

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

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Dan R. Eastman**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Insurance Code to amend provisions relating to uninsured and
10 underinsured motorist coverage.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines "interpolicy stacking";
- 14 ▶ provides that interpolicy stacking is prohibited except in certain circumstances; and
- 15 ▶ makes technical changes.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides for retroactive application.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **31A-22-305**, as last amended by Chapters 76 and 218, Laws of Utah 2003

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

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

26 **31A-22-305. Uninsured and underinsured motorist coverage.**

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



- 28 (a) the named insured;
- 29 (b) persons related to the named insured by blood, marriage, adoption, or guardianship,
30 who are residents of the named insured's household, including those who usually make their
31 home in the same household but temporarily live elsewhere;
- 32 (c) any person occupying or using a motor vehicle:
 - 33 (i) referred to in the policy; or
 - 34 (ii) owned by a self-insurer; and
- 35 (d) any person who is entitled to recover damages against the owner or operator of the
36 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under
37 Subsection (1)(a), (b), or (c).
- 38 (2) As used in this section, "uninsured motor vehicle" includes:
 - 39 (a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered
40 under a liability policy at the time of an injury-causing occurrence; or
 - 41 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
42 31A-22-304; and
 - 43 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of
44 the deficiency;
 - 45 (b) an unidentified motor vehicle that left the scene of an accident proximately caused
46 by the motor vehicle operator;
 - 47 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
48 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
49 60 days; or
 - 50 (d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of
51 the motor vehicle is declared insolvent by a court of competent jurisdiction; and
 - 52 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent
53 that the claim against the insolvent insurer is not paid by a guaranty association or fund.
- 54 (3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides
55 coverage for covered persons who are legally entitled to recover damages from owners or
56 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.
- 57 (b) For new policies written on or after January 1, 2001, the limits of uninsured
58 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle

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

62 (i) waives the higher coverage;

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

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

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

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

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

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

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

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

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

88 (4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject
89 uninsured motorist coverage by an express writing to the insurer that provides liability

90 coverage under Subsection 31A-22-302(1)(a).

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

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

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

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

102 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

114 (C) while committing a felony; and

115 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:

116 (A) for a person under 18 years of age who is injured within the scope of Subsection
117 (4)(c)(v) but limited to medical and funeral expenses; or

118 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
119 within the course and scope of the law enforcement officer's duties.

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 motor
125 vehicle occupied by the covered person, the covered person must show the existence of the
126 uninsured motor vehicle by clear and convincing evidence consisting of more than the covered
127 person's 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 motor vehicle that the covered
135 person is the named insured or an insured family member.

136 (iii) This coverage shall be in addition to the coverage on the motor 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 motor 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 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to
148 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
149 under which he is a covered person.

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

152 (1):

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

154 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying
155 or using a motor vehicle that is not owned, leased, or furnished, to the covered person, to the
156 covered person's spouse, or to the covered person's resident parent or resident sibling.

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

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

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

163 (ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of
164 the damages that the limit of liability of each parent's policy of uninsured motorist coverage
165 bears to the total of all uninsured coverage applicable to the accident.

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

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

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

172 (ii) Except to the extent permitted by Subsection (6) and this Subsection (7),
173 interpolicy stacking is prohibited for uninsured motorist coverage.

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

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

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

181 (ii) an uninsured motor vehicle as defined in Subsection (2); or

182 (iii) a motor vehicle owned or leased by the named insured, the named insured's

183 spouse, or any dependant of the named insured.

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

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

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

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

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

199 (i) waives the higher coverage;

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

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

205 (c) Self-insurers, including governmental entities, may elect to provide underinsured
206 motorist coverage in an amount that is less than their maximum self-insured retention under
207 Subsections (9)(b) and (9)(g) by issuing a declaratory memorandum or policy statement from
208 the chief financial officer or chief risk officer that declares the:

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

210 (ii) process for filing an underinsured motorist claim.

211 (d) Underinsured motorist coverage may not be sold with limits that are less than
212 \$10,000 for one person in any one accident and at least \$20,000 for two or more persons in any
213 one accident.

