

**MOTOR VEHICLE INSURANCE AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Sheldon L. Killpack**

House Sponsor: Stephen H. Urquhart

---

---

**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code by amending provisions related to arbitration for uninsured and underinsured motorist coverage claims.

**Highlighted Provisions:**

This bill:

- ▶ provides that the named insured or a covered person asserting a claim against the person's uninsured or underinsured motorist carrier may elect to resolve the claim by submitting the claim to binding arbitration or through litigation;
- ▶ provides procedures for resolving the claim through arbitration;
- ▶ provides that an arbitration award may not exceed the uninsured or underinsured motorist policy limits of all applicable uninsured or underinsured motorist policies, including any applicable umbrella uninsured or underinsured motorist policies;
- ▶ provides that the arbitrator or arbitration panel may award reasonable attorney's fees and costs if the claim was not brought, pursued, or defended in good faith;
- ▶ provides that an arbitration award issued by a single arbitrator or an arbitration panel shall be the final resolution of all claims unless:
  - the award was procured by corruption, fraud, or other undue means; or
  - either party files a notice for a trial de novo within 20 days of service of the arbitration award;
- ▶ provides that if a claimant, as the moving party in a trial de novo, does not receive a verdict that is at least \$5,000 and is at least 20% greater than the arbitration award, the claimant is responsible for the nonmoving party's costs;

30           ▶ provides that if an uninsured or underinsured motorist carrier, as the moving party  
31 in a trial de novo, does not receive a verdict that is at least 20% less than the  
32 arbitration award, the uninsured or underinsured motorist carrier is responsible for  
33 the nonmoving party's costs;

34           ▶ provides that a court may award reasonable attorney fees if the court finds that a  
35 party's use of the de novo process was filed in bad faith;

36           ▶ provides that if there are multiple uninsured or underinsured motorist policies, the  
37 plaintiff may elect to arbitrate in one hearing the claims against all the uninsured or  
38 underinsured motorist carriers; and

39           ▶ makes technical changes.

40 **Monies Appropriated in this Bill:**

41           None

42 **Other Special Clauses:**

43           None

44 **Utah Code Sections Affected:**

45 AMENDS:

46           **31A-22-302**, as last amended by Chapter 124, Laws of Utah 2005

47           **31A-22-305**, as last amended by Chapters 117, 267 and 304, Laws of Utah 2004

48 ENACTS:

49           **31A-22-305.3**, Utah Code Annotated 1953



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

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

53           **31A-22-302. Required components of motor vehicle insurance policies --**

54 **Exceptions.**

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

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

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

60 (c) underinsured motorist coverage under Section [~~31A-22-305~~] 31A-22-305.3, unless  
61 affirmatively waived under Subsection [~~31A-22-305(9)~~] 31A-22-305.3(2); and

62 (d) except as provided in Subsection (2) and subject to Subsection (3), personal injury  
63 protection under Sections 31A-22-306 through 31A-22-309.

64 (2) A policy of insurance or combination of policies, purchased to satisfy the owner's  
65 or operator's security requirement of Section 41-12a-301 for a motorcycle, trailer, or semitrailer  
66 is not required to have personal injury protection under Sections 31A-22-306 through  
67 31A-22-309.

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

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

73 (4) First party medical coverage expenses shall be governed by the relative value study  
74 provisions under Subsections 31A-22-307(2) and (3).

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

76 **31A-22-305. Uninsured motorist coverage.**

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

78 (a) the named insured;

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

82 (c) any person occupying or using a motor vehicle:

83 (i) referred to in the policy; or

84 (ii) owned by a self-insured; and

85 (d) any person who is entitled to recover damages against the owner or operator of the

86 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under  
87 Subsection (1)(a), (b), or (c).

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

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

91 (ii) (A) a motor vehicle covered with lower liability limits than required by Section  
92 31A-22-304; and

93 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of  
94 the deficiency;

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

97 (c) a motor vehicle covered by a liability policy, but coverage for an accident is  
98 disputed by the liability insurer for more than 60 days or continues to be disputed for more than  
99 60 days; or

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

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

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

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

112 (i) waives the higher coverage;

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

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

118 (c) A self-insured, including a governmental entity, may elect to provide uninsured  
119 motorist coverage in an amount that is less than its maximum self-insured retention under  
120 Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from  
121 the chief financial officer or chief risk officer that declares the:

- 122 (i) self-insured entity's coverage level; and
- 123 (ii) process for filing an uninsured motorist claim.

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

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

129 (f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for  
130 policies existing on that date, the insurer shall disclose in the same medium as the premium  
131 renewal notice, an explanation of:

- 132 (A) the purpose of uninsured motorist coverage; and
- 133 (B) the costs associated with increasing the coverage in amounts up to and including  
134 the maximum amount available by the insurer under the insured's motor vehicle policy.

135 (ii) The disclosure required under this Subsection (3)(f) shall be sent to all insureds that  
136 carry uninsured motorist coverage limits in an amount less than the insured's motor vehicle  
137 liability policy limits or the maximum uninsured motorist coverage limits available by the  
138 insurer under the insured's motor vehicle policy.

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

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

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

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

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

153 (c) Uninsured motorist coverage:

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

156 (ii) may not be subrogated by the workers' compensation insurance carrier;

157 (iii) may not be reduced by any benefits provided by workers' compensation insurance;

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

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

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

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

164 (C) while committing a felony; and

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

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

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

170 (d) As used in this Subsection (4), "motor vehicle" has the same meaning as under  
171 Section 41-1a-102.

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

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

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

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

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

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

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

191 (7) (a) Uninsured motorist coverage under this section applies to bodily injury,  
192 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if  
193 the motor vehicle is described in the policy under which a claim is made, or if the motor  
194 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.  
195 Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a  
196 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to  
197 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy

198 under which the person is a covered person.

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

201 (1):

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

203 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying  
204 or using a motor vehicle that is not owned, leased, or furnished:

205 (A) to the covered person;

206 (B) to the covered person's spouse; or

207 (C) to the covered person's resident parent or resident sibling.

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

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

211 (B) injured while occupying or using a motor vehicle that is not owned, leased, or  
212 furnished:

213 (I) to the covered person;

214 (II) to the covered person's resident parent; or

215 (III) to the covered person's resident sibling.

216 (ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of  
217 the damages that the limit of liability of each parent's policy of uninsured motorist coverage  
218 bears to the total of both parents' uninsured coverage applicable to the accident.

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

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

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

225 (ii) Except to the extent permitted by Subsection (6) and this Subsection (7),



226 interpolicy stacking is prohibited for uninsured motorist coverage.

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

231 ~~[(b) The term "underinsured motor vehicle" does not include:]~~

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

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

235 ~~[(iii) a motor vehicle owned or leased by:]~~

236 ~~[(A) the named insured;]~~

237 ~~[(B) the named insured's spouse; or]~~

238 ~~[(C) any dependent of the named insured.]~~

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

243 ~~[(ii) A covered person occupying or using a motor vehicle owned, leased, or furnished~~  
244 ~~to the covered person, the covered person's spouse, or covered person's resident relative may~~  
245 ~~recover underinsured benefits only if the motor vehicle is:]~~

246 ~~[(A) described in the policy under which a claim is made; or]~~

247 ~~[(B) a newly acquired or replacement motor vehicle covered under the terms of the~~  
248 ~~policy.]~~

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

254           ~~[(i) waives the higher coverage;]~~  
255           ~~[(ii) reasonably explains the purpose of underinsured motorist coverage; and]~~  
256           ~~[(iii) discloses the additional premiums required to purchase underinsured motorist~~  
257 ~~coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability~~  
258 ~~coverage or the maximum underinsured motorist coverage limits available by the insurer under~~  
259 ~~the insured's motor vehicle policy.]~~

260           ~~[(c) A self-insured, including a governmental entity, may elect to provide underinsured~~  
261 ~~motorist coverage in an amount that is less than its maximum self-insured retention under~~  
262 ~~Subsections (9)(b) and (9)(g) by issuing a declaratory memorandum or policy statement from~~  
263 ~~the chief financial officer or chief risk officer that declares the:]~~

264           ~~[(i) self-insured entity's coverage level; and]~~

265           ~~[(ii) process for filing an underinsured motorist claim.]~~

266           ~~[(d) Underinsured motorist coverage may not be sold with limits that are less than:]~~

267           ~~[(i) \$10,000 for one person in any one accident; and]~~

268           ~~[(ii) at least \$20,000 for two or more persons in any one accident.]~~

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

272           ~~[(f) (i) The named insured's underinsured motorist coverage, as described in Subsection~~  
273 ~~(9)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor~~  
274 ~~vehicle, as described in Subsection (8).]~~

275           ~~[(ii) Underinsured motorist coverage may not be set off against the liability coverage of~~  
276 ~~the owner or operator of an underinsured motor vehicle, but shall be added to, combined with,~~  
277 ~~or stacked upon the liability coverage of the owner or operator of the underinsured motor~~  
278 ~~vehicle to determine the limit of coverage available to the injured person.]~~

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

281           ~~[(ii) This written rejection shall be on a form provided by the insurer that includes a~~

282 reasonable explanation of the purpose of underinsured motorist coverage and when it would be  
283 applicable.]

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

286 [(h) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for  
287 policies existing on that date, the insurer shall disclose in the same medium as the premium  
288 renewal notice, an explanation of:]

289 [(A) the purpose of underinsured motorist coverage; and]

290 [(B) the costs associated with increasing the coverage in amounts up to and including  
291 the maximum amount available by the insurer under the insured's motor vehicle policy.]

292 [(ii) The disclosure required by this Subsection (9)(h) shall be sent to all insureds that  
293 carry underinsured motorist coverage limits in an amount less than the insured's motor vehicle  
294 liability policy limits or the maximum underinsured motorist coverage limits available by the  
295 insurer under the insured's motor vehicle policy.]

296 [(10) (a) (i) Except as provided in this Subsection (10), a covered person injured in a  
297 motor vehicle described in a policy that includes underinsured motorist benefits may not elect  
298 to collect underinsured motorist coverage benefits from any other motor vehicle insurance  
299 policy.]

300 [(ii) The limit of liability for underinsured motorist coverage for two or more motor  
301 vehicles may not be added together, combined, or stacked to determine the limit of insurance  
302 coverage available to an injured person for any one accident.]

303 [(iii) Subsection (10)(a)(ii) applies to all persons except a covered person described  
304 under Subsections (10)(b)(i) and (ii).]

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

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

312 ~~[(I) a dependent minor of parents who reside in separate households, and]~~

313 ~~[(II) injured while occupying or using a motor vehicle that is not owned, leased, or~~  
314 ~~furnished to the covered person, the covered person's resident parent, or the covered person's~~  
315 ~~resident sibling.]~~

316 ~~[(B) Each parent's policy under this Subsection (10)(b)(ii) is liable only for the~~  
317 ~~percentage of the damages that the limit of liability of each parent's policy of underinsured~~  
318 ~~motorist coverage bears to the total of both parents' underinsured coverage applicable to the~~  
319 ~~accident.]~~

320 ~~[(iii) A covered person's recovery under any available policies may not exceed the full~~  
321 ~~amount of damages:]~~

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

325 ~~[(v) The primary and the secondary coverage may not be set off against the other:]~~

326 ~~[(vi) A covered person as described under Subsection (10)(b)(i) is entitled to the~~  
327 ~~highest limits of underinsured motorist coverage under only one additional policy per~~  
328 ~~household applicable to that covered person as a named insured, spouse, or relative:]~~

329 ~~[(vii) A covered injured person is not barred against making subsequent elections if~~  
330 ~~recovery is unavailable under previous elections:]~~

331 ~~[(viii) (A) As used in this section, "interpolicy stacking" means recovering benefits for~~  
332 ~~a single incident of loss under more than one insurance policy:]~~

333 ~~[(B) Except to the extent permitted by this Subsection (10), interpolicy stacking is~~  
334 ~~prohibited for underinsured motorist coverage:]~~

335 ~~[(c) Underinsured motorist coverage:]~~

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

338           ~~[(ii) may not be subrogated by the workers' compensation insurance carrier;]~~  
339           ~~[(iii) may not be reduced by any benefits provided by workers' compensation~~  
340 ~~insurance;]~~  
341           ~~[(iv) may be reduced by health insurance subrogation only after the covered person has~~  
342 ~~been made whole;]~~  
343           ~~[(v) may not be collected for bodily injury or death sustained by a person:]~~  
344           ~~[(A) while committing a violation of Section 41-1a-1314;]~~  
345           ~~[(B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated~~  
346 ~~in violation of Section 41-1a-1314; or]~~  
347           ~~[(C) while committing a felony; and]~~  
348           ~~[(vi) notwithstanding Subsection (10)(c)(v), may be recovered:]~~  
349           ~~[(A) for a person under 18 years of age who is injured within the scope of Subsection~~  
350 ~~(10)(c)(v) but limited to medical and funeral expenses; or]~~  
351           ~~[(B) by a law enforcement officer as defined in Section 53-13-103, who is injured~~  
352 ~~within the course and scope of the law enforcement officer's duties.]~~  
353           ~~[(11) The inception of the loss under Subsection 31A-21-313(1) for underinsured~~  
354 ~~motorist claims occurs upon the date of the last liability policy payment.]~~  
355           ~~[(12) (a) Within five business days after notification in a manner specified by the~~  
356 ~~department that all liability insurers have tendered their liability policy limits, the underinsured~~  
357 ~~carrier shall either:]~~  
358           ~~[(i) waive any subrogation claim the underinsured carrier may have against the person~~  
359 ~~liable for the injuries caused in the accident; or]~~  
360           ~~[(ii) pay the insured an amount equal to the policy limits tendered by the liability~~  
361 ~~carrier.]~~  
362           ~~[(b) If neither option is exercised under Subsection (12)(a), the subrogation claim is~~  
363 ~~considered to be waived by the underinsured carrier.]~~  
364           ~~[(13) Except as otherwise provided in this section, a covered person may seek, subject~~  
365 ~~to the terms and conditions of the policy, additional coverage under any policy.]~~

366 ~~[(a) that provides coverage for damages resulting from motor vehicle accidents; and]~~  
367 ~~[(b) that is not required to conform to Section 31A-22-302.]~~

368 (8) (a) When a claim is brought by a named insured or a person described in  
369 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the  
370 claimant may elect to resolve the claim:

371 (i) by submitting the claim to binding arbitration; or

372 (ii) through litigation.

373 (b) Unless otherwise provided in the policy under which uninsured benefits are  
374 claimed, the election provided in Subsection (8)(a) is available to the claimant only.

375 (c) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii),  
376 the claimant may not elect to resolve the claim through binding arbitration under this section  
377 without the written consent of the uninsured motorist carrier.

378 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to  
379 binding arbitration under Subsection (8)(a)(i) shall be resolved by a single arbitrator.

380 (ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).

381 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection  
382 (8)(d)(ii), the parties shall select a panel of three arbitrators.

383 (e) If the parties select a panel of three arbitrators under Subsection (8)(d)(iii):

384 (i) each side shall select one arbitrator; and

385 (ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional  
386 arbitrator to be included in the panel.

387 (f) Unless otherwise agreed to in writing:

388 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected  
389 under Subsection (8)(d)(i); or

390 (ii) if an arbitration panel is selected under Subsection (8)(d)(iii):

391 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and

392 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected  
393 under Subsection (8)(e)(ii).

394 (g) Except as otherwise provided in this section or unless otherwise agreed to in  
395 writing by the parties, an arbitration proceeding conducted under this section shall be governed  
396 by Title 78, Chapter 31a, Utah Uniform Arbitration Act.

397 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and  
398 68 of the Utah Rules of Civil Procedure.

399 (i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.

400 (j) A written decision by a single arbitrator or by a majority of the arbitration panel  
401 shall constitute a final decision.

402 (k) (i) The amount of an arbitration award may not exceed the uninsured motorist  
403 policy limits of all applicable uninsured motorist policies, including applicable uninsured  
404 motorist umbrella policies.

405 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all  
406 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount  
407 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist  
408 policies.

