

**UNINSURED AND UNDERINSURED MOTORIST
AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the Insurance Code by amending uninsured and underinsured motorists provisions. This act allows self-insurers to provide uninsured and underinsured motorist coverage in amounts that are less than their maximum self-insured retention by issuing a statement that declares the coverage level and the process for filing a claim. This act makes technical changes.

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

AMENDS:

31A-22-302, as last amended by Chapter 1, Laws of Utah 2000

31A-22-305, as last amended by Chapter 59, Laws of Utah 2001

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

Section 1. Section **31A-22-302** is amended to read:

31A-22-302. Required components of motor vehicle insurance policies --

Exceptions.

(1) Every policy of insurance or combination of policies purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301 shall include:

- (a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;
- (b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively

waived under Subsection 31A-22-305(4); and

(c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively waived under Subsection 31A-22-305(9)[(e)].

(2) Every policy of insurance or combination of policies, purchased to satisfy the owner's or operator's security requirement of Section 41-12a-301, except for motorcycles, trailers, and semitrailers, shall also include personal injury protection under Sections 31A-22-306 through 31A-22-309.

(3) (a) First party medical coverages may be offered or included in policies issued to motorcycle, trailer, and semitrailer owners or operators.

(b) Owners and operators of motorcycles, trailers, and semitrailers are not covered by personal injury protection coverages in connection with injuries incurred while operating any of these vehicles.

Section 2. 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:

(i) referred to in the policy; or

(ii) 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;

(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

(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; and

(ii) the vehicle described in Subsection (2)(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) (a) 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.

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

(i) waives the higher coverage;

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

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

(c) Self-insurers, including governmental entities, may elect to provide uninsured motorist coverage in an amount that is less than their maximum self-insured retention under Subsections (3)(b) and (4)(a) 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 uninsured motorist claim.

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

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

~~[(e)]~~ (f) (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 the purpose of uninsured motorist coverage and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.

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

(4) (a) (i) 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).

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

Act;

- (ii) may not be subrogated by the Workers' Compensation insurance carrier;
- (iii) may not be reduced by any benefits provided by Workers' Compensation insurance;

and

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

(d) 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 this Subsection (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.

(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 insured's motor vehicle liability

coverage or the maximum underinsured motorist coverage limits available by the insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser amount by signing an acknowledgment form provided by the insurer that:

- (i) waives the higher coverage;
- (ii) reasonably explains the purpose of underinsured motorist coverage; and
- (iii) discloses the additional premiums required to purchase underinsured motorist

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

(c) Self-insurers, including governmental entities, may elect to provide underinsured motorist coverage in an amount that is less than their maximum self-insured retention under Subsections (9)(b) and (9)(g) 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.

~~(c)~~ (d) Underinsured motorist coverage may not be sold with limits that are less than \$10,000 for one person in any one accident and at least \$20,000 for two or more persons in any one accident.

~~(d)~~ (e) The acknowledgment under Subsection (9)(b) continues for that issuer of the underinsured motorist coverage until the insured, in writing, requests different underinsured motorist coverage from the insurer.

~~(e)~~ (f) 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.

~~(f)~~ (g) (i) 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).

(ii) This written rejection shall be on a form provided by the insurer that includes a reasonable explanation of the purpose of underinsured motorist coverage and when it would be applicable.

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

~~(g)~~ (h) (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 the purpose of underinsured motorist coverage and the costs associated with increasing the coverage in amounts up to and including the maximum amount available by the insurer under the insured's motor vehicle policy.

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

(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 this 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)(d)(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) Underinsured motorist coverage:

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

(ii) may not be [~~subrogated~~] subrogated by the Workers' Compensation insurance carrier;

(iii) may not be reduced by any benefits provided by Workers' Compensation insurance; and

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

(d) (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)(d)(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.

(e) A covered injured person is not barred against making subsequent elections if

recovery is unavailable under previous elections.

(11) A claim may not be brought by a covered person against a motor vehicle underinsured motorist policy more than three years after the date of the last liability policy payment.

(12) (a) Within five business days after notification in a manner specified by the department that all liability insurers have tendered their liability policy limits, the underinsured carrier shall either:

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

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

(b) If neither option is exercised under Subsection (12)(a), the subrogation claim is deemed to be waived by the underinsured carrier.