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

217 (f) The named insured's underinsured motorist coverage, as described in Subsection
218 (9)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor
219 vehicle, as described in Subsection (8). Underinsured motorist coverage may not be set off
220 against the liability coverage of the owner or operator of an underinsured motor vehicle, but
221 shall be added to, combined with, or stacked upon the liability coverage of the owner or
222 operator of the underinsured motor vehicle to determine the limit of coverage available to the
223 injured person.

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

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

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

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

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

240 (10) (a) (i) Except as provided in this Subsection (10), a covered person injured in a
241 motor vehicle described in a policy that includes underinsured motorist benefits may not elect
242 to collect underinsured motorist coverage benefits from any other motor vehicle insurance
243 policy.

244 (ii) The limit of liability for underinsured motorist coverage for two or more motor

245 vehicles may not be added together, combined, or stacked to determine the limit of insurance
246 coverage available to an injured person for any one accident.

247 (iii) Subsection (10)(a)(ii) applies to all persons except a covered person as defined
248 under Subsections (10)(b)(i) and (ii).

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

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

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

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

260 (B) Each parent's policy under this Subsection (10)(b)(ii) is liable only for the
261 percentage of the damages that the limit of liability of each parent's policy of underinsured
262 motorist coverage bears to the total of all underinsured coverage applicable to the accident.

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

265 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident shall
266 be primary coverage, and the coverage elected by a person described under Subsections (1)(a)
267 and (b) shall be secondary coverage.

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

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

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

274 (viii) (A) As used in this section, "interpolicy stacking" means recovering benefits for a
275 single incident of loss under more than one insurance policy.

276 (B) Except to the extent permitted by this Subsection (10), interpolicy stacking is
277 prohibited for underinsured motorist coverage.

278 (c) Underinsured motorist coverage:

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

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

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

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

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

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

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

290 (C) while committing a felony; and

291 (vi) notwithstanding Subsection (10)(c)(v), may be recovered:

292 (A) for a person under 18 years of age who is injured within the scope of Subsection
293 (10)(c)(v) but limited to medical and funeral expenses; or

294 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
295 within the course and scope of the law enforcement officer's duties.

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

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

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

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

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

306 (13) Except as otherwise provided in this section, a covered person may seek, subject

307 to the terms and conditions of the policy, additional coverage under any policy:

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

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

310 Section 2. **Retroactive application.**

311 (1) Subsections 31A-22-305(7)(f) and (10)(b)(viii) apply retroactively to any claim on
312 or after January 1, 1995 for which as of May 3, 2004, a court of competent jurisdiction has not
313 issued a final unappealable judgment or order.

314 (2) The Legislature finds that the retroactive application of Subsections
315 31A-22-305(7)(f) and (10)(b)(viii):

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

317 (b) clarifies legislative intent.

Legislative Review Note

as of 2-23-04 2:41 PM

This bill applies retroactively to claims on or after January 1, 1995. The due process clause of the United States Constitution and the Utah Constitution restricts a legislature's ability to make statutory changes retroactive. However, the Utah Supreme Court has recognized an exception for statutory amendments that clarify an ambiguity in the original statute. Evans & Sutherland Computer Corp. v. Utah State Tax Comm'n, 953 P.2d 435, 440 (Utah 1997). This exception applies if the amendments are not substantive amendments that enlarge, eliminate, or destroy vested contractual rights. Keegan v. State, 896 P.2d 618, 620-21 (Utah 1995); *see also*, Thomas v. Color Country Management, 492 Utah Adv. Rep. 9 (Utah 2004)(Durham, J., concurring). It is for a court to determine whether the retroactive amendments in this bill are procedural rather than substantive amendments that enlarge, eliminate, or destroy substantive rights.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0225

Uninsured and Underinsured Motorist Coverage

25-Feb-04

3:15 PM

State Impact

No fiscal impact. This bill has a Legislative Review Note. There may be additional state costs if the bill is challenged in court.

Individual and Business Impact

Individual impacts will vary according to circumstances.

Office of the Legislative Fiscal Analyst