409 (l) The arbitrator or arbitration panel may not decide the issues of coverage or  
410 extra-contractual damages, including:

411 (i) whether the claimant is a covered person;

412 (ii) whether the policy extends coverage to the loss; or

413 (iii) any allegations or claims asserting consequential damages or bad faith liability.

414 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or  
415 class-representative basis.

416 (n) If the arbitrator or arbitration panel finds that the action was not brought, pursued,  
417 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees  
418 and costs against the party that failed to bring, pursue, or defend the claim in good faith.

419 (o) An arbitration award issued under this section shall be the final resolution of all  
420 claims not excluded by Subsection (8)(l) between the parties unless:

421 (i) the award was procured by corruption, fraud, or other undue means; or

422 (ii) either party, within 20 days after service of the arbitration award:  
423 (A) files a complaint requesting a trial de novo in the district court; and  
424 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo  
425 under Subsection (8)(o)(ii)(A).

426 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), the claim  
427 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules  
428 of Evidence in the district court.

429 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may  
430 request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

431 (q) (i) If the claimant, as the moving party in a trial de novo requested under  
432 Subsection (8)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater  
433 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

434 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested  
435 under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration  
436 award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.

437 (iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(q)  
438 shall include:

439 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

440 (B) the costs of expert witnesses and depositions.

441 (iv) An award of costs under this Subsection (8)(q) may not exceed \$2,500.

442 (r) For purposes of determining whether a party's verdict is greater or less than the  
443 arbitration award under Subsection (8)(q), a court may not consider any recovery or other relief  
444 granted on a claim for damages if the claim for damages:

445 (i) was not fully disclosed in writing prior to the arbitration proceeding; or

446 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil  
447 Procedure.

448 (s) If a district court determines, upon a motion of the nonmoving party, that the  
449 moving party's use of the trial de novo process was filed in bad faith in accordance with



450 Section 78-27-56, the district court may award reasonable attorney fees to the nonmoving  
451 party.

452 (t) Nothing in this section is intended to limit any claim under any other portion of an  
453 applicable insurance policy.

454 (u) If there are multiple uninsured motorist policies, as set forth in Subsection (7), the  
455 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist  
456 carriers.

457 Section 3. Section **31A-22-305.3** is enacted to read:

458 **31A-22-305.3. Underinsured motorist coverage.**

459 (1) As used in this section:

460 (a) "Covered person" has the same meaning as defined in Section 31A-22-305.

461 (b) (i) "Underinsured motor vehicle" includes a motor vehicle, the operation,  
462 maintenance, or use of which is covered under a liability policy at the time of an injury-causing  
463 occurrence, but which has insufficient liability coverage to compensate fully the injured party  
464 for all special and general damages.

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

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

468 (B) an uninsured motor vehicle as defined in Subsection 31A-22-305(2); or

469 (C) a motor vehicle owned or leased by:

470 (I) the named insured;

471 (II) the named insured's spouse; or

472 (III) any dependent of the named insured.

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

477 (ii) A covered person occupying or using a motor vehicle owned, leased, or furnished

478 to the covered person, the covered person's spouse, or covered person's resident relative may  
479 recover underinsured benefits only if the motor vehicle is:

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

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

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

488 (i) waives the higher coverage;

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

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

494 (c) A self-insured, including a governmental entity, may elect to provide underinsured  
495 motorist coverage in an amount that is less than its maximum self-insured retention under  
496 Subsections (2)(b) and (2)(g) by issuing a declaratory memorandum or policy statement from  
497 the chief financial officer or chief risk officer that declares the:

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

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

500 (d) Underinsured motorist coverage may not be sold with limits that are less than:

501 (i) \$10,000 for one person in any one accident; and

502 (ii) at least \$20,000 for two or more persons in any one accident.

503 (e) The acknowledgment under Subsection (2)(b) continues for that issuer of the  
504 underinsured motorist coverage until the insured, in writing, requests different underinsured  
505 motorist coverage from the insurer.

506 (f) (i) The named insured's underinsured motorist coverage, as described in Subsection  
507 (2)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor  
508 vehicle, as described in Subsection (1).

509 (ii) Underinsured motorist coverage may not be set off against the liability coverage of  
510 the owner or operator of an underinsured motor vehicle, but shall be added to, combined with,  
511 or stacked upon the liability coverage of the owner or operator of the underinsured motor  
512 vehicle to determine the limit of coverage available to the injured person.

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

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

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

520 (h) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for  
521 policies existing on that date, the insurer shall disclose in the same medium as the premium  
522 renewal notice, an explanation of:

523 (A) the purpose of underinsured motorist coverage; and

524 (B) the costs associated with increasing the coverage in amounts up to and including  
525 the maximum amount available by the insurer under the insured's motor vehicle policy.

526 (ii) The disclosure required by this Subsection (2)(h) shall be sent to all insureds that  
527 carry underinsured motorist coverage limits in an amount less than the insured's motor vehicle  
528 liability policy limits or the maximum underinsured motorist coverage limits available by the  
529 insurer under the insured's motor vehicle policy.

530 (3) (a) (i) Except as provided in this Subsection (3), a covered person injured in a  
531 motor vehicle described in a policy that includes underinsured motorist benefits may not elect  
532 to collect underinsured motorist coverage benefits from any other motor vehicle insurance  
533 policy.

534 (ii) The limit of liability for underinsured motorist coverage for two or more motor  
535 vehicles may not be added together, combined, or stacked to determine the limit of insurance  
536 coverage available to an injured person for any one accident.

537 (iii) Subsection (3)(a)(ii) applies to all persons except a covered person described  
538 under Subsections (3)(b)(i) and (ii).

539 (b) (i) Except as provided in Subsection (3)(b)(ii), a covered person injured while  
540 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the  
541 covered person, the covered person's spouse, or the covered person's resident parent or resident  
542 sibling, may also recover benefits under any one other policy under which they are a covered  
543 person.

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

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

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

550 (B) Each parent's policy under this Subsection (3)(b)(ii) is liable only for the  
551 percentage of the damages that the limit of liability of each parent's policy of underinsured  
552 motorist coverage bears to the total of both parents' underinsured coverage applicable to the  
553 accident.

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

556 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident shall  
557 be primary coverage, and the coverage elected by a person described under Subsections  
558 31A-22-305(1)(a) and (b) shall be secondary coverage.

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

560 (vi) A covered person as described under Subsection (3)(b)(i) is entitled to the highest  
561 limits of underinsured motorist coverage under only one additional policy per household

562 applicable to that covered person as a named insured, spouse, or relative.

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

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

567 (B) Except to the extent permitted by this Subsection (3), interpolicy stacking is  
568 prohibited for underinsured motorist coverage.

569 (c) Underinsured motorist coverage:

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

572 (ii) may not be subrogated by the workers' compensation insurance carrier;

573 (iii) may not be reduced by any benefits provided by workers' compensation insurance;

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

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

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

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

580 (C) while committing a felony; and

581 (vi) notwithstanding Subsection (3)(c)(v), may be recovered:

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

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

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

588 (5) (a) Within five business days after notification in a manner specified by the  
589 department that all liability insurers have tendered their liability policy limits, the underinsured

590 carrier shall either:

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

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

594 (b) If neither option is exercised under Subsection (5)(a), the subrogation claim is  
595 considered to be waived by the underinsured carrier.

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

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

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

600 (7) (a) When a claim is brought by a named insured or a person described in  
601 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist  
602 carrier, the claimant may elect to resolve the claim:

603 (i) by submitting the claim to binding arbitration; or

604 (ii) through litigation.

605 (b) Unless otherwise provided in the policy under which underinsured benefits are  
606 claimed, the election provided in Subsection (7)(a) is available to the claimant only.

607 (c) Once the claimant has elected to commence litigation under Subsection (7)(a)(ii),  
608 the claimant may not elect to resolve the claim through binding arbitration under this section  
609 without the written consent of the underinsured motorist coverage carrier.

610 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to  
611 binding arbitration under Subsection (7)(a)(i) shall be resolved by a single arbitrator.

612 (ii) All parties shall agree on the single arbitrator selected under Subsection (7)(d)(i).

