

1 **MOTOR VEHICLE INSURANCE AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Sheldon L. Killpack**

5 House Sponsor: Stephen H. Urquhart

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that the named insured or a covered person asserting a claim against the
14 person's uninsured or underinsured motorist carrier may elect to resolve the claim
15 by submitting the claim to binding arbitration or through litigation;

16 ▶ provides procedures for resolving the claim through arbitration;

17 ▶ provides that an arbitration award may not exceed the uninsured or underinsured
18 motorist policy limits of all applicable uninsured or underinsured motorist policies,
19 including any applicable umbrella uninsured or underinsured motorist policies;

20 ▶ provides that the arbitrator or arbitration panel may award reasonable attorney's fees
21 and costs if the claim was not brought, pursued, or defended in good faith;

22 ▶ provides that an arbitration award issued by a single arbitrator or an arbitration
23 panel shall be the final resolution of all claims unless:

- 24 • the award was procured by corruption, fraud, or other undue means; or
25 • either party files a notice for a trial de novo within 20 days of service of the
26 arbitration award;

27 ▶ provides that if a claimant, as the moving party in a trial de novo, does not receive a



28 verdict that is at least \$5,000 and is at least 20% greater than the arbitration award, the claimant
29 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 [(f) a dependent minor of parents who reside in separate households; and]

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

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

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

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

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

422 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
423 under Subsection (8)(n)(ii)(A).

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

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

429 (p) (i) If the claimant, as the moving party in a trial de novo requested under
430 Subsection (8)(n), does not obtain a verdict that is at least \$5,000 and is at least 20% greater

431 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

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

435 (iii) Except as provided in Subsection (8)(p)(iv), the costs under this Subsection (8)(p)
436 shall include:

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

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

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

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

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

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

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

450 (s) Nothing in this section is intended to limit any claim under any other portion of an
451 applicable insurance policy.

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

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

456 **31A-22-305.3. Underinsured motorist coverage.**

457 (1) As used in this section:

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

459 (b) (i) "Underinsured motor vehicle" includes a motor vehicle, the operation,
460 maintenance, or use of which is covered under a liability policy at the time of an injury-causing
461 occurrence, but which has insufficient liability coverage to compensate fully the injured party

462 for all special and general damages.

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

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

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

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

468 (I) the named insured;

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

470 (III) any dependent of the named insured.

471 (2) (a) (i) Underinsured motorist coverage under Subsection 31A-22-302(1)(c)

472 provides coverage for covered persons who are legally entitled to recover damages from

473 owners or operators of underinsured motor vehicles because of bodily injury, sickness, disease,

474 or death.

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

476 to the covered person, the covered person's spouse, or covered person's resident relative may

477 recover underinsured benefits only if the motor vehicle is:

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

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

481 (b) For new policies written on or after January 1, 2001, the limits of underinsured

482 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle

483 liability coverage or the maximum underinsured motorist coverage limits available by the

484 insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a

485 lesser amount by signing an acknowledgment form provided by the insurer that:

486 (i) waives the higher coverage;

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

488 (iii) discloses the additional premiums required to purchase underinsured motorist

489 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability

490 coverage or the maximum underinsured motorist coverage limits available by the insurer under

491 the insured's motor vehicle policy.

492 (c) A self-insured, including a governmental entity, may elect to provide underinsured

493 motorist coverage in an amount that is less than its maximum self-insured retention under
494 Subsections (2)(b) and (2)(g) by issuing a declaratory memorandum or policy statement from
495 the chief financial officer or chief risk officer that declares the:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

554 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident shall

555 be primary coverage, and the coverage elected by a person described under Subsections
556 31A-22-305(1)(a) and (b) shall be secondary coverage.

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

558 (vi) A covered person as described under Subsection (3)(b)(i) is entitled to the highest
559 limits of underinsured motorist coverage under only one additional policy per household
560 applicable to that covered person as a named insured, spouse, or relative.

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

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

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

567 (c) Underinsured motorist coverage:

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

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

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

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

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

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

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

578 (C) while committing a felony; and

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

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

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

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

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

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

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

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

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

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

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

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

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

602 (ii) through litigation.

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

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

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

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

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

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

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

615 (ii) the arbitrators appointed under Subsection (7)(e)(i) shall select one additional
616 arbitrator to be included in the panel.

- 617 (f) Unless otherwise agreed to in writing:
618 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
619 under Subsection (7)(d)(i); or
620 (ii) if an arbitration panel is selected under Subsection (7)(d)(iii):
621 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and
622 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
623 under Subsection (7)(e)(ii).
- 624 (g) Except as otherwise provided in this section or unless otherwise agreed to in
625 writing by the parties, an arbitration proceeding conducted under this section shall be governed
626 by Title 78, Chapter 31a, Utah Uniform Arbitration Act.
- 627 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and
628 68 of the Utah Rules of Civil Procedure.
- 629 (i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.
630 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
631 shall constitute a final decision.
- 632 (k) (i) The amount of an arbitration award may not exceed the underinsured motorist
633 policy limits of all applicable underinsured motorist policies, including applicable underinsured
634 motorist umbrella policies.
- 635 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all
636 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
637 equal to the combined underinsured motorist policy limits of all applicable underinsured
638 motorist policies.
- 639 (l) The arbitrator or arbitration panel may not decide the issues of coverage or
640 extra-contractual damages, including:
- 641 (i) whether the claimant is a covered person;
642 (ii) whether the policy extends coverage to the loss; or
643 (iii) any allegations or claims asserting consequential damages or bad faith liability.
- 644 (m) If the arbitrator or arbitration panel finds that the action was not brought, pursued,
645 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees
646 and costs against the party that failed to bring, pursue, or defend the claim in good faith.
- 647 (n) An arbitration award issued under this section shall be the final resolution of all

648 claims not excluded by Subsection (7)(l) between the parties unless:

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

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

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

652 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
653 under Subsection (7)(n)(ii)(A).

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

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

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

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

665 (iii) Except as provided in Subsection (7)(p)(iv), the costs under this Subsection (7)(p)
666 shall include:

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

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

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

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

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

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

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

679 party.

680 (s) Nothing in this section is intended to limit any claim under any other portion of an
681 applicable insurance policy.

682 (t) If there are multiple underinsured motorist policies, as set forth in Subsection (3),
683 the claimant may elect to arbitrate in one hearing the claims against all the underinsured
684 motorist carriers.

Legislative Review Note
as of 2-1-06 11:30 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel