

MOTOR VEHICLE INSURANCE COVERAGE AMENDMENTS

2011 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 arbitration for motor vehicle insurance coverage.

Highlighted Provisions:

This bill:

- ▶ clarifies that certain caps on the amount of an arbitration award for certain uninsured and underinsured motorist claims apply only in certain circumstances;
- ▶ clarifies that the caps on the award of fees and costs for certain uninsured and underinsured motorist claims only apply in certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-22-305, as last amended by Laws of Utah 2010, Chapter 354

31A-22-305.3, as last amended by Laws of Utah 2010, Chapters 10 and 354

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

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

31A-22-305. Uninsured motorist coverage.

- 30 (1) As used in this section, "covered persons" includes:
- 31 (a) the named insured;
- 32 (b) persons related to the named insured by blood, marriage, adoption, or guardianship,
- 33 who are residents of the named insured's household, including those who usually make their
- 34 home in the same household but temporarily live elsewhere;
- 35 (c) any person occupying or using a motor vehicle:
- 36 (i) referred to in the policy; or
- 37 (ii) owned by a self-insured; and
- 38 (d) any person who is entitled to recover damages against the owner or operator of the
- 39 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under
- 40 Subsection (1)(a), (b), or (c).
- 41 (2) As used in this section, "uninsured motor vehicle" includes:
- 42 (a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered
- 43 under a liability policy at the time of an injury-causing occurrence; or
- 44 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
- 45 31A-22-304; and
- 46 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of
- 47 the deficiency;
- 48 (b) an unidentified motor vehicle that left the scene of an accident proximately caused
- 49 by the motor vehicle operator;
- 50 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
- 51 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
- 52 60 days; or
- 53 (d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of
- 54 the motor vehicle is declared insolvent by a court of competent jurisdiction; and
- 55 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent
- 56 that the claim against the insolvent insurer is not paid by a guaranty association or fund.
- 57 (3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides

58 coverage for covered persons who are legally entitled to recover damages from owners or
59 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

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

- 65 (i) is filed with the department;
- 66 (ii) is provided by the insurer;
- 67 (iii) waives the higher coverage;
- 68 (iv) reasonably explains the purpose of uninsured motorist coverage; and
- 69 (v) discloses the additional premiums required to purchase uninsured motorist
70 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
71 coverage or the maximum uninsured motorist coverage limits available by the insurer under the
72 insured's motor vehicle policy.

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

- 77 (i) self-insured entity's coverage level; and
 - 78 (ii) process for filing an uninsured motorist claim.
- 79 (d) Uninsured motorist coverage may not be sold with limits that are less than the
80 minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

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

84 (f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for
85 policies existing on that date, the insurer shall disclose in the same medium as the premium

86 renewal notice, an explanation of:

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

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

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

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

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

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

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

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

108 (c) Uninsured motorist coverage:

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

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

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

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

114 been made whole;

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

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

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

119 (C) while committing a felony; and

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

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

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

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

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

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

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

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

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

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

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

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

154 (b) Each of the following persons may also recover uninsured motorist benefits under
155 any one other policy in which they are described as a "covered person" as defined in Subsection
156 (1):

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

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

160 (A) to the covered person;

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

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

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

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

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

168 (I) to the covered person;

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

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

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

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

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

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

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

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

185 (i) by submitting the claim to binding arbitration; or
186 (ii) through litigation.

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

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

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

194 (ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).
195 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection
196 (8)(d)(ii), the parties shall select a panel of three arbitrators.

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

- 198 (i) each side shall select one arbitrator; and
- 199 (ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional
200 arbitrator to be included in the panel.
- 201 (f) Unless otherwise agreed to in writing:
- 202 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
203 under Subsection (8)(d)(i); or
- 204 (ii) if an arbitration panel is selected under Subsection (8)(d)(iii):
- 205 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and
- 206 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
207 under Subsection (8)(e)(ii).
- 208 (g) Except as otherwise provided in this section or unless otherwise agreed to in
209 writing by the parties, an arbitration proceeding conducted under this section shall be governed
210 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- 211 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and
212 68 of the Utah Rules of Civil Procedure.
- 213 (i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.
- 214 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
215 shall constitute a final decision.
- 216 (k) (i) [~~The~~] Except as provided in Subsection (9), the amount of an arbitration award
217 may not exceed the uninsured motorist policy limits of all applicable uninsured motorist
218 policies, including applicable uninsured motorist umbrella policies.
- 219 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all
220 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount
221 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist
222 policies.
- 223 (l) The arbitrator or arbitration panel may not decide the issues of coverage or
224 extra-contractual damages, including:
- 225 (i) whether the claimant is a covered person;

- 226 (ii) whether the policy extends coverage to the loss; or
- 227 (iii) any allegations or claims asserting consequential damages or bad faith liability.
- 228 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
- 229 class-representative basis.
- 230 (n) If the arbitrator or arbitration panel finds that the action was not brought, pursued,
- 231 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees
- 232 and costs against the party that failed to bring, pursue, or defend the claim in good faith.
- 233 (o) An arbitration award issued under this section shall be the final resolution of all
- 234 claims not excluded by Subsection (8)(l) between the parties unless:
- 235 (i) the award was procured by corruption, fraud, or other undue means; ~~or~~
- 236 (ii) either party, within 20 days after service of the arbitration award:
- 237 (A) files a complaint requesting a trial de novo in the district court; and
- 238 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
- 239 under Subsection (8)(o)(ii)(A).
- 240 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), the claim
- 241 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules
- 242 of Evidence in the district court.
- 243 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
- 244 request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).
- 245 (q) (i) If the claimant, as the moving party in a trial de novo requested under
- 246 Subsection (8)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater
- 247 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.
- 248 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested
- 249 under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration
- 250 award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.
- 251 (iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(q)
- 252 shall include:
- 253 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

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

255 (iv) An award of costs under this Subsection (8)(q) may not exceed \$2,500 unless
256 Subsection (9)(h)(iii) applies.

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

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

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

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

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

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

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

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

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

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

278 (ii) a written statement under oath disclosing:

279 (A) (I) the names and last known addresses of all health care providers who have

280 rendered health care services to the covered person that are material to the claims for which

281 uninsured motorist benefits are sought for a period of five years preceding the date of the event

282 giving rise to the claim for uninsured motorist benefits up to the time the election for
283 arbitration or litigation has been exercised; and

284 (II) whether the covered person has seen other health care providers who have rendered
285 health care services to the covered person, which the covered person claims are immaterial to
286 the claims for which uninsured motorist benefits are sought, for a period of five years
287 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the
288 time the election for arbitration or litigation has been exercised that have not been disclosed
289 under Subsection (9)(a)(ii)(A)(I);

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

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

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

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

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

309 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain records

310 and billings from the individuals or entities disclosed.

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

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

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

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

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

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

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

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

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

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

335 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
336 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
337 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,

338 tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed
339 to the covered person less:

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

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

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

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

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

352 (ii) elect to:

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

355 (B) litigate or arbitrate the remaining claim.

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

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

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

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

365 (g) If the final award obtained through arbitration or litigation is greater than the

366 average of the covered person's initial written demand for payment provided for in Subsection
367 (9)(a)(i) and the uninsured motorist carrier's initial written response provided for in Subsection
368 (9)(c)(i), the uninsured motorist carrier shall pay:

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

372 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

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

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

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

390 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that
391 occur on or after March 30, 2010.

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

393 **31A-22-305.3. Underinsured motorist coverage.**

394 (1) As used in this section:

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

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

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

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

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

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

405 (I) a named insured;

406 (II) a named insured's spouse; or

407 (III) a dependent of a named insured.

408 (2) (a) (i) Underinsured motorist coverage under Subsection 31A-22-302(1)(c)
409 provides coverage for a covered person who is legally entitled to recover damages from an
410 owner or operator of an underinsured motor vehicle because of bodily injury, sickness, disease,
411 or death.

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

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

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

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

422 lesser amount by signing an acknowledgment form that:

- 423 (i) is filed with the department;
- 424 (ii) is provided by the insurer;
- 425 (iii) waives the higher coverage;
- 426 (iv) reasonably explains the purpose of underinsured motorist coverage; and
- 427 (v) discloses the additional premiums required to purchase underinsured motorist
- 428 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
- 429 coverage or the maximum underinsured motorist coverage limits available by the insurer under
- 430 the insured's motor vehicle policy.

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

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

440 (e) An acknowledgment under Subsection (2)(b) continues for that issuer of the
441 underinsured motorist coverage until the insured, in writing, requests different underinsured
442 motorist coverage from the insurer.

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

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

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

452 (ii) A written rejection under this Subsection (2)(g) shall be on a form provided by the
453 insurer that includes a reasonable explanation of the purpose of underinsured motorist coverage
454 and when it would be applicable.

455 (iii) A written rejection under this Subsection (2)(g) continues for that issuer of the
456 liability coverage until the insured in writing requests underinsured motorist coverage from that
457 liability insurer.

458 (3) (a) (i) Except as provided in this Subsection (3), a covered person injured in a
459 motor vehicle described in a policy that includes underinsured motorist benefits may not elect
460 to collect underinsured motorist coverage benefits from another motor vehicle insurance policy.

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

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

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

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

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

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

477 (B) Each parent's policy under this Subsection (3)(b)(ii) is liable only for the

478 percentage of the damages that the limit of liability of each parent's policy of underinsured
479 motorist coverage bears to the total of both parents' underinsured coverage applicable to the
480 accident.

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

483 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is
484 primary coverage, and the coverage elected by a person described under Subsections
485 31A-22-305(1)(a) and (b) is secondary coverage.

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

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

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

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

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

496 (c) Underinsured motorist coverage:

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

499 (ii) may not be subrogated by a workers' compensation insurance carrier;

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

501 (iv) may be reduced by health insurance subrogation only after the covered person is
502 made whole;

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

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

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

506 in violation of Section 41-1a-1314; or
507 (C) while committing a felony; and
508 (vi) notwithstanding Subsection (3)(c)(v), may be recovered:
509 (A) for a person under 18 years of age who is injured within the scope of Subsection
510 (3)(c)(v), but is limited to medical and funeral expenses; or
511 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
512 within the course and scope of the law enforcement officer's duties.
513 (4) The inception of the loss under Subsection 31A-21-313(1) for underinsured
514 motorist claims occurs upon the date of the last liability policy payment.
515 (5) (a) Within five business days after notification that all liability insurers have
516 tendered their liability policy limits, the underinsured carrier shall either:
517 (i) waive any subrogation claim the underinsured carrier may have against the person
518 liable for the injuries caused in the accident; or
519 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.
520 (b) If neither option is exercised under Subsection (5)(a), the subrogation claim is
521 considered to be waived by the underinsured carrier.
522 (6) Except as otherwise provided in this section, a covered person may seek, subject to
523 the terms and conditions of the policy, additional coverage under any policy:
524 (a) that provides coverage for damages resulting from motor vehicle accidents; and
525 (b) that is not required to conform to Section 31A-22-302.
526 (7) (a) When a claim is brought by a named insured or a person described in
527 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist
528 carrier, the claimant may elect to resolve the claim:
529 (i) by submitting the claim to binding arbitration; or
530 (ii) through litigation.
531 (b) Unless otherwise provided in the policy under which underinsured benefits are
532 claimed, the election provided in Subsection (7)(a) is available to the claimant only.
533 (c) Once a claimant elects to commence litigation under Subsection (7)(a)(ii), the

534 claimant may not elect to resolve the claim through binding arbitration under this section
535 without the written consent of the underinsured motorist coverage carrier.

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

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

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

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

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

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

545 (f) Unless otherwise agreed to in writing:

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

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

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

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

552 (g) Except as otherwise provided in this section or unless otherwise agreed to in
553 writing by the parties, an arbitration proceeding conducted under this section is governed by
554 Title 78B, Chapter 11, Utah Uniform Arbitration Act.

555 (h) An arbitration shall be conducted in accordance with Rules 26 through 37, 54, and
556 68 of the Utah Rules of Civil Procedure.

557 (i) An issue of discovery shall be resolved by the arbitrator or the arbitration panel.

558 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
559 constitutes a final decision.

560 (k) (i) ~~[The]~~ Except as provided in Subsection (8), the amount of an arbitration award
561 may not exceed the underinsured motorist policy limits of all applicable underinsured motorist

562 policies, including applicable underinsured motorist umbrella policies.

563 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all
564 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
565 equal to the combined underinsured motorist policy limits of all applicable underinsured
566 motorist policies.

567 (l) The arbitrator or arbitration panel may not decide an issue of coverage or
568 extra-contractual damages, including:

- 569 (i) whether the claimant is a covered person;
- 570 (ii) whether the policy extends coverage to the loss; or
- 571 (iii) an allegation or claim asserting consequential damages or bad faith liability.

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

574 (n) If the arbitrator or arbitration panel finds that the arbitration is not brought, pursued,
575 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees
576 and costs against the party that failed to bring, pursue, or defend the arbitration in good faith.

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

- 579 (i) the award is procured by corruption, fraud, or other undue means; ~~or~~
- 580 (ii) either party, within 20 days after service of the arbitration award:
 - 581 (A) files a complaint requesting a trial de novo in the district court; and
 - 582 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
 - 583 under Subsection (7)(o)(ii)(A).

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

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

589 (q) (i) If the claimant, as the moving party in a trial de novo requested under

590 Subsection (7)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater
591 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

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

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

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

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

599 (iv) An award of costs under this Subsection (7)(q) may not exceed \$2,500 unless
600 Subsection (8)(h)(iii) applies.

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

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

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

607 (s) If a district court determines, upon a motion of the nonmoving party, that a moving
608 party's use of the trial de novo process is filed in bad faith in accordance with Section
609 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

610 (t) Nothing in this section is intended to limit a claim under another portion of an
611 applicable insurance policy.

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

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

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

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

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

622 (ii) a written statement under oath disclosing:

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

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

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

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

644 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
645 employers of the covered person for a period of five years preceding the date of the event

646 giving rise to the claim for underinsured motorist benefits up to the time the election for
647 arbitration or litigation has been exercised;

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

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

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

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

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

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

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

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

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

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

671 (c) (i) An underinsured motorist carrier that receives an election for arbitration or a
672 notice of filing litigation and the demand for payment of underinsured motorist benefits under
673 Subsection (8)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the

674 demand and receipt of the items specified in Subsections (8)(a)(i) through (iii), to:

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

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

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

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

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

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

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

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

696 (ii) elect to:

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

699 (B) litigate or arbitrate the remaining claim.

700 (e) If a covered person elects to accept the amount tendered under Subsection (8)(c)(i)
701 as partial payment of all underinsured motorist claims, the final award obtained through

702 arbitration, litigation, or later settlement shall be reduced by any payment made by the
703 underinsured motorist carrier under Subsection (8)(c)(i).

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

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

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

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

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

716 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

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

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

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

734 (k) The provisions of this Subsection (8) only apply to motor vehicle accidents that
735 occur on or after March 30, 2010.