

MOTOR VEHICLE INSURANCE COVERAGE

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Insurance Code by amending provisions relating to uninsured and underinsured motorist coverage.

Highlighted Provisions:

This bill:

H→ ► provides that an arbitrator or arbitration panel may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing of an arbitration proceeding on an uninsured or underinsured motorist coverage claim; ←H

► provides that an uninsured and underinsured motorist coverage carrier shall provide a written response to a covered person's demand for uninsured or underinsured motorist compensation **S→ [within 30 days] within a reasonable period of time ←S** ;

► provides that an uninsured and underinsured motorist coverage carrier shall immediately pay the amount of the covered person's demand or the carrier's response;

► provides that a covered person may elect to litigate or arbitrate the remaining claim if a carrier does not pay the full amount of the covered person's demand for uninsured or underinsured motorist compensation;

► provides procedures for litigating or arbitrating a demand for uninsured or underinsured motorist compensation;

► provides that if a litigation or arbitration award is greater than a carrier's last offer, the carrier is liable for the award amount and certain costs;

► provides that litigating or arbitrating a covered person's demand for uninsured or



28 underinsured motorist compensation does not limit any other cause of action that arose or may
29 arise against the carrier that is the subject of the litigation from the same dispute;

30 ▶ provides that provisions apply to all claims that have not been adjudicated by
31 arbitration or trial on the date of the enactment of this section; and

32 ▶ makes technical changes.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **31A-22-305**, as last amended by Laws of Utah 2008, Chapter 3

40 **31A-22-305.3**, as last amended by Laws of Utah 2009, Chapter 231



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

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

44 **31A-22-305. Uninsured motorist coverage.**

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

46 (a) the named insured;

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

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

51 (i) referred to in the policy; or

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

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

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

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

59 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
60 31A-22-304; and

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

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

65 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
66 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
67 60 days; or

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

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

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

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

80 (i) is filed with the department;

81 (ii) is provided by the insurer;

82 (iii) waives the higher coverage;

83 (iv) reasonably explains the purpose of uninsured motorist coverage; and

84 (v) discloses the additional premiums required to purchase uninsured motorist
85 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
86 coverage or the maximum uninsured motorist coverage limits available by the insurer under the
87 insured's motor vehicle policy.

88 (c) A self-insured, including a governmental entity, may elect to provide uninsured
89 motorist coverage in an amount that is less than its maximum self-insured retention under

90 Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from
91 the chief financial officer or chief risk officer that declares the:

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

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

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

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

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

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

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

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

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

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

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

123 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

134 (C) while committing a felony; and

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

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

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

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

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

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

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

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

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

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

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

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

169 (b) Each of the following persons may also recover uninsured motorist benefits under
170 any one other policy in which they are described as a "covered person" as defined in Subsection
171 (1):

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

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

175 (A) to the covered person;

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

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

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

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

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

183 (I) to the covered person;

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

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

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

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

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

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

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

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

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

201 (ii) through litigation.

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

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

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

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

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

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

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

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

216 (f) Unless otherwise agreed to in writing:

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

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

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

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

223 (g) ~~Ĥ→ (i) ←Ĥ~~ Except as otherwise provided in this section or unless otherwise agreed to in
224 writing by the parties, an arbitration proceeding conducted under this section shall be governed
225 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

225a ~~Ĥ→~~ **(ii) An arbitrator or arbitration panel may issue a subpoena for the attendance of a**
225b **witness and for the production of records and other evidence at any hearing in accordance**
225c **with Section 78B-11-118.** ~~←Ĥ~~

226 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and
227 68 of the Utah Rules of Civil Procedure.

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

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

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

234 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all
235 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount
236 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist
237 policies.

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

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

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

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

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

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

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

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

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

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

253 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
254 under Subsection (8)(o)(ii)(A).

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

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

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

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

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

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

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

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

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

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

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

276 Procedure.

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

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

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

286 (9) (a) (i) ~~§→ [Within 30 days of a covered person making]~~ **An uninsured motorist carrier**
286a **that receives ←§ a specific demand for uninsured**
287 **motorist compensation** ~~§→ [; the uninsured motorist carrier shall provide a written response to the~~
288 **demand]** **from a covered person shall have a reasonable period of time, but not to exceed 60**
288a **days, to provide a written response to the covered person's written demand for a specific**
288b **amount of compensation ←§ .**

289 (ii) Payment in the amount of the covered person's demand or the uninsured motorist
290 carrier's response, whichever is less, shall immediately be made.

291 (b) (i) If an uninsured motorist carrier does not accept a covered person's demand under
292 Subsection (9)(a)(i), the covered person may:

293 (A) elect to accept the uninsured motorist carrier's response payment as described in
294 Subsection (9)(a)(ii); and

295 (B) litigate or arbitrate the remaining claim.

296 (ii) If an election is made under Subsection (9)(b)(i)(B) to litigate or arbitrate the
297 remaining claim, a final award obtained through arbitration, litigation, or later settlement shall
298 be reduced by any payment made by the uninsured motorist carrier under Subsection (9)(a)(ii).

299 (c) If a claim is arbitrated or litigated under Subsection (9)(b)(i)(B):

300 (i) the parties may not disclose to the fact finder any information regarding the policy
301 limits; and

302 (ii) the fact finder may not be informed of:

303 (A) the demand made by the covered person; or

304 (B) offers extended by the underinsured motorist carrier.

305 (d) (i) ~~§→ [If the fact finder determines that the award is greater than the uninsured motorist~~
306 **carrier's last offer, the uninsured motorist carrier shall pay the following:]** **If the final award ←§**

306a **§→ is greater than the uninsured motorist carrier's offer existing 120 days after the covered**
 306b **person's initial written demand, the uninsured motorist carrier shall pay the entire award**
 306c **including any amount in excess of the uninsured motorist policy that is the subject of the**
 306d **arbitration or litigation, not to exceed three times the amount of the subject uninsured**
 306e **motorist policy.**

306f **↯→ [(ii) If the judge or arbitrator determines that the covered person intentionally withheld**
 306g **a material fact prior to the initial demand:**

306h **—— (A) the award may not exceed the uninsured motorist policy limits; and**

306i **—— (B) no costs may be awarded to the covered person under Subsection (9)(d)(iii);**

306j **—— (iii)] (ii) ↯↯ If the award is greater than the uninsured motorist carrier's offer**
 306k1 **described in**

306k **Subsection (9)(a)(i), the uninsured motorist carrier shall pay the following: ↯↯**

307 ~~§~~ → [(A) the fact finder's award, including any amount in excess of the subject's uninsured
 308 motorist policy limit;

309 ~~(B)]~~ (A) ← ~~§~~ any costs set forth in Rule 54(d) of the Utah Rules of Civil Procedure; and

310 ~~§~~ → [(C)] (B) ← ~~§~~ the costs of expert witnesses and depositions.

311 (ii) (A) The judge or arbitrator in a separate, later proceeding shall make a

312 determination of the costs described in ~~§~~ → [Subsection] Subsections ← ~~§~~ (9)(d)(i) ~~§~~ → (A) and ← ~~§~~ (B).

313 (B) The costs described in ~~§~~ → [Subsection] Subsections ← ~~§~~ (9)(d)(i) ~~§~~ → [(C)] (A) and

313a (B) ← ~~§~~ shall become a part of the award.

314 (e) This Subsection (9) does not limit any other cause of action that arose or may arise
 315 against the uninsured motorist carrier from the same dispute.

316 (f) This Subsection (9) shall apply to all claims that have not been adjudicated by
 317 arbitration or trial on the date of the enactment of this section.

318 Section 2. Section **31A-22-305.3** is amended to read:

319 **31A-22-305.3. Underinsured motorist coverage.**

320 (1) As used in this section:

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

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

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

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

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

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

331 (I) the named insured;

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

333 (III) any dependent of the named insured.

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

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

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

337 or death.

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

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

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

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

349 (i) is filed with the department;

350 (ii) is provided by the insurer;

351 (iii) waives the higher coverage;

352 (iv) reasonably explains the purpose of underinsured motorist coverage; and

353 (v) discloses the additional premiums required to purchase underinsured motorist
354 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
355 coverage or the maximum underinsured motorist coverage limits available by the insurer under
356 the insured's motor vehicle policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

419 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident shall
420 be primary coverage, and the coverage elected by a person described under Subsections
421 31A-22-305(1)(a) and (b) shall be secondary coverage.

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

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

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

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

430 (B) Except to the extent permitted by this Subsection (3), interpolicy stacking is

431 prohibited for underinsured motorist coverage.

432 (c) Underinsured motorist coverage:

433 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'

434 Compensation Act;

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

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

437 (iv) may be reduced by health insurance subrogation only after the covered person has

438 been made whole;

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

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

441 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated

442 in violation of Section 41-1a-1314; or

443 (C) while committing a felony; and

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

445 (A) for a person under 18 years of age who is injured within the scope of Subsection

446 (3)(c)(v) but limited to medical and funeral expenses; or

447 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured

448 within the course and scope of the law enforcement officer's duties.

449 (4) The inception of the loss under Subsection 31A-21-313(1) for underinsured

450 motorist claims occurs upon the date of the last liability policy payment.

451 (5) (a) Within five business days after notification that all liability insurers have

452 tendered their liability policy limits, the underinsured carrier shall either:

453 (i) waive any subrogation claim the underinsured carrier may have against the person

454 liable for the injuries caused in the accident; or

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

456 (b) If neither option is exercised under Subsection (5)(a), the subrogation claim is

457 considered to be waived by the underinsured carrier.

458 (6) Except as otherwise provided in this section, a covered person may seek, subject to

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

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

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

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

- 465 (i) by submitting the claim to binding arbitration; or
- 466 (ii) through litigation.

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

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

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

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

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

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

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

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

481 (f) Unless otherwise agreed to in writing:

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

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

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

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

488 (g) ~~Ĥ→ (i) ←Ĥ~~ Except as otherwise provided in this section or unless otherwise agreed to in
 489 writing by the parties, an arbitration proceeding conducted under this section shall be governed
 490 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

490a ~~Ĥ→~~ **(ii) An arbitrator or arbitration panel may issue a subpoena for the attendance of a**
 490b **witness and for the production of records and other evidence at any hearing in accordance**
 490c **with Section 78B-11-118.** ~~←Ĥ~~

491 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and
 492 68 of the Utah Rules of Civil Procedure.

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

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

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

499 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all
500 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
501 equal to the combined underinsured motorist policy limits of all applicable underinsured
502 motorist policies.

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

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

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

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

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

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

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

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

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

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

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

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

523 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may

524 request a jury trial with a complaint requesting a trial de novo under Subsection (7)(o)(ii)(A).

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

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

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

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

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

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

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

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

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

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

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

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

551 (8) (a) (i) ~~§→ [Within 30 days of a covered person making]~~ **An underinsured motorist**
551a **carrier that receives ←§ a specific demand for**
552 **underinsured motorist compensation §→ [; the underinsured motorist carrier shall provide a written**
553 **response to the demand.] from a covered person shall have a reasonable period of time, but not to**
553a **exceed 60 days, to provide a written response to the covered person's written demand for a**
553b **specific amount of compensation. ←§**

554 (ii) Payment in the amount of the covered person's demand or the underinsured

555 motorist carrier's response, whichever is less, shall immediately be made.

556 (b) (i) If a carrier does not accept a covered person's demand under Subsection
 557 (8)(a)(i), the covered person may:

558 (A) elect to accept the underinsured motorist carrier's response payment as described in
 559 Subsection (8)(a)(ii); and

560 (B) litigate or arbitrate the remaining claim.

561 (ii) If an election is made under Subsection (8)(b)(i)(B) to litigate or arbitrate the
 562 remaining claim, a final award obtained through arbitration, litigation, or later settlement shall
 563 be reduced by any payment made by the underinsured motorist carrier under Subsection
 564 (8)(a)(ii).

565 (c) If a claim is arbitrated or litigated under Subsection (8)(b)(i)(B):

566 (i) the parties may not disclose to the fact finder any information regarding the policy
 567 limits; and

568 (ii) the fact finder may not be informed of:

569 (A) the demand made by the covered person; or

570 (B) offers extended by the underinsured motorist carrier.

571 (d) (i) ~~§~~→ [If the fact finder determines that the award is greater than the underinsured

572 motorist carrier's last offer, the underinsured motorist carrier shall pay the following:] If the final
 572a award is greater than the underinsured motorist carrier's offer existing 120 days after the
 572b covered person's initial written demand, the underinsured motorist carrier shall pay the entire
 572c award including any amount in excess of the underinsured motorist policy that is the subject of
 572d the arbitration or litigation, not to exceed three times the amount of the subject underinsured
 572e motorist policy.

572f ~~§~~→ [(ii) If the judge or arbitrator determines that the covered person intentionally withheld
 572g a material fact prior to the initial demand:

572h —— (A) the award may not exceed the underinsured motorist policy limits; and

572i —— (B) no costs may be awarded to the covered person under Subsection (8)(d)(iii);

572j —— (iii)] (ii) ~~←§~~ If the award is greater than the underinsured motorist carrier's offer
 572k1 described in

572k Subsection (8)(a)(i), the underinsured motorist carrier shall pay the following:

573 [~~(A) the fact finder's award, including any amount in excess of the subject~~
 574 ~~underinsured's motorist policy limit;~~

575 —— ~~(B)] (A) ~~←§~~ any costs set forth in Rule 54(d) of the Utah Rules of Civil Procedure; and~~

576 ~~§~~→ [~~(C)] (B) ~~←§~~ the costs of expert witnesses and depositions.~~

577 (ii) (A) The judge or arbitrator in a separate, later proceeding shall make a

578 determination of the costs described in ~~§~~ [Subsection] Subsections ~~←~~§ (8)(d)(i) ~~§~~→ (A) and ~~←~~§ (B).
579 (B) The costs described in ~~§~~→ [Subsection] Subsections ~~←~~§ (8)(d)(i) ~~§~~→ [~~€~~] (A) and
579a (B)~~←~~§ shall become a part of the award.
580 (e) This Subsection (8) does not limit any other cause of action that arose or may arise
581 against the underinsured motorist carrier from the same dispute.
582 (f) This Subsection (8) shall apply to all claims that have not been adjudicated by
583 arbitration or trial on the date of the enactment of this section.

Legislative Review Note
as of 2-3-10 12:54 PM

Office of Legislative Research and General Counsel

S.B. 62 - Motor Vehicle Insurance Coverage Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals and business may see an increase in premiums over time.
