section 31A-22-305.

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

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

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

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

(C) a motor vehicle owned or leased by:

(I) a named insured;

(II) a named insured's spouse; or

(III) a dependent of a named insured.

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

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

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

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

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

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

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

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

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

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

(i) is filed with the department;

(ii) is provided by the insurer;

(iii) waives the higher coverage;

(iv) need only state in this or similar language that "underinsured motorist coverage provides benefits or protection to you and other covered persons for bodily injury resulting from an accident caused by the fault of another party where the other party has insufficient liability insurance"; and

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

- 711 coverage with limits equal to the lesser of the limits of the named insured's motor
712 vehicle liability coverage or the maximum underinsured motorist coverage limits
713 available by the insurer under the named insured's motor vehicle policy.
- 714 (c) Any selection or rejection under Subsection (3)(b) continues for that issuer of the
715 liability coverage until the insured requests, in writing, a change of underinsured
716 motorist coverage from that liability insurer.
- 717 (d)(i) Subsections (3)(b) and (c) apply retroactively to any claim arising on or after
718 January 1, 2001, for which, as of May 14, 2013, an insured has not made a written
719 demand for arbitration or filed a complaint in a court of competent jurisdiction.
- 720 (ii) The Legislature finds that the retroactive application of Subsections (3)(b) and (c)
721 clarifies the application of law and does not enlarge, eliminate, or destroy vested
722 rights.
- 723 (e)(i) As used in this Subsection (3)(e), "additional motor vehicle" means a change
724 that increases the total number of vehicles insured by the policy, and does not
725 include replacement, substitute, or temporary vehicles.
- 726 (ii) The adding of an additional motor vehicle to an existing personal lines or
727 commercial lines policy does not constitute a new policy for purposes of
728 Subsection (3)(a).
- 729 (iii) If an additional motor vehicle is added to a personal lines policy where
730 underinsured motorist coverage has been rejected, or where underinsured motorist
731 limits are lower than the named insured's motor vehicle liability limits, the insurer
732 shall provide a notice to a named insured within 30 days that:
- 733 (A) in the same manner described in Subsection (3)(b)(iv), explains the purpose of
734 underinsured motorist coverage; and
- 735 (B) encourages the named insured to contact the insurance company or insurance
736 producer for quotes as to the additional premiums required to purchase
737 underinsured motorist coverage with limits equal to the lesser of the limits of
738 the named insured's motor vehicle liability coverage or the maximum
739 underinsured motorist coverage limits available by the insurer under the named
740 insured's motor vehicle policy.
- 741 (f) A change in policy number resulting from any policy change not identified under
742 Subsection (3)(a)(ii) does not constitute a new policy.
- 743 (g)(i) Subsection (3)(a) applies retroactively to any claim arising on or after January
744 1, 2001 for which, as of May 1, 2012, an insured has not made a written demand

for arbitration or filed a complaint in a court of competent jurisdiction.

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

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

(B) clarifies legislative intent.

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

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

(ii) process for filing an underinsured motorist claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b)(i) A covered person injured as a pedestrian by an underinsured motor vehicle may recover underinsured motorist benefits under any one other policy in which they are described as a covered person.

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

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

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

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

(B) Each parent's policy under this Subsection (4)(b)(iii) is liable only for the percentage of the damages that the limit of liability of each parent's policy of underinsured motorist coverage bears to the total of both parents' underinsured

- 813 coverage applicable to the accident.
- 814 (iv) A covered person's recovery under any available policies may not exceed the full
815 amount of damages.
- 816 (v) Underinsured coverage on a motor vehicle occupied at the time of an accident is
817 primary coverage, and the coverage elected by a person described under
818 Subsections 31A-22-305(1)(a), (b), and (c) is secondary coverage.
- 819 (vi) The primary and the secondary coverage may not be set off against the other.
- 820 (vii) A covered person as described under Subsection (4)(b)(i) or is entitled to the
821 highest limits of underinsured motorist coverage under only one additional policy
822 per household applicable to that covered person as a named insured, spouse, or
823 relative.
- 824 (viii) A covered injured person is not barred against making subsequent elections if
825 recovery is unavailable under previous elections.
- 826 (ix)(A) As used in this section, "interpolicy stacking" means recovering benefits
827 for a single incident of loss under more than one insurance policy.
- 828 (B) Except to the extent permitted by this Subsection (4), interpolicy stacking is
829 prohibited for underinsured motorist coverage.
- 830 (c) Underinsured motorist coverage:
- 831 (i) in order to avoid double recovery, does not cover any benefit under Title 34A,
832 Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah
833 Occupational Disease Act, provided by the workers' compensation insurance
834 carrier, uninsured employer, the Uninsured Employers' Fund created in Section
835 34A-2-704, or the Employers' Reinsurance Fund created in Section 34A-2-702,
836 except that:
- 837 (A) the covered person is credited an amount described in Subsection
838 34A-2-106(5); and
- 839 (B) the benefits described in this Subsection (4)(c)(i) do not need to be paid before
840 an underinsured motorist claim may be pursued and resolved[-] ;
- 841 (ii) may not be subrogated by a workers' compensation insurance carrier, uninsured
842 employer, the Uninsured Employers' Fund created in Section 34A-2-704, or the
843 Employers' Reinsurance Fund created in Section 34A-2-702;
- 844 (iii) may not be reduced by benefits provided by the workers' compensation insurance
845 carrier, uninsured employer, the Uninsured Employers' Fund created in Section
846 34A-2-704, or the Employers' Reinsurance Fund created in Section 34A-2-702;

