

1 **MOTOR VEHICLE INSURANCE COVERAGE**

2 **AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

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

6 House Sponsor: James A. Dunnigan

7

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ provides that, if a covered person elects to submit a claim for uninsured or
15 underinsured motorist benefits to binding arbitration or files litigation, the covered
16 person shall provide a written demand to the uninsured or underinsured motorist
17 carrier for payment of uninsured or underinsured motorist compensation with
18 certain documentation;
- 19 ▶ provides that an uninsured or underinsured motorist carrier that receives an election
20 for arbitration or a notice of filing for litigation and the demand for payment of
21 uninsured or underinsured motorist benefits shall have a reasonable time, not to
22 exceed 60 days, to provide a written response to the written demand for payment
23 and tender the amount, if any, of the uninsured or underinsured motorist carrier's
24 determination of the amount owed to the claimant;
- 25 ▶ provides that a covered person may elect to litigate or arbitrate any remaining claim
26 if an uninsured or underinsured motorist carrier's tender is less than the total
27 amount of the uninsured or underinsured policy limits;
- 28 ▶ provides procedures for litigating or arbitrating a claim for uninsured or
29 underinsured motorist compensation;

30 ▶ provides that, if a litigation or arbitration award is greater than a certain amount,
31 the carrier is liable for the award amount and certain costs;

32 ▶ establishes a cap on certain amounts an uninsured motorist carrier or an
33 underinsured motorist carrier pays;

34 ▶ provides that litigating or arbitrating a covered person's demand for uninsured or
35 underinsured motorist compensation does not limit any other cause of action that
36 arose or may arise against the carrier that is the subject of the litigation from the
37 same dispute; and

38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill provides an immediate effective date.

43 This bill provides revisor instructions.

44 **Utah Code Sections Affected:**

45 AMENDS:

46 **31A-22-305**, as last amended by Laws of Utah 2008, Chapter 3

47 **31A-22-305.3**, as last amended by Laws of Utah 2009, Chapter 231



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

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

51 **31A-22-305. Uninsured motorist coverage.**

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

53 (a) the named insured;

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

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

58 (i) referred to in the policy; or
59 (ii) owned by a self-insured; and
60 (d) any person who is entitled to recover damages against the owner or operator of the
61 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under
62 Subsection (1)(a), (b), or (c).

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

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

66 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
67 31A-22-304; and

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

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

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

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

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

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

82 (b) For new policies written on or after January 1, 2001, the limits of uninsured
83 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle
84 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
85 under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser

86 amount by signing an acknowledgment form that:

87 (i) is filed with the department;

88 (ii) is provided by the insurer;

89 (iii) waives the higher coverage;

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

91 (v) discloses the additional premiums required to purchase uninsured motorist

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

93 coverage or the maximum uninsured motorist coverage limits available by the insurer under

94 the insured's motor vehicle policy.

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

96 motorist coverage in an amount that is less than its maximum self-insured retention under

97 Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from

98 the chief financial officer or chief risk officer that declares the:

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

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

101 (d) Uninsured motorist coverage may not be sold with limits that are less than the

102 minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

103 (e) The acknowledgment under Subsection (3)(b) continues for that issuer of the

104 uninsured motorist coverage until the insured, in writing, requests different uninsured motorist

105 coverage from the insurer.

106 (f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for

107 policies existing on that date, the insurer shall disclose in the same medium as the premium

108 renewal notice, an explanation of:

109 (A) the purpose of uninsured motorist coverage; and

110 (B) the costs associated with increasing the coverage in amounts up to and including

111 the maximum amount available by the insurer under the insured's motor vehicle policy.

112 (ii) The disclosure required under this Subsection (3)(f) shall be sent to all insureds

113 that carry uninsured motorist coverage limits in an amount less than the insured's motor

114 vehicle liability policy limits or the maximum uninsured motorist coverage limits available by
115 the insurer under the insured's motor vehicle policy.

