

MOTOR VEHICLE INSURANCE AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

AN ACT RELATING TO INSURANCE; AMENDING MOTOR VEHICLE INSURANCE
PROVISIONS; § ~~[AND]~~ § MAKING TECHNICAL CORRECTIONS § ; **AND PROVIDING AN
EFFECTIVE DATE** § .

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

31A-22-305, as last amended by Chapter 375, Laws of Utah 1997

31A-22-305.5, as enacted by Chapter 321, Laws of Utah 1990

§ [~~— 31A-26-303, as last amended by Chapter 91, Laws of Utah 1987~~] §

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

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

31A-22-305. Uninsured and underinsured motorist coverage.

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

(a) the named insured;

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

(c) any person occupying or using a motor vehicle referred to in the policy or owned by
a self-insurer; and

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

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

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

(ii) (A) a vehicle covered with lower liability limits than required by Section 31A-22-304;
(B) the vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of the deficiency;

(b) an unidentified vehicle that left the scene of an accident proximately caused by the vehicle operator; ~~or~~

(c) a vehicle covered by a liability policy, but coverage for an accident is disputed by the liability insurer § FOR MORE THAN 60 DAYS § § OR, BEGINNING WITH THE EFFECTIVE DATE OF THIS ACT, CONTINUES TO BE DISPUTED FOR MORE THAN 60 DAYS § ; or

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

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

(3) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death in limits that at least equal the minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

(4) (a) Except as provided in Subsection (4)(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). This rejection continues for that issuer of the liability coverage until the insured in writing requests uninsured motorist coverage from that liability insurer.

(b) 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 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.

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

(ii) This coverage does not apply to an employee, who is injured by an uninsured motorist, whose exclusive remedy is provided by Title 34A, Chapter 2, Workers' Compensation Act.

(c) As used in this Subsection (4):

(i) "Governmental entity" has the same meaning as under Section 63-30-2.

(ii) "Motor vehicle" has the same meaning as under Section 41-1a-102.

(5) 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 vehicle occupied by the covered person, the covered person must show the existence of the uninsured motor vehicle by clear and convincing evidence consisting of more than the covered person's testimony.

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

(ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest limits of uninsured motorist coverage afforded for any one 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 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) and (b) shall be secondary coverage.

(7) (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 vehicle covered under the terms of the policy. Except as provided in Subsection (6) or (7), a covered person injured in a 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 he is a covered person.

(b) Each of the following persons may also recover uninsured motorist benefits under any 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) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

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

(8) (a) As used in this section, "underinsured motor vehicle" includes a 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.

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

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

(ii) an uninsured motor vehicle as defined in Subsection (2).

(9) (a) Underinsured motorist coverage under Subsection 31A-22-302(1)(c) provides coverage for covered persons who are legally entitled to recover damages from owners or operators of underinsured motor vehicles because of bodily injury, sickness, disease, or death in limits of at least \$10,000 for one person in any one accident, and at least \$20,000 for two or more persons in any one accident.

(b) The named insured's underinsured motorist coverage, as described in Subsection (9)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor vehicle, as described in Subsection (8). 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.

(c) (i) For new policies or contracts written after January 1, 1993, a named insured may reject underinsured motorist coverage by an express writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a). This rejection continues for that issuer of the liability coverage until the insured in writing requests underinsured motorist coverage from that liability insurer.

(ii) In conjunction with the first three renewal notices sent after January 1, 1993, for policies existing on that date, the insurer shall notify the insured of the availability of underinsured motorist coverage along with estimated ranges of premiums for the coverage. The department shall provide standard language to be used by insurers to fulfill the insurers' duty under this Subsection (9).

(10) (a) Underinsured motorist coverage under this section applies to bodily injury, sickness, disease, or death of an insured while occupying or using a motor vehicle owned by, furnished, or available for the regular use of the insured, a resident spouse, or resident relative of the insured, 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 vehicle covered under the terms of the policy. Except as provided in Subsection (10), a covered person injured in a vehicle described in a policy that includes underinsured motorist benefits may not elect to collect underinsured motorist coverage benefits from any other motor vehicle insurance policy under which he is a named insured.

(b) (i) 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.

(ii) Subsection (10)(b)(i) applies to all persons except a covered person as defined under Subsection (10)(c)(i)(B).

(iii) 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) and (b) shall be secondary coverage.

(c) (i) Each of the following persons may also recover underinsured motorist coverage benefits under any other policy in which they are described as a "covered person" as defined under Subsection (1):

(A) a covered person injured as a pedestrian by an underinsured motor vehicle; or

(B) a covered person injured while occupying or using a motor vehicle that is not owned by, furnished, or available for the regular use of the covered person, the covered person's resident spouse, or the covered person's resident relative.

(ii) This coverage shall only be available as a secondary source of coverage.

(iii) A covered person as defined under Subsection (10)(c)(i)(B) is entitled to the highest limits of underinsured motorist coverage afforded for any one vehicle that the covered person is the named insured or an insured family member.