- 847 (iv) notwithstanding Subsection 31A-1-103(3)(f), may be reduced by health
848 insurance subrogation only after the covered person is made whole;
- 849 (v) may not be collected for bodily injury or death sustained by a person:
- 850 (A) while committing a violation of Section 41-1a-1314;
- 851 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being
852 operated in violation of Section 41-1a-1314; or
- 853 (C) while committing a felony; and
- 854 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:
- 855 (A) for a person younger than 18 years old who is injured within the scope of
856 Subsection (4)(c)(v), but is limited to medical and funeral expenses; or
- 857 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
858 within the course and scope of the law enforcement officer's duties.
- 859 (5)(a) Notwithstanding Section 31A-21-313, an action on a written policy or contract for
860 underinsured motorist coverage shall be commenced within four years after the
861 inception of loss.
- 862 (b) The inception of the loss under Subsection 31A-21-313(1) for underinsured motorist
863 claims occurs upon the date of the settlement check representing the last liability
864 policy payment.
- 865 (6) An underinsured motorist insurer does not have a right of reimbursement against a
866 person liable for the damages resulting from an injury-causing occurrence if the person's
867 liability insurer has tendered the policy limit and the limits have been accepted by the
868 claimant.
- 869 (7) Except as otherwise provided in this section, a covered person may seek, subject to the
870 terms and conditions of the policy, additional coverage under any policy:
- 871 (a) that provides coverage for damages resulting from motor vehicle accidents; and
- 872 (b) that is not required to conform to Section 31A-22-302.
- 873 (8)(a) When a claim is brought by a named insured or a person described in Subsection
874 31A-22-305(1) and is asserted against the covered person's underinsured motorist
875 carrier, the claimant may elect to resolve the claim:
- 876 (i) by submitting the claim to binding arbitration; or
- 877 (ii) through litigation.
- 878 (b) Unless otherwise provided in the policy under which underinsured benefits are
879 claimed, the election provided in Subsection (8)(a) is available to the claimant only,
880 except that if the policy under which insured benefits are claimed provides that either

an insured or the insurer may elect arbitration, the insured or the insurer may elect arbitration and that election to arbitrate shall stay the litigation of the claim under Subsection (8)(a)(ii).

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

(d) For purposes of the statute of limitations applicable to a claim described in Subsection (8)(a), if the claimant does not elect to resolve the claim through litigation, the claim is considered filed when the claimant submits the claim to binding arbitration in accordance with this Subsection (8).

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

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

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

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

(i) each side shall select one arbitrator; and

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

(g) Unless otherwise agreed to in writing:

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

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

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

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

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

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

- 915 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil
916 Procedure shall be determined based on the claimant's specific monetary amount
917 in the written demand for payment of uninsured motorist coverage benefits as
918 required in Subsection (9)(a)(i)(A).
- 919 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to
920 arbitration claims under this part.
- 921 (j) An issue of discovery shall be resolved by the arbitrator or the arbitration panel.
- 922 (k) A written decision by a single arbitrator or by a majority of the arbitration panel
923 constitutes a final decision.
- 924 (l)(i) Except as provided in Subsection (9), the amount of an arbitration award may
925 not exceed the underinsured motorist policy limits of all applicable underinsured
926 motorist policies, including applicable underinsured motorist umbrella policies.
- 927 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of
928 all applicable underinsured motorist policies, the arbitration award shall be
929 reduced to an amount equal to the combined underinsured motorist policy limits
930 of all applicable underinsured motorist policies.
- 931 (m) The arbitrator or arbitration panel may not decide an issue of coverage or
932 extra-contractual damages, including:
- 933 (i) whether the claimant is a covered person;
- 934 (ii) whether the policy extends coverage to the loss; or
- 935 (iii) an allegation or claim asserting consequential damages or bad faith liability.
- 936 (n) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
937 class-representative basis.
- 938 (o) If the arbitrator or arbitration panel finds that the arbitration is not brought, pursued,
939 or defended in good faith, the arbitrator or arbitration panel may award reasonable
940 attorney fees and costs against the party that failed to bring, pursue, or defend the
941 arbitration in good faith.
- 942 (p) An arbitration award issued under this section shall be the final resolution of all
943 claims not excluded by Subsection (8)(m) between the parties unless:
- 944 (i) the award is procured by corruption, fraud, or other undue means; or
- 945 (ii) either party, within 20 days after service of the arbitration award:
- 946 (A) files a complaint requesting a trial de novo in the a court with jurisdiction
947 under Title 78A, Judiciary and Judicial Administration; and
- 948 (B) serves the nonmoving party with a copy of the complaint requesting a trial de

- 949 novo under Subsection (8)(p)(ii)(A).
- 950 (q)(i) Upon filing a complaint for a trial de novo under Subsection (8)(p), a claim
- 951 shall proceed through litigation in accordance with the Utah Rules of Civil
- 952 Procedure and Utah Rules of Evidence.
- 953 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
- 954 request a jury trial with a complaint requesting a trial de novo under Subsection
- 955 (8)(p)(ii)(A).
- 956 (r)(i) If the claimant, as the moving party in a trial de novo requested under
- 957 Subsection (8)(p), does not obtain a verdict that is at least \$5,000 and is at least
- 958 20% greater than the arbitration award, the claimant is responsible for all of the
- 959 nonmoving party's costs.
- 960 (ii) If the underinsured motorist carrier, as the moving party in a trial de novo
- 961 requested under Subsection (8)(p), does not obtain a verdict that is at least 20%
- 962 less than the arbitration award, the underinsured motorist carrier is responsible for
- 963 all of the nonmoving party's costs.
- 964 (iii) Except as provided in Subsection (8)(r)(iv), the costs under this Subsection (8)(r)
- 965 shall include:
- 966 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and
- 967 (B) the costs of expert witnesses and depositions.
- 968 (iv) An award of costs under this Subsection (8)(r) may not exceed \$2,500 unless
- 969 Subsection (9)(h)(iii) applies.
- 970 (s) For purposes of determining whether a party's verdict is greater or less than the
- 971 arbitration award under Subsection (8)(r), a court may not consider any recovery or
- 972 other relief granted on a claim for damages if the claim for damages:
- 973 (i) was not fully disclosed in writing prior to the arbitration proceeding; or
- 974 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil
- 975 Procedure.
- 976 ~~[(t) If a court determines, upon a motion of the nonmoving party, that a moving party's~~
- 977 ~~use of the trial de novo process is filed in bad faith in accordance with Section~~
- 978 ~~78B-5-825, the court may award reasonable attorney fees to the nonmoving party.]~~
- 979 (t) Upon a motion of the nonmoving party, the court may award reasonable attorney fees
- 980 to the nonmoving party if the court determines that:
- 981 (i) the moving party lacked an honest belief that the request for a trial de novo was
- 982 proper;

(ii) the moving party intended to take unconscionable advantage of another by requesting a trial de novo; or

(iii) the moving party intended to, or acted with, the knowledge that the request for a trial de novo would hinder, delay, or defraud another.

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

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

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

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

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

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

(ii) a written statement under oath disclosing:

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

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

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

1017 entities to whom the covered person has submitted claims for health care
1018 services or benefits material to the claims for which underinsured motorist
1019 benefits are sought, for a period of five years preceding the date of the event
1020 giving rise to the claim for underinsured motorist benefits up to the time the
1021 election for arbitration or litigation has been exercised; and

1022 (II) the names and last known addresses of the health insurers or other entities
1023 to whom the covered person has submitted claims for health care services or
1024 benefits, which the covered person claims are immaterial to the claims for
1025 which underinsured motorist benefits are sought, for a period of five years
1026 preceding the date of the event giving rise to the claim for underinsured
1027 motorist benefits up to the time the election for arbitration or litigation have
1028 not been disclosed;

1029 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
1030 employers of the covered person for a period of five years preceding the date
1031 of the event giving rise to the claim for underinsured motorist benefits up to the
1032 time the election for arbitration or litigation has been exercised;

1033 (D) other documents to reasonably support the claims being asserted; and

1034 (E) all state and federal statutory lienholders including a statement as to whether
1035 the covered person is a recipient of Medicare or Medicaid benefits or Utah
1036 Children's Health Insurance Program benefits under Title 26B, Chapter 3, Part 9,
1037 Utah Children's Health Insurance Program, or if the claim is subject to any
1038 other state or federal statutory liens; and

1039 (iii) signed authorizations to allow the underinsured motorist carrier to only obtain
1040 records and billings from the individuals or entities disclosed under Subsections
1041 (9)(a)(ii)(A)(I), (B)(I), and (C).

1042 (b)(i) If the underinsured motorist carrier determines that the disclosure of
1043 undisclosed health care providers or health care insurers under Subsection
1044 (9)(a)(ii) is reasonably necessary, the underinsured motorist carrier may:

1045 (A) make a request for the disclosure of the identity of the health care providers or
1046 health care insurers; and

1047 (B) make a request for authorizations to allow the underinsured motorist carrier to
1048 only obtain records and billings from the individuals or entities not disclosed.

