

1 **UNDERINSURED MOTORIST COVERAGE**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stephen H. Urquhart**

6 House Sponsor: Lorie D. Fowlke

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Insurance Code by amending provisions relating to underinsured
11 motorist coverage.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ repeals the requirement that the Insurance Department specify the manner of
15 notification for a notification to the underinsured motorist coverage carrier that all
16 liability insurers have tendered their liability policy limits; and
17 ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **31A-22-305.3**, as last amended by Laws of Utah 2008, Chapter 3

25

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

27 Section 1. Section **31A-22-305.3** is amended to read:

28 **31A-22-305.3. Underinsured motorist coverage.**

29 (1) As used in this section:

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

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

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

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

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

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

40 (I) the named insured;

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

42 (III) any dependent of the named insured.

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

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

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

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

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

58 (i) is filed with the department;
59 (ii) is provided by the insurer;
60 (iii) waives the higher coverage;
61 (iv) reasonably explains the purpose of underinsured motorist coverage; and
62 (v) discloses the additional premiums required to purchase underinsured motorist
63 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
64 coverage or the maximum underinsured motorist coverage limits available by the insurer under
65 the insured's motor vehicle policy.

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

- 70 (i) self-insured entity's coverage level; and
 - 71 (ii) process for filing an underinsured motorist claim.
- 72 (d) Underinsured motorist coverage may not be sold with limits that are less than:
- 73 (i) \$10,000 for one person in any one accident; and
 - 74 (ii) at least \$20,000 for two or more persons in any one accident.

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

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

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

85 (g) (i) A named insured may reject underinsured motorist coverage by an express

86 writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

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

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

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

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

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

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

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

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

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

111 (b) (i) Except as provided in Subsection (3)(b)(ii), a covered person injured while
112 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the
113 covered person, the covered person's spouse, or the covered person's resident parent or resident

114 sibling, may also recover benefits under any one other policy under which they are a covered
115 person.

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

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

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

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

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

128 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident
129 shall be primary coverage, and the coverage elected by a person described under Subsections
130 31A-22-305(1)(a) and (b) shall be secondary coverage.

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

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

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

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

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

141 (c) Underinsured motorist coverage:

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

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

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

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

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

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

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

153 (C) while committing a felony; and

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

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

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

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

161 (5) (a) Within five business days after notification [~~in a manner specified by the~~
162 ~~department~~] that all liability insurers have tendered their liability policy limits, the
163 underinsured carrier shall either:

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

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

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

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

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

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

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

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

178 (ii) through litigation.

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

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

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

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

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

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

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

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

193 (f) Unless otherwise agreed to in writing:

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

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

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

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

200 (g) Except as otherwise provided in this section or unless otherwise agreed to in
201 writing by the parties, an arbitration proceeding conducted under this section shall be
202 governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

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

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

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

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

211 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of
212 all applicable underinsured motorist policies, the arbitration award shall be reduced to an
213 amount equal to the combined underinsured motorist policy limits of all applicable
214 underinsured motorist policies.

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

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

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

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

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

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

225 (o) An arbitration award issued under this section shall be the final resolution of all

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

253 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil

254 Procedure.

255 (s) If a district court determines, upon a motion of the nonmoving party, that the
256 moving party's use of the trial de novo process was filed in bad faith in accordance with
257 Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving
258 party.

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

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