613 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection  
614 (7)(d)(ii), the parties shall select a panel of three arbitrators.

615 (e) If the parties select a panel of three arbitrators under Subsection (7)(d)(iii):

616 (i) each side shall select one arbitrator; and

617 (ii) the arbitrators appointed under Subsection (7)(e)(i) shall select one additional

618 arbitrator to be included in the panel.

619 (f) Unless otherwise agreed to in writing:

620 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected  
621 under Subsection (7)(d)(i); or

622 (ii) if an arbitration panel is selected under Subsection (7)(d)(iii):

623 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and

624 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected  
625 under Subsection (7)(e)(ii).

626 (g) Except as otherwise provided in this section or unless otherwise agreed to in  
627 writing by the parties, an arbitration proceeding conducted under this section shall be governed  
628 by Title 78, Chapter 31a, Utah Uniform Arbitration Act.

629 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and  
630 68 of the Utah Rules of Civil Procedure.

631 (i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.

632 (j) A written decision by a single arbitrator or by a majority of the arbitration panel  
633 shall constitute a final decision.

634 (k) (i) The amount of an arbitration award may not exceed the underinsured motorist  
635 policy limits of all applicable underinsured motorist policies, including applicable underinsured  
636 motorist umbrella policies.

637 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all  
638 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount  
639 equal to the combined underinsured motorist policy limits of all applicable underinsured  
640 motorist policies.

641 (l) The arbitrator or arbitration panel may not decide the issues of coverage or  
642 extra-contractual damages, including:

643 (i) whether the claimant is a covered person;

644 (ii) whether the policy extends coverage to the loss; or

645 (iii) any allegations or claims asserting consequential damages or bad faith liability.

646 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or  
647 class-representative basis.

648 (n) If the arbitrator or arbitration panel finds that the action was not brought, pursued,  
649 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees  
650 and costs against the party that failed to bring, pursue, or defend the claim in good faith.

651 (o) An arbitration award issued under this section shall be the final resolution of all  
652 claims not excluded by Subsection (7)(l) between the parties unless:

653 (i) the award was procured by corruption, fraud, or other undue means; or

654 (ii) either party, within 20 days after service of the arbitration award:

655 (A) files a complaint requesting a trial de novo in the district court; and

656 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo  
657 under Subsection (7)(o)(ii)(A).

658 (p) (i) Upon filing a complaint for a trial de novo under Subsection (7)(o), the claim  
659 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules  
660 of Evidence in the district court.

661 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may  
662 request a jury trial with a complaint requesting a trial de novo under Subsection (7)(o)(ii)(A).

663 (q) (i) If the claimant, as the moving party in a trial de novo requested under  
664 Subsection (7)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater  
665 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

666 (ii) If the underinsured motorist carrier, as the moving party in a trial de novo requested  
667 under Subsection (7)(o), does not obtain a verdict that is at least 20% less than the arbitration  
668 award, the underinsured motorist carrier is responsible for all of the nonmoving party's costs.

669 (iii) Except as provided in Subsection (7)(q)(iv), the costs under this Subsection (7)(q)  
670 shall include:

671 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

672 (B) the costs of expert witnesses and depositions.

673 (iv) An award of costs under this Subsection (7)(q) may not exceed \$2,500.



674           (r) For purposes of determining whether a party's verdict is greater or less than the  
675 arbitration award under Subsection (7)(q), a court may not consider any recovery or other relief  
676 granted on a claim for damages if the claim for damages:

677           (i) was not fully disclosed in writing prior to the arbitration proceeding; or

678           (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil  
679 Procedure.

680           (s) If a district court determines, upon a motion of the nonmoving party, that the  
681 moving party's use of the trial de novo process was filed in bad faith in accordance with  
682 Section 78-27-56, the district court may award reasonable attorney fees to the nonmoving  
683 party.

684           (t) Nothing in this section is intended to limit any claim under any other portion of an  
685 applicable insurance policy.

686           (u) If there are multiple underinsured motorist policies, as set forth in Subsection (3),  
687 the claimant may elect to arbitrate in one hearing the claims against all the underinsured  
688 motorist carriers.