1049 (ii) If the covered person does not provide the requested information within 10 days:

1050 (A) the covered person shall disclose, in writing, the legal or factual basis for the

- 1051 failure to disclose the health care providers or health care insurers; and
- 1052 (B) either the covered person or the underinsured motorist carrier may request the
- 1053 arbitrator or arbitration panel to resolve the issue of whether the identities or
- 1054 records are to be provided if the covered person has elected arbitration.
- 1055 (iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of
- 1056 the dispute concerning the disclosure and production of records of the health care
- 1057 providers or health care insurers.
- 1058 (c)(i) An underinsured motorist carrier that receives an election for arbitration or a
- 1059 notice of filing litigation and the demand for payment of underinsured motorist
- 1060 benefits under Subsection (9)(a)(i) shall have a reasonable time, not to exceed 60
- 1061 days from the date of the demand and receipt of the items specified in Subsections
- 1062 (9)(a)(i) through (iii), to:
- 1063 (A) provide a written response to the written demand for payment provided for in
- 1064 Subsection (9)(a)(i);
- 1065 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the
- 1066 underinsured motorist carrier's determination of the amount owed to the
- 1067 covered person; and
- 1068 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
- 1069 Children's Health Insurance Program benefits under Title 26B, Chapter 3, Part 9,
- 1070 Utah Children's Health Insurance Program, or if the claim is subject to any
- 1071 other state or federal statutory liens, tender the amount, if any, of the
- 1072 underinsured motorist carrier's determination of the amount owed to the
- 1073 covered person less:
- 1074 (I) if the amount of the state or federal statutory lien is established, the amount
- 1075 of the lien; or
- 1076 (II) if the amount of the state or federal statutory lien is not established, two
- 1077 times the amount of the medical expenses subject to the state or federal
- 1078 statutory lien until such time as the amount of the state or federal statutory
- 1079 lien is established.
- 1080 (ii) If the amount tendered by the underinsured motorist carrier under Subsection
- 1081 (9)(c)(i) is the total amount of the underinsured motorist policy limits, the
- 1082 tendered amount shall be accepted by the covered person.
- 1083 (d) A covered person who receives a written response from an underinsured motorist
- 1084 carrier as provided for in Subsection (9)(c)(i), may:

- 1085 (i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all
1086 underinsured motorist claims; or
- 1087 (ii) elect to:
- 1088 (A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all
1089 underinsured motorist claims; and
- 1090 (B) continue to litigate or arbitrate the remaining claim in accordance with the
1091 election made under Subsections (8)(a) through (c).
- 1092 (e) If a covered person elects to accept the amount tendered under Subsection (9)(c)(i) as
1093 partial payment of all underinsured motorist claims, the final award obtained through
1094 arbitration, litigation, or later settlement shall be reduced by any payment made by
1095 the underinsured motorist carrier under Subsection (9)(c)(i).
- 1096 (f) In an arbitration proceeding on the remaining underinsured claims:
- 1097 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
1098 under Subsection (9)(c)(i) until after the arbitration award has been rendered; and
- 1099 (ii) the parties may not disclose the amount of the limits of underinsured motorist
1100 benefits provided by the policy.
- 1101 (g) If the final award obtained through arbitration or litigation is greater than the average
1102 of the covered person's initial written demand for payment provided for in Subsection
1103 (9)(a)(i) and the underinsured motorist carrier's initial written response provided for
1104 in Subsection (9)(c)(i), the underinsured motorist carrier shall pay:
- 1105 (i) the final award obtained through arbitration or litigation, except that if the award
1106 exceeds the policy limits of the subject underinsured motorist policy by more than
1107 \$15,000, the amount shall be reduced to an amount equal to the policy limits plus
1108 \$15,000; and
- 1109 (ii) any of the following applicable costs:
- 1110 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;
- 1111 (B) the arbitrator or arbitration panel's fee; and
- 1112 (C) the reasonable costs of expert witnesses and depositions used in the
1113 presentation of evidence during arbitration or litigation.
- 1114 (h)(i) The covered person shall provide an affidavit of costs within five days of an
1115 arbitration award.
- 1116 (ii)(A) Objection to the affidavit of costs shall specify with particularity the costs
1117 to which the underinsured motorist carrier objects.
- 1118 (B) The objection shall be resolved by the arbitrator or arbitration panel.

- 1119 (iii) The award of costs by the arbitrator or arbitration panel under Subsection
1120 (9)(g)(ii) may not exceed \$5,000.
- 1121 (i)(i) A covered person shall disclose all material information, other than rebuttal
1122 evidence, within 30 days after a covered person elects to submit a claim for
1123 underinsured motorist coverage benefits to binding arbitration or files litigation as
1124 specified in Subsection (9)(a).
- 1125 (ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person
1126 may not recover costs or any amounts in excess of the policy under Subsection
1127 (9)(g).
- 1128 (j) This Subsection (9) does not limit any other cause of action that arose or may arise
1129 against the underinsured motorist carrier from the same dispute.
- 1130 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that
1131 occur on or after March 30, 2010.
- 1132 (l)(i) The written demand requirement in Subsection (9)(a)(i)(A) does not affect the
1133 covered person's requirement to provide a computation of any other economic
1134 damages claimed, and the one or more respondents shall have a reasonable time
1135 after the receipt of the computation of any other economic damages claimed to
1136 conduct fact and expert discovery as to any additional damages claimed. The
1137 changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter 300,
1138 Section 11, to this Subsection (9)(l) and Subsection (9)(a)(i)(A) apply to a claim
1139 submitted to binding arbitration or through litigation on or after May 13, 2014.
- 1140 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter
1141 300, Section 11, under Subsections (9)(a)(ii)(A)(II) and (B)(II) apply to a claim submitted
1142 to binding arbitration or through litigation on or after May 13, 2014.
- 1143 Section 4. Section **31A-22-321** is amended to read:
- 1144 **31A-22-321 . Use of arbitration in third party motor vehicle accident cases.**
- 1145 (1) A person injured as a result of a motor vehicle accident may elect to submit all third
1146 party bodily injury claims to arbitration by filing a notice of the submission of the claim
1147 to binding arbitration in a court with jurisdiction under Title 78A, Judiciary and Judicial
1148 Administration, if:
- 1149 (a) the claimant or the claimant's representative has:
- 1150 (i) previously and timely filed a complaint in a court that includes a third party bodily
1151 injury claim; and
- 1152 (ii) filed a notice to submit the claim to arbitration within 14 days after the complaint

has been answered; and

(b) the notice required under Subsection (1)(a)(ii) is filed while the action under Subsection (1)(a)(i) is still pending.

(2)(a) If a party submits a bodily injury claim to arbitration under Subsection (1), the party submitting the claim or the party's representative is limited to an arbitration award that does not exceed \$75,000 or the defendant's per person limits of third party bodily insurance, whichever is less, in addition to any available personal injury protection benefits and any claim for property damage.

(b) A claim for reimbursement of personal injury protection benefits is to be resolved between insurers as provided for in Subsection 31A-22-309(6)(a)(ii).

(c) A claim for property damage may not be made in an arbitration proceeding under Subsection (1) unless agreed upon by the parties in writing.

(d) A party who elects to proceed against a defendant under this section:

(i) waives the right to obtain a judgment against the personal assets of the defendant; and

(ii) is limited to recovery only against available limits of insurance , plus a maximum \$15,000 in excess of policy limits, and available costs if appealed.

(e)(i) This section does not prevent a party from pursuing an underinsured motorist claim as set out in Section 31A-22-305.3.

(ii) An underinsured motorist claim described in Subsection (2)(e)(i) is not limited to the defendant's per person limits of third party bodily insurance coverage or the \$75,000 limit.

(iii) There shall be no right of subrogation on the part of the underinsured motorist carrier for a claim submitted to arbitration under this section.

(3) A claim for punitive damages may not be made in an arbitration proceeding under Subsection (1) or any subsequent proceeding, even if the claim is later resolved through a trial de novo under Subsection (11).

(4)(a) A person who has elected arbitration under this section may rescind the person's election if the rescission is made within:

(i) 90 days after the election to arbitrate; and

(ii) no less than 30 days before any scheduled arbitration hearing.

(b) A person seeking to rescind an election to arbitrate under this Subsection (4) shall:

(i) file a notice of the rescission of the election to arbitrate with the court in which the matter was filed; and

- 1187 (ii) send copies of the notice of the rescission of the election to arbitrate to all counsel
1188 of record to the action.
- 1189 (c) All discovery completed in anticipation of the arbitration hearing shall be available
1190 for use by the parties as allowed by the Utah Rules of Civil Procedure and Utah
1191 Rules of Evidence.
- 1192 (d) A party who has elected to arbitrate under this section and then rescinded the
1193 election to arbitrate under this Subsection (4) may not elect to arbitrate the claim
1194 under this section again.
- 1195 (5)(a) Unless otherwise agreed to by the parties or by order of the court, an arbitration
1196 process elected under this section is subject to Rule 26, Utah Rules of Civil
1197 Procedure.
- 1198 (b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be
1199 completed within 150 days after the date arbitration is elected under this section or
1200 the date the answer is filed, whichever is longer.
- 1201 (6)(a) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
1202 arbitration under this section shall be resolved by a single arbitrator.
- 1203 (b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall
1204 agree on the single arbitrator selected under Subsection (6)(a) within 90 days of the
1205 answer of the defendant.
- 1206 (c) If the parties are unable to agree on a single arbitrator as required under Subsection
1207 (6)(b), the parties shall select a panel of three arbitrators.
- 1208 (d) If the parties select a panel of three arbitrators under Subsection (6)(c):
1209 (i) each side shall select one arbitrator; and
1210 (ii) the arbitrators appointed under Subsection (6)(d)(i) shall select one additional
1211 arbitrator to be included in the panel.
- 1212 (7) Unless otherwise agreed to in writing:
1213 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
1214 under Subsection (6)(a); and
1215 (b) if an arbitration panel is selected under Subsection (6)(d):
1216 (i) each party shall pay the fees and costs of the arbitrator selected by that party's
1217 side; and
1218 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected
1219 under Subsection (6)(d)(ii).
- 1220 (8) Except as otherwise provided in this section and unless otherwise agreed to in writing

by the parties, an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(9)(a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and Utah Rules of Evidence apply to the arbitration proceeding.

(b) The Utah Rules of Civil Procedure and Utah Rules of Evidence shall be applied liberally with the intent of concluding the claim in a timely and cost-efficient manner.

(c) Discovery shall be conducted in accordance with Rules 26 through 37 of the Utah Rules of Civil Procedure and shall be subject to the jurisdiction of the court in which the matter is filed.

(d) Dispositive motions shall be filed, heard, and decided by the court prior to the arbitration proceeding in accordance with the court's scheduling order.

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

(11) An arbitration award issued under this section shall be the final resolution of all bodily injury claims between the parties and may be reduced to judgment by the court upon motion and notice unless:

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

(i) files a notice requesting a trial de novo in the court; and

(ii) serves the nonmoving party with a copy of the notice requesting a trial de novo under Subsection (11)(a)(i); or

(b) the arbitration award has been satisfied.

(12)(a) Upon filing a notice requesting a trial de novo under Subsection (11):

(i) unless otherwise stipulated to by the parties or ordered by the court, an additional 120 days shall be allowed for further discovery;

(ii) the additional discovery time under Subsection (12)(a)(i) shall run from the notice of appeal; and

(iii) the claim shall proceed through litigation in accordance with the Utah Rules of Civil Procedure and Utah Rules of Evidence.

(b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request a jury trial with a request for trial de novo filed under Subsection (11)(a)(i).

(13)(a) If the plaintiff, as the moving party in a trial de novo requested under Subsection (11), does not obtain a verdict that is at least \$5,000 and is at least 30% greater than the damages awarded in arbitration, excluding the items listed in Subsection (19), the plaintiff is responsible for all of the nonmoving party's costs.

- 1255 (b) The costs described in Subsection (13)(a) include:
- 1256 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure;
- 1257 (ii) the costs of expert witnesses and depositions;
- 1258 (iii) the arbitration costs paid by the prevailing party under Subsection (7);
- 1259 (iv) prejudgment interest described in Section 78B-5-824; and
- 1260 (v) postjudgment interest described in Section 15-1-4.
- 1261 (14)(a) If a defendant, as the moving party in a trial de novo requested under Subsection
- 1262 (11), does not obtain a verdict that is at least 30% less than the damages awarded in
- 1263 arbitration, excluding the items described in Subsection (19), the defendant is
- 1264 responsible for all of the nonmoving party's costs.
- 1265 (b) The costs described in Subsection (14)(a) include:
- 1266 (i) costs described in Rule 54(d), Utah Rules of Civil Procedure;
- 1267 (ii) the costs of expert witnesses and depositions;
- 1268 (iii) the arbitration costs paid by the prevailing party under Subsection (7);
- 1269 (iv) prejudgment interest described in Section 78B-5-824; and
- 1270 (v) postjudgment interest described in Section 15-1-4.
- 1271 (15) For purposes of determining whether a party's verdict is greater or less than the
- 1272 arbitration award under Subsections (13) and (14), a court may not consider any
- 1273 recovery or other relief granted on a claim for damages if the claim for damages:
- 1274 (a) was not fully disclosed in writing prior to the arbitration proceeding; or
- 1275 (b) was not disclosed in response to discovery contrary to the Utah Rules of Civil
- 1276 Procedure.
- 1277 ~~[(16) If a court determines, upon a motion of the nonmoving party, that the moving party's~~
- 1278 ~~use of the trial de novo process was filed in bad faith as defined in Section 78B-5-825,~~
- 1279 ~~the court may award reasonable attorney fees to the nonmoving party.]~~
- 1280 (16) Upon a motion of the nonmoving party, the court may award reasonable attorney fees
- 1281 to the nonmoving party if the court determines that:
- 1282 (a) the moving party lacked an honest belief that the request for a trial de novo was
- 1283 proper;
- 1284 (b) the moving party intended to take unconscionable advantage of another by
- 1285 requesting a trial de novo; or
- 1286 (c) the moving party intended to, or acted with, the knowledge that the request for a trial
- 1287 de novo would hinder, delay, or defraud another.
- 1288 (17) Nothing in this section is intended to affect or prevent any first party claim from later

being brought under any first party insurance policy under which the injured person is a covered person.

- (18)(a) If a defendant requests a trial de novo under Subsection (11), the total damages award at trial may not exceed \$15,000 above any available per person limits of insurance coverage, not including the costs described in Subsection (14)(b).
- (b) If a plaintiff requests a trial de novo under Subsection (11), the verdict at trial may not exceed \$75,000, or the per person limits of insurance coverage, whichever is less.

(19) All arbitration awards issued under this section shall include:

- (a) the costs described in Rule 54(d), Utah Rules of Civil Procedure;
- (b) the arbitration costs paid by the prevailing party under Subsection (7);
- (c) prejudgment interest described in Section 78B-5-824; and
- (d) postjudgment interest described in Section 15-1-4.

(20) If a party requests a trial de novo under Subsection (11), the party shall file a copy of the notice requesting a trial de novo with the commissioner notifying the commissioner of the party's request for a trial de novo under Subsection (11).

Section 5. Section **38-1a-308** is amended to read:

38-1a-308 . Intentional submission of excessive lien notice -- Criminal and civil liability.

(1) As used in this section, "residential project" means a project on real property:

- (a) for which a preconstruction service or construction work is provided; and
- (b) that consists of:
 - (i) one single-family residence; or
 - (ii) one multi-family residence that contains no more than four units.

(2) A person is guilty of a class B misdemeanor if:

- (a) the person intentionally submits for recording a notice of preconstruction lien or notice of construction lien against any property containing a greater demand than the sum due; and
- (b) by submitting the notice, the person intends:
 - (i) to cloud the title;
 - (ii) to exact from the owner or person liable by means of the excessive notice of preconstruction or construction lien more than is due; or
 - (iii) to procure any unjustified advantage or benefit.

(3)(a) As used in this Subsection (3), "third party" means an owner, original contractor, or subcontractor.

(b) In addition to any criminal penalty under Subsection (2), a person who submits a notice of preconstruction lien or notice of construction lien as described in Subsection (2) is liable to a third party who is affected by the notice of preconstruction lien or the notice of construction lien for twice the amount by which the lien notice exceeds the amount actually due or the actual damages incurred by the owner, original contractor, or subcontractor, whichever is greater.

(4) The parties to a claim described in Subsection (3)(b) who agree to arbitrate the claim shall arbitrate in accordance with Subsections (5) through (15) if the notice of preconstruction lien, or the notice of construction lien, that is the subject of the claim is:

(a) for a residential project; and

(b) for \$50,000 or less.

(5)(a) Unless otherwise agreed to by the parties, a claim that is submitted to arbitration under this section shall be resolved by a single arbitrator.

(b) All parties shall agree on the single arbitrator described in Subsection (5)(a) within 60 days after the day on which an answer is filed.

(c) If the parties are unable to agree on a single arbitrator as required under Subsection (5)(b), the parties shall select a panel of three arbitrators.

(d) If the parties select a panel of three arbitrators under Subsection (5)(c):

(i) each side shall select one arbitrator; and

(ii) the arbitrators selected under Subsection (5)(d)(i) shall select one additional arbitrator to be included in the panel.

(6) Unless otherwise agreed to in writing:

(a) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (5)(b); or

(b) if an arbitration panel is selected under Subsection (5)(d):

(i) each party shall pay the fees and costs of that party's selected arbitrator; and

(ii) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (5)(d)(ii).

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

(8)(a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and the Utah Rules of Evidence shall apply to an arbitration proceeding under this section.

(b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied

liberally with the intent of resolving the claim in a timely and cost-efficient manner.

(c) Subject to the provisions of this section, the parties shall conduct discovery in accordance with Rules 26 through 37 of the Utah Rules of Civil Procedure.

(d) Unless otherwise agreed to by the parties or ordered by the court, discovery in an arbitration proceeding under this section shall be limited to the discovery available in a tier 1 case under Rule 26 of the Utah Rules of Civil Procedure.

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

(10) An arbitration award issued under this section:

(a) shall be the final resolution of all excessive notice claims described in Subsection

(3)(b) that are:

(i) between the parties;

(ii) for a residential project; and

(iii) for \$50,000 or less; and

(b) may be reduced to judgment by the court upon motion and notice, unless:

(i) any party, within 20 days after the day on which the arbitration award is served, files a notice requesting a trial de novo in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration; or

(ii) the arbitration award has been satisfied.

(11)(a) Upon filing a notice requesting a trial de novo under Subsection (10)(b)(i):

(i) unless otherwise stipulated to by the parties or ordered by the court, the parties are allowed an additional 60 days for discovery; and

(ii) the claim shall proceed through litigation in accordance with the Utah Rules of Civil Procedure and the Utah Rules of Evidence.

(b) The additional discovery time described in Subsection (11)(a)(i) shall run from the day on which the notice requesting a trial de novo is filed.

(12) If the plaintiff, as the moving party in a trial de novo requested under Subsection (10)(b)(i), does not obtain a verdict that is at least 10% greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs, including expert witness fees.

(13) If a defendant, as the moving party in a trial de novo requested under Subsection (10)(b)(i), does not obtain a verdict that is at least 10% less than the arbitration award, the defendant is responsible for all of the nonmoving party's costs, including expert witness fees.

1391 ~~[(14) If a court determines, upon a motion of the nonmoving party, that the moving party's~~
1392 ~~use of the trial de novo process was filed in bad faith, as defined in Section 78B-5-825,~~
1393 ~~the court may award reasonable attorney fees to the nonmoving party.]~~

1394 (14) Upon a motion of the nonmoving party, the court may award reasonable attorney fees
1395 to the nonmoving party if the court determines that:

1396 (a) the moving party lacked an honest belief that the request for a trial de novo was
1397 proper;

1398 (b) the moving party intended to take unconscionable advantage of another by
1399 requesting a trial de novo; or

1400 (c) the moving party intended to, or acted with, the knowledge that the request for a trial
1401 de novo would hinder, delay, or defraud another.

1402 (15) All arbitration awards issued under this section shall bear postjudgment interest [
1403 pursuant to] in accordance with Section 15-1-4.

1404 Section 6. Section **78B-5-825** is amended to read:

1405 **78B-5-825 . Award of reasonable attorney fees in civil action -- Exceptions.**

1406 ~~[(1) In civil actions, the court shall award reasonable attorney fees to a prevailing party if~~
1407 ~~the court determines that the action or defense to the action was without merit and not~~
1408 ~~brought or asserted in good faith, except under Subsection (2).]~~

1409 (1) Except as provided in Subsection (3), the court shall award reasonable attorney fees to a
1410 prevailing party in a civil action if the court determines that:

1411 (a) the nonprevailing party's civil action, or defense to the civil action, was frivolous or
1412 of little weight or importance having no basis in law or fact; and

1413 (b)(i) the nonprevailing party lacked an honest belief that the action or defense was
1414 proper;

1415 (ii) the nonprevailing party intended to take unconscionable advantage of another by
1416 bringing the action or defense; or

1417 (iii) the nonprevailing party intended to, or acted with, the knowledge that the action
1418 or defense would hinder, delay, or defraud another.

1419 (2) Except as provided in Subsection (3), the court shall award reasonable attorney fees to a
1420 party in a civil action if:

1421 (a) the party incurred attorney fees in defense of a motion brought by the opposing
1422 party; and

1423 (b) the court determines that:

1424 (i) the opposing party's motion was frivolous or of little weight or importance having

no basis in law or fact; and

(ii)(A) the opposing party lacked an honest belief that the action or defense was proper;

(B) the opposing party intended to take unconscionable advantage of another by bringing the motion; or

(C) the opposing party intended to, or acted with, the knowledge that the motion would hinder, delay, or defraud another.

~~[(2)]~~ (3) The court, in the court's discretion, may award no fees or limited fees against a party under Subsection (1)~~[- but only if the court]~~ or (2) if the court:

(a) finds the party has filed an affidavit of indigency under Section 78A-2-302 in the action before the court; or

(b) ~~[the court]~~ enters in the record the reason for not awarding fees under the provisions of Subsection (1) or (2).

Section 7. Section **78B-10a-108** is amended to read:

78B-10a-108 . Trial de novo.

(1)(a) Upon filing a notice requesting a trial de novo in accordance with Subsection 78B-10a-107(2):

(i) unless otherwise stipulated to by the parties or ordered by the court, an additional 90 days shall be allowed for further discovery;

(ii) the additional discovery time under Subsection (1)(a)(i) shall run from the notice of the request for a trial de novo; and

(iii) the claim shall proceed through litigation ~~[pursuant to]~~ in accordance with the Utah Rules of Civil Procedure and Utah Rules of Evidence in the district court.

(b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request a jury trial with a request for trial de novo filed in accordance with Subsection 78B-10a-107(2)(a)(i).

(2)(a) If the plaintiff, as the moving party in a trial de novo requested under Subsection 78B-10a-107(2), does not obtain a verdict that is at least \$5,000 and 30% greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs.

(b) Except as provided in Subsection (2)(c), the costs under Subsection (2)(a) shall include:

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

(ii) the costs of expert witnesses and depositions.

(c) An award of costs under this Subsection (2) may not exceed \$6,000.

(3)(a) If a defendant, as the moving party in a trial de novo requested in accordance with Subsection 78B-10a-107(2), does not obtain a verdict that is at least 30% less than the arbitration award, the defendant is responsible for all of the nonmoving party's costs.

(b) Except as provided in Subsection (3)(c), the costs under Subsection (3)(a) shall include:

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

(ii) the costs of expert witnesses and depositions.

(c) An award of costs in accordance with this Subsection (3) may not exceed \$6,000.

(4) For purposes of determining whether a party's verdict is greater or less than the arbitration award under Subsections (2) and (3), a court may not consider any recovery or other relief granted on a claim for damages if the claim for damages:

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

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

~~[(5) If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith as defined in Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.]~~

(5) Upon a motion of the nonmoving party, the district court may award reasonable attorney fees to the nonmoving party if the district court determines that:

(a) the moving party lacked an honest belief that the request for a trial de novo was proper;

(b) the moving party intended to take unconscionable advantage of another by requesting a trial de novo; or

(c) the moving party intended to, or acted with, the knowledge that the request for a trial de novo would hinder, delay, or defraud another.

(6)(a) If a defendant requests a trial de novo under Subsection 78B-10a-107(2), the total verdict at trial may not exceed \$15,000 above any available limits of insurance coverage and the total verdict may not exceed \$65,000.

(b) If a plaintiff requests a trial de novo under Subsection 78B-10a-107(2), the verdict at trial may not exceed \$50,000.

Section 8. **Effective Date.**

This bill takes effect on May 6, 2026.