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

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

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

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

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

130 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

142 (C) while committing a felony; and
143 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:
144 (A) for a person under 18 years of age who is injured within the scope of Subsection
145 (4)(c)(v) but limited to medical and funeral expenses; or
146 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
147 within the course and scope of the law enforcement officer's duties.
148 (d) As used in this Subsection (4), "motor vehicle" has the same meaning as under
149 Section 41-1a-102.
150 (5) When a covered person alleges that an uninsured motor vehicle under Subsection
151 (2)(b) proximately caused an accident without touching the covered person or the motor
152 vehicle occupied by the covered person, the covered person must show the existence of the
153 uninsured motor vehicle by clear and convincing evidence consisting of more than the covered
154 person's testimony.
155 (6) (a) The limit of liability for uninsured motorist coverage for two or more motor
156 vehicles may not be added together, combined, or stacked to determine the limit of insurance
157 coverage available to an injured person for any one accident.
158 (b) (i) Subsection (6)(a) applies to all persons except a covered person as defined
159 under Subsection (7)(b)(ii).
160 (ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest
161 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered
162 person is the named insured or an insured family member.
163 (iii) This coverage shall be in addition to the coverage on the motor vehicle the
164 covered person is occupying.
165 (iv) Neither the primary nor the secondary coverage may be set off against the other.
166 (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary
167 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b)
168 shall be secondary coverage.
169 (7) (a) Uninsured motorist coverage under this section applies to bodily injury,

170 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if
171 the motor vehicle is described in the policy under which a claim is made, or if the motor
172 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the
173 policy. Except as provided in Subsection (6) or this Subsection (7), a covered person injured
174 in a motor vehicle described in a policy that includes uninsured motorist benefits may not elect
175 to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
176 under which the person is a covered person.

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

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

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

183 (A) to the covered person;

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

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

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

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

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

191 (I) to the covered person;

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

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

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

197 (d) A covered person's recovery under any available policies may not exceed the full

198 amount of damages.

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

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

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

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

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

209 (ii) through litigation.

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

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

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

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

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

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

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

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

224 (f) Unless otherwise agreed to in writing:

225 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected

226 under Subsection (8)(d)(i); or

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

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

229 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected

230 under Subsection (8)(e)(ii).

231 (g) Except as otherwise provided in this section or unless otherwise agreed to in

232 writing by the parties, an arbitration proceeding conducted under this section shall be

233 governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

234 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54,

235 and 68 of the Utah Rules of Civil Procedure.

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

237 (j) A written decision by a single arbitrator or by a majority of the arbitration panel

238 shall constitute a final decision.

239 (k) (i) The amount of an arbitration award may not exceed the uninsured motorist

240 policy limits of all applicable uninsured motorist policies, including applicable uninsured

241 motorist umbrella policies.

242 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all

243 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount

244 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist

245 policies.

246 (l) The arbitrator or arbitration panel may not decide the issues of coverage or

247 extra-contractual damages, including:

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

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

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

251 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or

252 class-representative basis.

253 (n) If the arbitrator or arbitration panel finds that the action was not brought, pursued,

254 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney
255 fees and costs against the party that failed to bring, pursue, or defend the claim in good faith.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

282 (i) was not fully disclosed in writing prior to the arbitration proceeding; or
283 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil
284 Procedure.

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

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

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

294 (9) (a) Within 30 days after a covered person elects to submit a claim for uninsured
295 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
296 the uninsured motorist carrier:

297 (i) a written demand for payment of uninsured motorist coverage benefits, setting
298 forth:

299 (A) the specific monetary amount of the demand; and

300 (B) the factual and legal basis and any supporting documentation for the demand;

301 (ii) a written statement under oath disclosing:

302 (A) (I) the names and last known addresses of all health care providers who have
303 rendered health care services to the covered person that are material to the claims for which
304 uninsured motorist benefits are sought for a period of five years preceding the date of the event
305 giving rise to the claim for uninsured motorist benefits up to the time the election for
306 arbitration or litigation has been exercised; and

307 (II) whether the covered person has seen other health care providers who have
308 rendered health care services to the covered person, which the covered person claims are
309 immaterial to the claims for which uninsured motorist benefits are sought, for a period of five

310 years preceding the date of the event giving rise to the claim for uninsured motorist benefits up
311 to the time the election for arbitration or litigation has been exercised that have not been
312 disclosed under Subsection (9)(a)(ii)(A)(I):

313 (B) (I) the names and last known addresses of all health insurers or other entities to
314 whom the covered person has submitted claims for health care services or benefits material to
315 the claims for which uninsured motorist benefits are sought, for a period of five years
316 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to
317 the time the election for arbitration or litigation has been exercised; and

318 (II) whether the identity of any health insurers or other entities to whom the covered
319 person has submitted claims for health care services or benefits, which the covered person
320 claims are immaterial to the claims for which uninsured motorist benefits are sought, for a
321 period of five years preceding the date of the event giving rise to the claim for uninsured
322 motorist benefits up to the time the election for arbitration or litigation have not been
323 disclosed;

324 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
325 employers of the covered person for a period of five years preceding the date of the event
326 giving rise to the claim for uninsured motorist benefits up to the time the election for
327 arbitration or litigation has been exercised;

328 (D) other documents to reasonably support the claims being asserted; and

329 (E) all state and federal statutory lienholders including a statement as to whether the
330 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health
331 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,
332 or if the claim is subject to any other state or federal statutory liens; and

333 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain
334 records and billings from the individuals or entities disclosed.

335 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed
336 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably
337 necessary, the uninsured motorist carrier may:

338 (A) make a request for the disclosure of the identity of the health care providers or
339 health care insurers; and

340 (B) make a request for authorizations to allow the uninsured motorist carrier to only
341 obtain records and billings from the individuals or entities not disclosed.

342 (ii) If the covered person does not provide the requested information within 10 days:

343 (A) the covered person shall disclose, in writing, the legal or factual basis for the
344 failure to disclose the health care providers or health care insurers; and

345 (B) either the covered person or the uninsured motorist carrier may request the
346 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be
347 provided if the covered person has elected arbitration.

348 (iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of
349 the dispute concerning the disclosure and production of records of the health care providers or
350 health care insurers.

351 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice
352 of filing litigation and the demand for payment of uninsured motorist benefits under
353 Subsection (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the
354 demand and receipt of the items specified in Subsections (9)(a)(i) through (iii), to:

355 (A) provide a written response to the written demand for payment provided for in
356 Subsection (9)(a)(i);

357 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the
358 uninsured motorist carrier's determination of the amount owed to the covered person; and

359 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
360 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
361 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,
362 tender the amount, if any, of the uninsured motorist carrier's determination of the amount
363 owed to the covered person less:

364 (I) if the amount of the state or federal statutory lien is established, the amount of the
365 lien; or

366 (II) if the amount of the state or federal statutory lien is not established, two times the
367 amount of the medical expenses subject to the state or federal statutory lien until such time as
368 the amount of the state or federal statutory lien is established.

369 (ii) If the amount tendered by the uninsured motorist carrier under Subsection (9)(c)(i)
370 is the total amount of the uninsured motorist policy limits, the tendered amount shall be
371 accepted by the covered person.

372 (d) A covered person who receives a written response from an uninsured motorist
373 carrier as provided for in Subsection (9)(c)(i), may:

374 (i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all
375 uninsured motorist claims; or

376 (ii) elect to:

377 (A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all
378 uninsured motorist claims; and

379 (B) litigate or arbitrate the remaining claim.

380 (e) If a covered person elects to accept the amount tendered under Subsection (9)(c)(i)
381 as partial payment of all uninsured motorist claims, the final award obtained through
382 arbitration, litigation, or later settlement shall be reduced by any payment made by the
383 uninsured motorist carrier under Subsection (9)(c)(i).

384 (f) In an arbitration proceeding on the remaining uninsured claims:

385 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
386 under Subsection (9)(c)(i) until after the arbitration award has been rendered; and

387 (ii) the parties may not disclose the amount of the limits of uninsured motorist benefits
388 provided by the policy.

389 (g) If the final award obtained through arbitration or litigation is greater than the
390 average of the covered person's initial written demand for payment provided for in Subsection
391 (9)(a)(i) and the uninsured motorist carrier's initial written response provided for in Subsection
392 (9)(c)(i), the uninsured motorist carrier shall pay:

393 (i) the final award obtained through arbitration or litigation, except that if the award

394 exceeds the policy limits of the subject uninsured motorist policy by more than \$15,000, the
395 amount shall be reduced to an amount equal to the policy limits plus \$15,000; and

396 (ii) any of the following applicable costs:

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

398 (B) the arbitrator or arbitration panel's fee; and

399 (C) the reasonable costs of expert witnesses and depositions used in the presentation
400 of evidence during arbitration or litigation.

401 (h) (i) The covered person shall provide an affidavit of costs within five days of an
402 arbitration award.

403 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to
404 which the uninsured motorist carrier objects.

405 (B) The objection shall be resolved by the arbitrator or arbitration panel.

406 (iii) The award of costs by the arbitrator or arbitration panel under Subsection
407 (9)(g)(ii) may not exceed \$5,000.

408 (i) (i) A covered person shall disclose all material information, other than rebuttal
409 evidence, as specified in Subsection (9)(a).

410 (ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person
411 may not recover costs or any amounts in excess of the policy under Subsection (9)(g).

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

414 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that
415 occur on or after the effective date of this bill.

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

417 **31A-22-305.3. Underinsured motorist coverage.**

418 (1) As used in this section:

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

420 (b) (i) "Underinsured motor vehicle" includes a motor vehicle, the operation,
421 maintenance, or use of which is covered under a liability policy at the time of an

422 injury-causing occurrence, but which has insufficient liability coverage to compensate fully
423 the injured party for all special and general damages.

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

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

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

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

429 (I) the named insured;

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

431 (III) any dependent of the named insured.

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

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

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

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

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

447 (i) is filed with the department;

448 (ii) is provided by the insurer;

449 (iii) waives the higher coverage;

450 (iv) reasonably explains the purpose of underinsured motorist coverage; and
451 (v) discloses the additional premiums required to purchase underinsured motorist
452 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
453 coverage or the maximum underinsured motorist coverage limits available by the insurer under
454 the insured's motor vehicle policy.

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

- 459 (i) self-insured entity's coverage level; and
- 460 (ii) process for filing an underinsured motorist claim.

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

- 462 (i) \$10,000 for one person in any one accident; and
- 463 (ii) at least \$20,000 for two or more persons in any one accident.

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

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

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

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

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

478 applicable.

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

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

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

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

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

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

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

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

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

505 (ii) (A) A covered person may recover benefits from no more than two additional

506 policies, one additional policy from each parent's household if the covered person is:

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

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

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

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

517 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident
518 shall be primary coverage, and the coverage elected by a person described under Subsections
519 31A-22-305(1)(a) and (b) shall be secondary coverage.

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

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

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

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

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

530 (c) Underinsured motorist coverage:

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

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

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

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

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

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

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

542 (C) while committing a felony; and

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

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

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

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

550 (5) (a) Within five business days after notification that all liability insurers have
551 tendered their liability policy limits, the underinsured carrier shall either:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

581 (f) Unless otherwise agreed to in writing:

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

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

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

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

588 (g) Except as otherwise provided in this section or unless otherwise agreed to in
589 writing by the parties, an arbitration proceeding conducted under this section shall be

590 governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

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

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

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

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

599 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of
600 all applicable underinsured motorist policies, the arbitration award shall be reduced to an
601 amount equal to the combined underinsured motorist policy limits of all applicable
602 underinsured motorist policies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

646 party.

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

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

652 (8) (a) Within 30 days after a covered person elects to submit a claim for underinsured
653 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
654 the underinsured motorist carrier:

655 (i) a written demand for payment of underinsured motorist coverage benefits, setting
656 forth:

657 (A) the specific monetary amount of the demand; and

658 (B) the factual and legal basis and any supporting documentation for the demand;

659 (ii) a written statement under oath disclosing:

660 (A) (I) the names and last known addresses of all health care providers who have
661 rendered health care services to the covered person that are material to the claims for which
662 the underinsured motorist benefits are sought for a period of five years preceding the date of
663 the event giving rise to the claim for underinsured motorist benefits up to the time the election
664 for arbitration or litigation has been exercised; and

665 (II) whether the covered person has seen other health care providers who have
666 rendered health care services to the covered person, which the covered person claims are
667 immaterial to the claims for which underinsured motorist benefits are sought, for a period of
668 five years preceding the date of the event giving rise to the claim for underinsured motorist
669 benefits up to the time the election for arbitration or litigation has been exercised that have not
670 been disclosed under Subsection (8)(a)(ii)(A)(I);

671 (B) (I) the names and last known addresses of all health insurers or other entities to
672 whom the covered person has submitted claims for health care services or benefits material to
673 the claims for which underinsured motorist benefits are sought, for a period of five years

674 preceding the date of the event giving rise to the claim for underinsured motorist benefits up to
675 the time the election for arbitration or litigation has been exercised; and

676 (II) whether the identity of any health insurers or other entities to whom the covered
677 person has submitted claims for health care services or benefits, which the covered person
678 claims are immaterial to the claims for which underinsured motorist benefits are sought, for a
679 period of five years preceding the date of the event giving rise to the claim for underinsured
680 motorist benefits up to the time the election for arbitration or litigation have not been
681 disclosed;

682 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
683 employers of the covered person for a period of five years preceding the date of the event
684 giving rise to the claim for underinsured motorist benefits up to the time the election for
685 arbitration or litigation has been exercised;

686 (D) other documents to reasonably support the claims being asserted; and

687 (E) all state and federal statutory lienholders including a statement as to whether the
688 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health
689 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,
690 or if the claim is subject to any other state or federal statutory liens; and

691 (iii) signed authorizations to allow the underinsured motorist carrier to only obtain
692 records and billings from the individuals or entities disclosed.

693 (b) (i) If the underinsured motorist carrier determines that the disclosure of
694 undisclosed health care providers or health care insurers under Subsection (8)(a)(ii) is
695 reasonably necessary, the underinsured motorist carrier may:

696 (A) make a request for the disclosure of the identity of the health care providers or
697 health care insurers; and

698 (B) make a request for authorizations to allow the underinsured motorist carrier to
699 only obtain records and billings from the individuals or entities not disclosed.

700 (ii) If the covered person does not provide the requested information within 10 days:

701 (A) the covered person shall disclose, in writing, the legal or factual basis for the

702 failure to disclose the health care providers or health care insurers; and

703 (B) either the covered person or the underinsured motorist carrier may request the
704 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be
705 provided if the covered person has elected arbitration.

706 (iii) The time periods imposed by Subsection (8)(c)(i) are tolled pending resolution of
707 the dispute concerning the disclosure and production of records of the health care providers or
708 health care insurers.

709 (c) (i) An underinsured motorist carrier that receives an election for arbitration or a
710 notice of filing litigation and the demand for payment of underinsured motorist benefits under
711 Subsection (8)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the
712 demand and receipt of the items specified in Subsections (8)(a)(i) through (iii), to:

713 (A) provide a written response to the written demand for payment provided for in
714 Subsection (8)(a)(i);

715 (B) except as provided in Subsection (8)(c)(i)(C), tender the amount, if any, of the
716 underinsured motorist carrier's determination of the amount owed to the covered person; and

717 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
718 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
719 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,
720 tender the amount, if any, of the underinsured motorist carrier's determination of the amount
721 owed to the covered person less:

722 (I) if the amount of the state or federal statutory lien is established, the amount of the
723 lien; or

724 (II) if the amount of the state or federal statutory lien is not established, two times the
725 amount of the medical expenses subject to the state or federal statutory lien until such time as
726 the amount of the state or federal statutory lien is established.

727 (ii) If the amount tendered by the underinsured motorist carrier under Subsection
728 (8)(c)(i) is the total amount of the underinsured motorist policy limits, the tendered amount
729 shall be accepted by the covered person.

730 (d) A covered person who receives a written response from an underinsured motorist
731 carrier as provided for in Subsection (8)(c)(i), may:

732 (i) elect to accept the amount tendered in Subsection (8)(c)(i) as payment in full of all
733 underinsured motorist claims; or

734 (ii) elect to:

735 (A) accept the amount tendered in Subsection (8)(c)(i) as partial payment of all
736 underinsured motorist claims; and

737 (B) litigate or arbitrate the remaining claim.

738 (e) If a covered person elects to accept the amount tendered under Subsection (8)(c)(i)
739 as partial payment of all underinsured motorist claims, the final award obtained through
740 arbitration, litigation, or later settlement shall be reduced by any payment made by the
741 underinsured motorist carrier under Subsection (8)(c)(i).

742 (f) In an arbitration proceeding on the remaining underinsured claims:

743 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
744 under Subsection (8)(c)(i) until after the arbitration award has been rendered; and

745 (ii) the parties may not disclose the amount of the limits of underinsured motorist
746 benefits provided by the policy.

747 (g) If the final award obtained through arbitration or litigation is greater than the
748 average of the covered person's initial written demand for payment provided for in Subsection
749 (8)(a)(i) and the underinsured motorist carrier's initial written response provided for in
750 Subsection (8)(c)(i), the underinsured motorist carrier shall pay:

751 (i) the final award obtained through arbitration or litigation, except that if the award
752 exceeds the policy limits of the subject underinsured motorist policy by more than \$15,000,
753 the amount shall be reduced to an amount equal to the policy limits plus \$15,000; and

754 (ii) any of the following applicable costs:

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

756 (B) the arbitrator or arbitration panel's fee; and

757 (C) the reasonable costs of expert witnesses and depositions used in the presentation

758 of evidence during arbitration or litigation.

759 (h) (i) The covered person shall provide an affidavit of costs within five days of an
760 arbitration award.

761 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to
762 which the underinsured motorist carrier objects.

763 (B) The objection shall be resolved by the arbitrator or arbitration panel.

764 (iii) The award of costs by the arbitrator or arbitration panel under Subsection
765 (8)(g)(ii) may not exceed \$5,000.

766 (i) (i) A covered person shall disclose all material information, other than rebuttal
767 evidence, as specified in Subsection (8)(a).

768 (ii) If the information under Subsection (8)(i)(i) is not disclosed, the covered person
769 may not recover costs or any amounts in excess of the policy under Subsection (8)(g).

770 (j) This Subsection (8) does not limit any other cause of action that arose or may arise
771 against the underinsured motorist carrier from the same dispute.

772 (k) The provisions of this Subsection (8) only apply to motor vehicle accidents that
773 occur on or after the effective date of this bill.

774 **Section 3. Effective date.**

775 If approved by two-thirds of all the members elected to each house, this bill takes effect
776 upon approval by the governor, or the day following the constitutional time limit of Utah
777 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
778 the date of veto override.

779 **Section 4. Revisor instructions.**

780 It is the intent of the Legislature that the Office of Legislative Research and General
781 Counsel, in preparing the database for publication, delete "the effective date of this bill" where
782 it appears in this bill and replace it with the actual date on which the bill takes effect.