

1 **UNINSURED AND UNDERINSURED MOTORIST**
2 **AMENDMENTS**

3 2003 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Michael G. Waddoups**

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

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

12 AMENDS:

13 **31A-22-302**, as last amended by Chapter 1, Laws of Utah 2000

14 **31A-22-305**, as last amended by Chapter 59, Laws of Utah 2001

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

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

17 **31A-22-302. Required components of motor vehicle insurance policies --**

18 **Exceptions.**

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

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

22 (b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively
23 waived under Subsection 31A-22-305(4); and

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

26 (2) Every policy of insurance or combination of policies, purchased to satisfy the
27 owner's or operator's security requirement of Section 41-12a-301, except for motorcycles,



28 trailers, and semitrailers, shall also include personal injury protection under Sections
29 31A-22-306 through 31A-22-309.

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

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

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

36 **31A-22-305. Uninsured and underinsured motorist coverage.**

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

38 (a) the named insured;

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

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

43 (i) referred to in the policy; or

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

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

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

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

51 (ii) (A) a vehicle covered with lower liability limits than required by Section
52 31A-22-304;

53 (B) the vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of the
54 deficiency;

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

57 (c) a vehicle covered by a liability policy, but coverage for an accident is disputed by
58 the liability insurer for more than 60 days or [~~beginning with the effective date of this act,~~]

59 continues to be disputed for more than 60 days; or

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

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

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

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

72 (i) waives the higher coverage;

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

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

78 (c) Self-insurers, including governmental entities, may elect to provide uninsured
79 motorist coverage in an amount that is less than their maximum self-insured retention under
80 Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from
81 the chief financial officer or chief risk officer that declares the:

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

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

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

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

89 [~~e~~] (f) (i) In conjunction with the first two renewal notices sent after January 1, 2001,

90 for policies existing on that date, the insurer shall disclose in the same medium as the premium
91 renewal notice, an explanation of the purpose of uninsured motorist coverage and the costs
92 associated with increasing the coverage in amounts up to and including the maximum amount
93 available by the insurer under the insured's motor vehicle policy.

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

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

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

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

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

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

112 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

174 (i) waives the higher coverage;

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

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

180 (c) Self-insurers, including governmental entities, may elect to provide uninsured
181 motorist coverage in an amount that is less than their maximum self-insured retention under
182 Subsections (9)(b) and (9)(g) by issuing a declaratory memorandum or policy statement from

183 the chief financial officer or chief risk officer that declares the:

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

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

186 [~~(c)~~] (d) Underinsured motorist coverage may not be sold with limits that are less than
187 \$10,000 for one person in any one accident and at least \$20,000 for two or more persons in any
188 one accident.

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

192 [~~(e)~~] (f) The named insured's underinsured motorist coverage, as described in
193 Subsection (9)(a), is secondary to the liability coverage of an owner or operator of an
194 underinsured motor vehicle, as described in Subsection (8). Underinsured motorist coverage
195 may not be set off against the liability coverage of the owner or operator of an underinsured
196 motor vehicle, but shall be added to, combined with, or stacked upon the liability coverage of
197 the owner or operator of the underinsured motor vehicle to determine the limit of coverage
198 available to the injured person.

199 [~~(f)~~] (g) (i) A named insured may reject underinsured motorist coverage by an express
200 writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

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

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

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

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

214 motor vehicle policy.

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

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

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

229 (iii) Coverage on a motor vehicle occupied at the time of an accident shall be primary
230 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall
231 be secondary coverage.

232 (c) Underinsured motorist coverage:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Legislative Review Note
as of 2-11-03 5:25 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0214

Uninsured and Underinsured Motorist Amendments

13-Feb-03

3:31 PM

State Impact

No fiscal impact.

Individual and Business Impact

Self insurers and government entities providing their own coverage on uninsured risks will incur some start-up costs but may see some savings by managing their own claims.

Office of the Legislative Fiscal Analyst