

1                                   **UNINSURED AND UNDERINSURED MOTORIST**  
2   **COVERAGE**

3   2003 GENERAL SESSION  
4   STATE OF UTAH

5   **Sponsor: Dan R. Eastman**

6 **This act modifies the Motor Vehicles Code by amending uninsured and underinsured**  
7 **motorists provisions. This act provides that a person who exercises unauthorized control**  
8 **over a vehicle, a passenger who has knowledge that the driver is exercising unauthorized**  
9 **control, or a person who is committing a felony may not collect uninsured or**  
10 **underinsured motorist coverage. This act provides that a dependent minor of parents**  
11 **who reside in separate households may recover uninsured or underinsured benefits from**  
12 **each parent's policy and each parent's policy is liable only for the percentage of damage**  
13 **that the limit bears to the total of all uninsured coverage applicable to the accident. This**  
14 **act provides that an underinsured motor vehicle does not include a named insured's own**  
15 **vehicle. This act makes technical changes.**

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

17 AMENDS:

18           **31A-22-302**, as last amended by Chapter 1, Laws of Utah 2000

19           **31A-22-305**, as last amended by Chapter 59, Laws of Utah 2001

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

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

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

23 **Exceptions.**

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

26           (a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;

27           (b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively



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

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

31 (2) Every policy of insurance or combination of policies, purchased to satisfy the  
32 owner's or operator's security requirement of Section 41-12a-301, except for motorcycles,  
33 trailers, and semitrailers, shall also include personal injury protection under Sections  
34 31A-22-306 through 31A-22-309.

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

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

40 Section 2. Section **31A-22-305** is amended to read:

41 **31A-22-305. Uninsured and underinsured motorist coverage.**

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

43 (a) the named insured;

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

47 (c) any person occupying or using a motor vehicle;

48 (i) referred to in the policy; or

49 (ii) owned by a self-insurer; and

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

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

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

56 (ii) (A) a motor vehicle covered with lower liability limits than required by Section  
57 31A-22-304; and

58 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of

59 the deficiency;

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

62 (c) a motor vehicle covered by a liability policy, but coverage for an accident is  
63 disputed by the liability insurer for more than 60 days or~~[-beginning with the effective date of~~  
64 ~~this act,]~~ continues to be disputed for more than 60 days; or

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

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

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

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

77 (i) waives the higher coverage;

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

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

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

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

88 (e) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for  
89 policies existing on that date, the insurer shall disclose in the same medium as the premium

90 renewal notice, an explanation of the purpose of uninsured motorist coverage and the costs  
91 associated with increasing the coverage in amounts up to and including the maximum amount  
92 available by the insurer under the insured's motor vehicle policy.

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

97 (4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject  
98 uninsured motorist coverage by an express writing to the insurer that provides liability  
99 coverage under Subsection 31A-22-302(1)(a).

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

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

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

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

111 (c) Uninsured motorist coverage:

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

114 (ii) may not be subrogated by the Workers' Compensation insurance carrier;

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

117 (iv) may be reduced by health insurance subrogation only after the covered person has  
118 been made whole[-]; and

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

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

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

123 (C) while committing a felony.

124 (d) As used in this Subsection (4):

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

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

127 (5) When a covered person alleges that an uninsured motor vehicle under Subsection  
128 (2)(b) proximately caused an accident without touching the covered person or the motor  
129 vehicle occupied by the covered person, the covered person must show the existence of the  
130 uninsured motor vehicle by clear and convincing evidence consisting of more than the covered  
131 person's testimony.

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

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

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

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

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

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

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

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

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

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

158 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying  
159 or using a motor vehicle that is not owned [~~by~~], leased, or furnished, [~~or available for the~~  
160 ~~regular use of~~] to the covered person, to the covered person's [resident] spouse, or to the  
161 covered person's resident relative.

162 (c) A covered person who is a dependent minor of parents who reside in separate  
163 households and who is injured while occupying or using a motor vehicle that is not owned,  
164 leased, or furnished to the covered person or to the covered person's resident relative may  
165 recover benefits from no more than two additional policies, one additional policy from each  
166 parent's household and each parent's policy is liable only for the percentage of the damages that  
167 the limit of liability of each parent's policy of uninsured motorist coverage bears to the total of  
168 all uninsured coverage applicable to the accident.

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

171 [~~(e)~~] (e) A covered person in Subsection (7)(b) is not barred against making subsequent  
172 elections if recovery is unavailable under previous elections.

173 (8) (a) As used in this section, "underinsured motor vehicle" includes a motor vehicle,  
174 the operation, maintenance, or use of which is covered under a liability policy at the time of an  
175 injury-causing occurrence, but which has insufficient liability coverage to compensate fully the  
176 injured party for all special and general damages.

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

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

180 (ii) an uninsured motor vehicle as defined in Subsection (2)[~~]; or~~

181 (iii) a motor vehicle owned or leased by the named insured, the named insured's  
182 spouse, or any dependant of the named insured.

183 (9) (a) (i) Underinsured motorist coverage under Subsection 31A-22-302(1)(c)  
184 provides coverage for covered persons who are legally entitled to recover damages from  
185 owners or operators of underinsured motor vehicles because of bodily injury, sickness, disease,  
186 or death.

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

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

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

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

198 (i) waives the higher coverage;

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

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

204 (c) Underinsured motorist coverage may not be sold with limits that are less than  
205 \$10,000 for one person in any one accident and at least \$20,000 for two or more persons in any  
206 one accident.

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

210 (e) The named insured's underinsured motorist coverage, as described in Subsection  
211 (9)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor  
212 vehicle, as described in Subsection (8). Underinsured motorist coverage may not be set off  
213 against the liability coverage of the owner or operator of an underinsured motor vehicle, but

214 shall be added to, combined with, or stacked upon the liability coverage of the owner or  
215 operator of the underinsured motor vehicle to determine the limit of coverage available to the  
216 injured person.

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

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

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

224 (g) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for  
225 policies existing on that date, the insurer shall disclose in the same medium as the premium  
226 renewal notice, an explanation of the purpose of underinsured motorist coverage and the costs  
227 associated with increasing the coverage in amounts up to and including the maximum amount  
228 available by the insurer under the insured's motor vehicle policy.

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

233 (10) (a) [~~Underinsured motorist coverage under this section applies to bodily injury,~~  
234 ~~sickness, disease, or death of an insured while occupying or using a motor vehicle owned by,~~  
235 ~~furnished, or available for the regular use of the insured, a resident spouse, or resident relative~~  
236 ~~of the insured, only if the motor vehicle is described in the policy under which a claim is made,~~  
237 ~~or if the motor vehicle is a newly acquired or replacement vehicle covered under the terms of~~  
238 ~~the policy.] Except as provided in this Subsection (10), a covered person injured in a motor  
239 vehicle described in a policy that includes underinsured motorist benefits may not elect to  
240 collect underinsured motorist coverage benefits from any other motor vehicle insurance policy  
241 [~~under which he is a named insured].~~~~

242 [~~(b) (i) The limit of liability for underinsured motorist coverage for two or more motor~~  
243 ~~vehicles may not be added together, combined, or stacked to determine the limit of insurance~~  
244 ~~coverage available to an injured person for any one accident.]~~



245 ~~[(ii) Subsection (10)(b)(i) applies to all persons except a covered person as defined~~  
 246 ~~under Subsection (10)(d)(i)(B).]~~

247 (b) (i) Except as provided in Subsection (10)(b)(ii), a covered person injured while  
 248 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the  
 249 covered person, the covered person's spouse, or the covered person's resident dependent, may  
 250 also recover benefits under any one other policy under which they are a covered person.

251 (ii) A covered person who is a dependent minor of parents who reside in separate  
 252 households may recover benefits from no more than two additional policies, one additional  
 253 policy from each parent's household and each parent's policy is liable only for the percentage of  
 254 the damages that the limit of liability of each parent's policy of underinsured motorist coverage  
 255 bears to the total of all uninsured coverage applicable to the accident.

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

258 ~~[(iii) Coverage]~~ (iv) Underinsured coverage on a motor vehicle occupied at the time of  
 259 an accident shall be primary coverage, and the coverage elected by a person described under  
 260 Subsections (1)(a) and (b) shall be secondary coverage.

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

262 (vi) A covered person as defined under Subsection (10)(b)(i) is entitled to the highest  
 263 limits of underinsured motorist coverage under only one additional policy per household  
 264 applicable to that covered person as a named insured, spouse, or relative.

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

267 (c) Underinsured motorist coverage:

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

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

272 (iii) may not be reduced by any benefits provided by Workers' Compensation  
 273 insurance; ~~[and]~~

274 (iv) may be reduced by health insurance subrogation only after the covered person has  
 275 been made whole~~[-]; and~~

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

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

280 ~~[(B) a covered person injured while occupying or using a motor vehicle that is not~~  
281 ~~owned by, furnished, or available for the regular use of the covered person, the covered~~  
282 ~~person's resident spouse, or the covered person's resident relative:]~~

283 ~~[(ii) This coverage shall only be available as a secondary source of coverage.]~~

284 ~~[(iii) A covered person as defined under Subsection (10)(d)(i)(B) is entitled to the~~  
285 ~~highest limits of underinsured motorist coverage afforded for any one vehicle that the covered~~  
286 ~~person is the named insured or an insured family member:]~~

287 ~~[(iv) This coverage shall be in addition to the coverage on the vehicle the covered~~  
288 ~~person is occupying:]~~

289 ~~[(v) Neither the primary nor the secondary coverage may be set off against the other:]~~

290 ~~[(e) A covered injured person is not barred against making subsequent elections if~~  
291 ~~recovery is unavailable under previous elections:]~~

292 ~~[(11) A claim may not be brought by a covered person against a motor vehicle~~  
293 ~~underinsured motorist policy more than three years after the date of the last liability policy~~  
294 ~~payment:]~~

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

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

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

299 (C) while committing a felony.

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

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

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

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

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

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

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

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

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**Legislative Review Note**  
**as of 2-14-03 3:28 PM**

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0186**

**Uninsured and Underinsured Motorist Coverage**

*21-Feb-03*

*10:16 AM*

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**State Impact**

Fiscal impact can be handled within existing budgets.

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**Individual and Business Impact**

There will be some cost to auto insurance carriers who will need to adjust their policy forms. The bill will expand coverage to dependent minors that are injured in a custodial parent's vehicle but limits benefits to amount of damages.

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**Office of the Legislative Fiscal Analyst**