(iv) This coverage shall be in addition to the coverage on the vehicle the covered person is occupying.

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

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

Section 2. Section **31A-22-305.5** is amended to read:

31A-22-305.5. Property damage protection.

(1) At the request of the named insured, every motor vehicle liability policy of insurance under Sections 31A-22-303 and 31A-22-304 or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 which policy does not provide insurance for collision damage shall provide coverage for property damage to the motor vehicle described in the policy for the benefit of covered persons, as defined under Section 31A-22-305, who are legally entitled to recover damages from the owner or operator of an uninsured motor vehicle, as defined under Subsections 31A-22-305 (2)(a), (c) and ~~[(c)]~~ (d), arising out of the operation, maintenance, or use of an uninsured motor vehicle.

(2) The coverage provided under this section shall include payment for loss or damage to the motor vehicle described in the policy, not to exceed the motor vehicle's actual cash value or \$3,500, whichever is less. Property damage does not include compensation for loss of use of the motor vehicle.

(3) The coverage provided under this section shall be payable only if:

(a) the occurrence causing the property damage involves actual physical contact between the covered motor vehicle and an uninsured motor vehicle;

(b) the owner, operator, or license plate number of the uninsured motor vehicle is identified; and

(c) the insured or someone on his behalf reports the occurrence within ten days to the insurer or his agent.

(4) The coverage provided under this section shall be subject to a \$250 deductible and shall be excess to any other insurance covering property damage to the motor vehicle described in the policy.

(5) The insurer providing coverage under this section may make available additional deductibles at appropriate premium rates.

(6) No rating surcharge may be applied to any policy of motor vehicle insurance issued in this state as a result of payment of a claim made under this section.

~~§ [Section 3. Section 31A-26-303 is amended to read: §~~

§ ~~31A-26-303. Unfair claim settlement practices.~~

~~(1) [No] An insurer or person representing an insurer may not engage in any unfair claim settlement practice under Subsections (2), (3), and (4):~~

~~(2) Each of the following acts is an unfair claim settlement practice:~~

~~(a) knowingly misrepresenting material facts or the contents of insurance policy provisions at issue in connection with a claim under an insurance contract; however, this provision does not include the failure to disclose information;~~

~~(b) attempting to use a policy application which was altered by the insurer without notice to, or knowledge[,] or consent of, the insured as the basis for settling or refusing to settle a claim;~~
~~or~~

~~(c) failing to settle a claim promptly under one portion of the insurance policy coverage, where liability and the amount of loss are reasonably clear, in order to influence settlements under other portions of the insurance policy coverage, but this Subsection (2) (c) applies only to claims made by persons in direct privity of contract with the insurer.~~

~~(3) Each of the following is an unfair claim settlement practice if committed or performed with such frequency as to indicate a general business practice by an insurer or persons representing an insurer:~~

~~(a) failing to acknowledge and act promptly upon communications about claims under insurance policies;~~

~~(b) failing to adopt and implement reasonable standards for the prompt investigation and processing of claims under insurance policies;~~

~~(c) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by those insureds when the amounts claimed were reasonably near to the amounts recovered;~~

~~(d) failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment was made;~~

~~(e) failing to promptly provide to the insured a reasonable explanation of the basis for denial of a claim or for the offer of a compromise settlement;~~

~~(f) appealing from substantially all arbitration awards in favor of insureds for the purpose of compelling them to accept settlements or compromises for less than the amount awarded in arbitration;~~ §

214 § ~~(g) delaying the investigation or payment of claims by requiring an insured, claimant, or~~
215 ~~the physician of either to submit a preliminary claim report and then requiring the subsequent~~
216 ~~submission of formal proof of loss forms which contain substantially the same information; or~~
217 ~~—— (h) not attempting in good faith to effectuate a prompt, fair, and equitable settlement of~~
218 ~~claims in which liability is reasonably clear.~~
219 ~~—— (4) The commissioner may define by rule, acts or general business practices which are~~
220 ~~unfair claim settlement practices, after a finding that those practices are misleading, deceptive,~~
221 ~~unfairly discriminatory, overreaching, or an unreasonable restraint on competition.~~
222 ~~—— (5) This section [does not] and rules made under Subsection (4) may create [any] a private~~
223 ~~cause of action.]~~

223a Section 3. Effective date.

223b IF APPROVED BY TWO-THIRDS OF ALL MEMBERS ELECTED TO EACH HOUSE, THIS ACT
223c TAKES EFFECT UPON APPROVAL BY THE GOVERNOR, OR THE DAY FOLLOWING THE
223d CONSTITUTIONAL TIME LIMIT OF UTAH CONSTITUTION ARTICLE VII, SECTION 8, WITHOUT THE
223e GOVERNOR'S SIGNATURE, OR IN THE CASE OF A VETO, THE DATE OF VETO OVERRIDE. §

Legislative Review Note

as of 1-5-99 9:44 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel