

1 **MOTOR VEHICLE INSURANCE MODIFICATIONS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd E. Kiser**

5 Senate Sponsor: John L. Valentine

6

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides a definition of new policy for purposes of determining the limits of
14 uninsured or underinsured motorist coverage;
- 15 ▶ provides that the definition of new policy applies retroactively to any claim arising
16 on or after January 1, 2001 for which, as of May 1, 2012, an insured has not made a
17 written demand for arbitration or filed a complaint in a court of competent
18 jurisdiction;
- 19 ▶ amends provisions relating to renewal notices for underinsured motorist coverage;
20 and
- 21 ▶ makes technical changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 **31A-22-302**, as last amended by Laws of Utah 2008, Chapter 36
 29 **31A-22-305**, as last amended by Laws of Utah 2011, Chapters 297 and 431
 30 **31A-22-305.3**, as last amended by Laws of Utah 2011, Chapter 431



31
 32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **31A-22-302** is amended to read:

34 **31A-22-302. Required components of motor vehicle insurance policies --**
 35 **Exceptions.**

36 (1) Every policy of insurance or combination of policies purchased to satisfy the
 37 owner's or operator's security requirement of Section 41-12a-301 shall include:

38 (a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;

39 (b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively
 40 waived under Subsection 31A-22-305[~~(4)~~](5);

41 (c) underinsured motorist coverage under Section 31A-22-305.3, unless affirmatively
 42 waived under Subsection 31A-22-305.3[~~(2)~~](3); and

43 (d) except as provided in Subsection (2) and subject to Subsection (3), personal injury
 44 protection under Sections 31A-22-306 through 31A-22-309.

45 (2) A policy of insurance or combination of policies, purchased to satisfy the owner's
 46 or operator's security requirement of Section 41-12a-301 for a motorcycle, off-highway vehicle,
 47 street-legal all-terrain vehicle, trailer, or semitrailer is not required to have personal injury
 48 protection under Sections 31A-22-306 through 31A-22-309.

49 (3) (a) First party medical coverages may be offered or included in policies issued to
 50 motorcycle, off-highway vehicle, street-legal all-terrain vehicle, trailer, and semitrailer owners
 51 or operators.

52 (b) Owners and operators of motorcycles, off-highway vehicles, street-legal all-terrain
 53 vehicles, trailers, and semitrailers are not covered by personal injury protection coverages in
 54 connection with injuries incurred while operating any of these vehicles.

55 (4) First party medical coverage expenses shall be governed by the relative value study
 56 provisions under Subsections 31A-22-307(2) and (3).

57 Section 2. Section **31A-22-305** is amended to read:

58 **31A-22-305. Uninsured motorist coverage.**

- 59 (1) As used in this section, "covered persons" includes:
- 60 (a) the named insured;
- 61 (b) persons related to the named insured by blood, marriage, adoption, or guardianship,
62 who are residents of the named insured's household, including those who usually make their
63 home in the same household but temporarily live elsewhere;
- 64 (c) any person occupying or using a motor vehicle:
- 65 (i) referred to in the policy; or
- 66 (ii) owned by a self-insured; and
- 67 (d) any person who is entitled to recover damages against the owner or operator of the
68 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under
69 Subsection (1)(a), (b), or (c).
- 70 (2) As used in this section, "uninsured motor vehicle" includes:
- 71 (a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered
72 under a liability policy at the time of an injury-causing occurrence; or
- 73 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
74 31A-22-304; and
- 75 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of
76 the deficiency;
- 77 (b) an unidentified motor vehicle that left the scene of an accident proximately caused
78 by the motor vehicle operator;
- 79 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
80 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
81 60 days; or
- 82 (d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of
83 the motor vehicle is declared insolvent by a court of competent jurisdiction; and
- 84 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent
85 that the claim against the insolvent insurer is not paid by a guaranty association or fund.
- 86 (3) ~~(a)~~ Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides
87 coverage for covered persons who are legally entitled to recover damages from owners or
88 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.
- 89 ~~(b)~~ (4) (a) For new policies written on or after January 1, 2001, the limits of

90 uninsured motorist coverage shall be equal to the lesser of the limits of the named insured's
91 motor vehicle liability coverage or the maximum uninsured motorist coverage limits available
92 by the insurer under the named insured's motor vehicle policy, unless ~~[the]~~ a named insured
93 rejects or purchases coverage in a lesser amount by signing an acknowledgment form that:

94 (i) is filed with the department;

95 (ii) is provided by the insurer;

96 (iii) waives the higher coverage;

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

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

99 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
100 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
101 under the named insured's motor vehicle policy.

102 (b) For purposes of this Subsection (4), "new policy" means:

103 (i) any policy that is issued which does not include a renewal or reinstatement of an
104 existing policy; or

105 (ii) a change to an existing policy that results in:

106 (A) a named insured being added to or deleted from the policy; or

107 (B) a change in the limits of the named insured's motor vehicle liability coverage.

108 (c) (i) As used in this Subsection (4)(c), "additional motor vehicle" means a change
109 that increases the total number of vehicles insured by the policy, and does not include
110 replacement, substitute, or temporary vehicles.

111 (ii) The adding of an additional motor vehicle to an existing personal lines or
112 commercial lines policy does not constitute a "new policy" for purposes of Subsection (4)(b).

113 (iii) If an additional motor vehicle is added to a personal lines policy where uninsured
114 motorist coverage has been rejected, or where uninsured motorist limits are lower than the
115 named insured's motor vehicle liability limits, the insurer shall provide a notice to a named
116 insured within thirty days that:

117 (A) reasonably explains the purpose of uninsured motorist coverage; and

118 (B) encourages the named insured to contact the insurance company or insurance
119 producer for quotes as to the additional premiums required to purchase uninsured motorist
120 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle

121 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
122 under the named insured's motor vehicle policy.

123 (d) A change in policy number resulting from any policy change not identified under
124 Subsection (4)(b)(ii) does not constitute a new policy.

125 (e) (i) Subsection (4)(b) applies retroactively to any claim arising on or after January 1,
126 2001 for which, as of May 1, 2012, an insured has not made a written demand for arbitration or
127 filed a complaint in a court of competent jurisdiction.

128 (ii) The Legislature finds that the retroactive application of Subsection (4):

129 (A) does not enlarge, eliminate, or destroy vested rights; and

130 (B) clarifies legislative intent.

131 ~~(e)~~ (f) A self-insured, including a governmental entity, may elect to provide
132 uninsured motorist coverage in an amount that is less than its maximum self-insured retention
133 under Subsections ~~(3)(b)~~ (4)(a) and ~~(4)~~ (5)(a) by issuing a declaratory memorandum or
134 policy statement from the chief financial officer or chief risk officer that declares the:

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

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

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

139 ~~(e)~~ (h) The acknowledgment under Subsection ~~(3)(b)~~ (4)(a) continues for that issuer
140 of the uninsured motorist coverage until the named insured requests, in writing, ~~[requests]~~
141 different uninsured motorist coverage from the insurer.

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

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

146 ~~[B) the costs associated with increasing the coverage in amounts up to and including~~
147 ~~the maximum amount available by the insurer under the insured's motor vehicle policy.]~~

148 (B) a disclosure of the additional premiums required to purchase uninsured motorist
149 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
150 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
151 under the named insured's motor vehicle policy.

152 (ii) The disclosure required under [~~this~~] Subsection [~~(3)(f)~~] (4)(i)(i) shall be sent to all
153 named insureds that carry uninsured motorist coverage limits in an amount less than the named
154 insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage
155 limits available by the insurer under the named insured's motor vehicle policy.

156 (j) For purposes of this Subsection (4), a notice or disclosure sent to a named insured in
157 a household constitutes notice or disclosure to all insureds within the household.

158 [~~(4)~~] (5) (a) (i) Except as provided in Subsection [~~(4)~~] (5)(b), the named insured may
159 reject uninsured motorist coverage by an express writing to the insurer that provides liability
160 coverage under Subsection 31A-22-302(1)(a).

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

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

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

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

172 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

183 (C) while committing a felony; and

184 (vi) notwithstanding Subsection [~~(4)(c)(v)~~] (5)(c)(v), may be recovered:

185 (A) for a person under 18 years of age who is injured within the scope of Subsection
186 [~~(4)(c)(v)~~] (5)(c)(v) but limited to medical and funeral expenses; or

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

189 (d) As used in this Subsection [~~(4)~~] (5), "motor vehicle" has the same meaning as under
190 Section 41-1a-102.

191 [~~(5)~~] (6) When a covered person alleges that an uninsured motor vehicle under
192 Subsection (2)(b) proximately caused an accident without touching the covered person or the
193 motor vehicle occupied by the covered person, the covered person shall show the existence of
194 the uninsured motor vehicle by clear and convincing evidence consisting of more than the
195 covered person's testimony.

196 [~~(6)~~] (7) (a) The limit of liability for uninsured motorist coverage for two or more
197 motor vehicles may not be added together, combined, or stacked to determine the limit of
198 insurance coverage available to an injured person for any one accident.

199 (b) (i) Subsection [~~(6)~~] (7)(a) applies to all persons except a covered person as defined
200 under Subsection [~~(7)~~] (8)(b)(ii).

201 (ii) A covered person as defined under Subsection [~~(7)~~] (8)(b)(ii) is entitled to the
202 highest limits of uninsured motorist coverage afforded for any one motor vehicle that the
203 covered person is the named insured or an insured family member.

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

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

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

210 [~~(7)~~] (8) (a) Uninsured motorist coverage under this section applies to bodily injury,
211 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if
212 the motor vehicle is described in the policy under which a claim is made, or if the motor
213 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.

214 Except as provided in Subsection [~~(6)~~] (7) or this Subsection [~~(7)~~] (8), a covered person injured
215 in a motor vehicle described in a policy that includes uninsured motorist benefits may not elect
216 to collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
217 under which the person is a covered person.

218 (b) Each of the following persons may also recover uninsured motorist benefits under
219 any one other policy in which they are described as a "covered person" as defined in Subsection
220 (1):

221 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and
222 (ii) except as provided in Subsection [~~(7)~~] (8)(c), a covered person injured while
223 occupying or using a motor vehicle that is not owned, leased, or furnished:

- 224 (A) to the covered person;
- 225 (B) to the covered person's spouse; or
- 226 (C) to the covered person's resident parent or resident sibling.

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

- 229 (A) a dependent minor of parents who reside in separate households; and
- 230 (B) injured while occupying or using a motor vehicle that is not owned, leased, or
231 furnished:

- 232 (I) to the covered person;
- 233 (II) to the covered person's resident parent; or
- 234 (III) to the covered person's resident sibling.

235 (ii) Each parent's policy under this Subsection [~~(7)~~] (8)(c) is liable only for the
236 percentage of the damages that the limit of liability of each parent's policy of uninsured
237 motorist coverage bears to the total of both parents' uninsured coverage applicable to the
238 accident.

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

241 (e) A covered person in Subsection [~~(7)~~] (8)(b) is not barred against making subsequent
242 elections if recovery is unavailable under previous elections.

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

245 (ii) Except to the extent permitted by Subsection [~~(6)~~] (7) and this Subsection [~~(7)~~] (8),
246 interpolicy stacking is prohibited for uninsured motorist coverage.

247 [~~(8)~~] (9) (a) When a claim is brought by a named insured or a person described in
248 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the
249 claimant may elect to resolve the claim:

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

251 (ii) through litigation.

252 (b) Unless otherwise provided in the policy under which uninsured benefits are
253 claimed, the election provided in Subsection [~~(8)~~] (9)(a) is available to the claimant only.

254 (c) Once the claimant has elected to commence litigation under Subsection [~~(8)~~]
255 (9)(a)(ii), the claimant may not elect to resolve the claim through binding arbitration under this
256 section without the written consent of the uninsured motorist carrier.

257 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
258 binding arbitration under Subsection [~~(8)~~] (9)(a)(i) shall be resolved by a single arbitrator.

259 (ii) All parties shall agree on the single arbitrator selected under Subsection [~~(8)~~]
260 (9)(d)(i).

261 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection
262 [~~(8)~~] (9)(d)(ii), the parties shall select a panel of three arbitrators.

263 (e) If the parties select a panel of three arbitrators under Subsection [~~(8)~~] (9)(d)(iii):

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

265 (ii) the arbitrators appointed under Subsection [~~(8)~~] (9)(e)(i) shall select one additional
266 arbitrator to be included in the panel.

267 (f) Unless otherwise agreed to in writing:

268 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
269 under Subsection [~~(8)~~] (9)(d)(i); or

270 (ii) if an arbitration panel is selected under Subsection [~~(8)~~] (9)(d)(iii):

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

272 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
273 under Subsection [~~(8)~~] (9)(e)(ii).

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

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

277 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and
278 68 of the Utah Rules of Civil Procedure.

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

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

282 (k) (i) Except as provided in Subsection [~~9~~] (10), the amount of an arbitration award
283 may not exceed the uninsured motorist policy limits of all applicable uninsured motorist
284 policies, including applicable uninsured motorist umbrella policies.

285 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all
286 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount
287 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist
288 policies.

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

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

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

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

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

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

299 (o) An arbitration award issued under this section shall be the final resolution of all
300 claims not excluded by Subsection [~~8~~] (9)(l) between the parties unless:

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

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

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

304 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
305 under Subsection [~~8~~] (9)(o)(ii)(A).

306 (p) (i) Upon filing a complaint for a trial de novo under Subsection [~~8~~] (9)(o), the

307 claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah
308 Rules of Evidence in the district court.

309 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
310 request a jury trial with a complaint requesting a trial de novo under Subsection [~~8~~]
311 9(o)(ii)(A).

312 (q) (i) If the claimant, as the moving party in a trial de novo requested under
313 Subsection [~~8~~] 9(o), does not obtain a verdict that is at least \$5,000 and is at least 20%
314 greater than the arbitration award, the claimant is responsible for all of the nonmoving party's
315 costs.

316 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested
317 under Subsection [~~8~~] 9(o), does not obtain a verdict that is at least 20% less than the
318 arbitration award, the uninsured motorist carrier is responsible for all of the nonmoving party's
319 costs.

320 (iii) Except as provided in Subsection [~~8~~] 9(q)(iv), the costs under this Subsection
321 [~~8~~] 9(q) shall include:

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

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

324 (iv) An award of costs under this Subsection [~~8~~] 9(q) may not exceed \$2,500 unless
325 Subsection [~~9~~] 10(h)(iii) applies.

326 (r) For purposes of determining whether a party's verdict is greater or less than the
327 arbitration award under Subsection [~~8~~] 9(q), a court may not consider any recovery or other
328 relief granted on a claim for damages if the claim for damages:

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

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

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

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

338 (u) If there are multiple uninsured motorist policies, as set forth in Subsection [~~(7)~~] (8),
339 the claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist
340 carriers.

341 [~~(9)~~] (10) (a) Within 30 days after a covered person elects to submit a claim for
342 uninsured motorist benefits to binding arbitration or files litigation, the covered person shall
343 provide to the uninsured motorist carrier:

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

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

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

347 (ii) a written statement under oath disclosing:

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

353 (II) whether the covered person has seen other health care providers who have rendered
354 health care services to the covered person, which the covered person claims are immaterial to
355 the claims for which uninsured motorist benefits are sought, for a period of five years
356 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the
357 time the election for arbitration or litigation has been exercised that have not been disclosed
358 under Subsection [~~(9)~~] (10)(a)(ii)(A)(I);

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

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

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

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

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

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

380 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed
381 health care providers or health care insurers under Subsection [~~9~~] (10)(a)(ii) is reasonably
382 necessary, the uninsured motorist carrier may:

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

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

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

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

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

393 (iii) The time periods imposed by Subsection [~~9~~] (10)(c)(i) are tolled pending
394 resolution of the dispute concerning the disclosure and production of records of the health care
395 providers or health care insurers.

396 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice
397 of filing litigation and the demand for payment of uninsured motorist benefits under Subsection
398 [~~9~~] (10)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand
399 and receipt of the items specified in Subsections [~~9~~] (10)(a)(i) through (iii), to:

400 (A) provide a written response to the written demand for payment provided for in
401 Subsection [~~(9)~~] (10)(a)(i);

402 (B) except as provided in Subsection [~~(9)~~] (10)(c)(i)(C), tender the amount, if any, of
403 the uninsured motorist carrier's determination of the amount owed to the covered person; and

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

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

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

414 (ii) If the amount tendered by the uninsured motorist carrier under Subsection [~~(9)~~]
415 (10)(c)(i) is the total amount of the uninsured motorist policy limits, the tendered amount shall
416 be accepted by the covered person.

417 (d) A covered person who receives a written response from an uninsured motorist
418 carrier as provided for in Subsection [~~(9)~~] (10)(c)(i), may:

419 (i) elect to accept the amount tendered in Subsection [~~(9)~~] (10)(c)(i) as payment in full
420 of all uninsured motorist claims; or

421 (ii) elect to:

422 (A) accept the amount tendered in Subsection [~~(9)~~] (10)(c)(i) as partial payment of all
423 uninsured motorist claims; and

424 (B) litigate or arbitrate the remaining claim.

425 (e) If a covered person elects to accept the amount tendered under Subsection [~~(9)~~]
426 (10)(c)(i) as partial payment of all uninsured motorist claims, the final award obtained through
427 arbitration, litigation, or later settlement shall be reduced by any payment made by the
428 uninsured motorist carrier under Subsection [~~(9)~~] (10)(c)(i).

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

430 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid

431 under Subsection [~~9~~] (10)(c)(i) until after the arbitration award has been rendered; and

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

434 (g) If the final award obtained through arbitration or litigation is greater than the
435 average of the covered person's initial written demand for payment provided for in Subsection
436 [~~9~~] (10)(a)(i) and the uninsured motorist carrier's initial written response provided for in
437 Subsection [~~9~~] (10)(c)(i), the uninsured motorist carrier shall pay:

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

441 (ii) any of the following applicable costs:

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

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

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

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

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

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

451 (iii) The award of costs by the arbitrator or arbitration panel under Subsection [~~9~~]
452 (10)(g)(ii) may not exceed \$5,000.

453 (i) (i) A covered person shall disclose all material information, other than rebuttal
454 evidence, as specified in Subsection [~~9~~] (10)(a).

455 (ii) If the information under Subsection [~~9~~] (10)(i)(i) is not disclosed, the covered
456 person may not recover costs or any amounts in excess of the policy under Subsection [~~9~~]
457 (10)(g).

458 (j) This Subsection [~~9~~] (10) does not limit any other cause of action that arose or may
459 arise against the uninsured motorist carrier from the same dispute.

460 (k) The provisions of this Subsection [~~9~~] (10) only apply to motor vehicle accidents
461 that occur on or after March 30, 2010.

462 Section 3. Section 31A-22-305.3 is amended to read:

463 **31A-22-305.3. Underinsured motorist coverage.**

464 (1) As used in this section:

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

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

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

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

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

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

475 (I) a named insured;

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

477 (III) a dependent of a named insured.

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

482 ~~(i)~~ (b) A covered person occupying or using a motor vehicle owned, leased, or
483 furnished to the covered person, the covered person's spouse, or covered person's resident
484 relative may recover underinsured benefits only if the motor vehicle is:

485 ~~(A)~~ (i) described in the policy under which a claim is made; or

486 ~~(B)~~ (ii) a newly acquired or replacement motor vehicle covered under the terms of the
487 policy.

488 ~~(b)~~ (3)(a) For new policies written on or after January 1, 2001, the limits of
489 underinsured motorist coverage shall be equal to the lesser of the limits of the named insured's
490 motor vehicle liability coverage or the maximum underinsured motorist coverage limits
491 available by the insurer under the named insured's motor vehicle policy, unless ~~the~~ a named
492 insured rejects or purchases coverage in a lesser amount by signing an acknowledgment form

493 that:

- 494 (i) is filed with the department;
- 495 (ii) is provided by the insurer;
- 496 (iii) waives the higher coverage;
- 497 (iv) reasonably explains the purpose of underinsured motorist coverage; and
- 498 (v) discloses the additional premiums required to purchase underinsured motorist
- 499 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
- 500 liability coverage or the maximum underinsured motorist coverage limits available by the
- 501 insurer under the named insured's motor vehicle policy.

502 (b) For purposes of this Subsection (3), "new policy" means:

503 (i) any policy that is issued which does not include a renewal or reinstatement of an

504 existing policy; or

505 (ii) a change to an existing policy that results in:

506 (A) a named insured being added to or deleted from the policy; or

507 (B) a change in the limits of the named insured's motor vehicle liability coverage.

508 (c) (i) As used in this Subsection (3)(c), "additional motor vehicle" means a change

509 that increases the total number of vehicles insured by the policy, and does not include

510 replacement, substitute, or temporary vehicles.

511 (ii) The adding of an additional motor vehicle to an existing personal lines or

512 commercial lines policy does not constitute a "new policy" for purposes of Subsection (3)(b).

513 (iii) If an additional motor vehicle is added to a personal lines policy where

514 underinsured motorist coverage has been rejected, or where underinsured motorist limits are

515 lower than the named insured's motor vehicle liability limits, the insurer shall provide a notice

516 to a named insured within thirty days that:

517 (A) reasonably explains the purpose of underinsured motorist coverage; and

518 (B) encourages the named insured to contact the insurance company or insurance

519 producer for quotes as to the additional premiums required to purchase underinsured motorist

520 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle

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

522 insurer under the named insured's motor vehicle policy.

523 (d) A change in policy number resulting from any policy change not identified under

524 Subsection (3)(b)(ii) does not constitute a new policy.

525 (e) (i) Subsection (3)(b) applies retroactively to any claim arising on or after January 1,
 526 2001 for which, as of May 1, 2012, an insured has not made a written demand for arbitration or
 527 filed a complaint in a court of competent jurisdiction.

528 (ii) The Legislature finds that the retroactive application of Subsection (3):

529 (A) does not enlarge, eliminate, or destroy vested rights; and

530 (B) clarifies legislative intent.

531 ~~[(e)]~~ (f) A self-insured, including a governmental entity, may elect to provide
 532 underinsured motorist coverage in an amount that is less than its maximum self-insured
 533 retention under Subsections ~~[(2)(b)]~~ (3)(a) and ~~[(2)(g)]~~ (3)(j) by issuing a declaratory
 534 memorandum or policy statement from the chief financial officer or chief risk officer that
 535 declares the:

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

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

538 ~~[(d)]~~ (g) Underinsured motorist coverage may not be sold with limits that are less than:

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

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

541 ~~[(e)]~~ (h) An acknowledgment under Subsection ~~[(2)(b)]~~ (3)(a) continues for that issuer
 542 of the underinsured motorist coverage until the named insured, in writing, requests different
 543 underinsured motorist coverage from the insurer.

544 ~~[(f)]~~ (i) (i) The named insured's underinsured motorist coverage, as described in
 545 Subsection (2)~~[(a)]~~, is secondary to the liability coverage of an owner or operator of an
 546 underinsured motor vehicle, as described in Subsection (1).

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

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

553 ~~[(ii) A written rejection under this Subsection (2)(g) shall be on a form provided by the~~
 554 ~~insurer that includes a reasonable explanation of the purpose of underinsured motorist coverage~~

555 and when it would be applicable.]

556 ~~[(iii) A written rejection under this Subsection (2)(g) continues for that issuer of the~~
557 ~~liability coverage until the insured in writing requests underinsured motorist coverage from that~~
558 ~~liability insurer.]~~

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

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

563 (B) a disclosure of the additional premiums required to purchase underinsured motorist
564 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
565 liability coverage or the maximum underinsured motorist coverage limits available by the
566 insurer under the named insured's motor vehicle policy.

567 (ii) The disclosure required under this Subsection (3)(j) shall be sent to all named
568 insureds that carry underinsured motorist coverage limits in an amount less than the named
569 insured's motor vehicle liability policy limits or the maximum underinsured motorist coverage
570 limits available by the insurer under the named insured's motor vehicle policy.

571 (k) For purposes of this Subsection (3), a notice or disclosure sent to a named insured
572 in a household constitutes notice or disclosure to all insureds within the household.

573 ~~[(3)]~~ (4) (a) (i) Except as provided in this Subsection ~~[(3)]~~ (4), a covered person injured
574 in a motor vehicle described in a policy that includes underinsured motorist benefits may not
575 elect to collect underinsured motorist coverage benefits from another motor vehicle insurance
576 policy.

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

580 (iii) Subsection ~~[(3)]~~ (4)(a)(ii) applies to all persons except a covered person described
581 under Subsections ~~[(3)]~~ (4)(b)(i) and (ii).

582 (b) (i) Except as provided in Subsection ~~[(3)]~~ (4)(b)(ii), a covered person injured while
583 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the
584 covered person, the covered person's spouse, or the covered person's resident parent or resident
585 sibling, may also recover benefits under any one other policy under which the covered person is

586 also a covered person.

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

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

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

593 (B) Each parent's policy under this Subsection [~~(3)~~] (4)(b)(ii) is liable only for the
594 percentage of the damages that the limit of liability of each parent's policy of underinsured
595 motorist coverage bears to the total of both parents' underinsured coverage applicable to the
596 accident.

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

599 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is
600 primary coverage, and the coverage elected by a person described under Subsections
601 31A-22-305(1)(a) and (b) is secondary coverage.

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

603 (vi) A covered person as described under Subsection [~~(3)~~] (4)(b)(i) is entitled to the
604 highest limits of underinsured motorist coverage under only one additional policy per
605 household applicable to that covered person as a named insured, spouse, or relative.

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

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

610 (B) Except to the extent permitted by this Subsection [~~(3)~~] (4), interpolicy stacking is
611 prohibited for underinsured motorist coverage.

612 (c) Underinsured motorist coverage:

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

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

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

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

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

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

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

623 (C) while committing a felony; and

624 (vi) notwithstanding Subsection [~~(3)~~] (4)(c)(v), may be recovered:

625 (A) for a person under 18 years of age who is injured within the scope of Subsection
626 [~~(3)~~] (4)(c)(v), but is limited to medical and funeral expenses; or

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

629 [~~(4)~~] (5) The inception of the loss under Subsection 31A-21-313(1) for underinsured
630 motorist claims occurs upon the date of the last liability policy payment.

631 [~~(5)~~] (6) (a) Within five business days after notification that all liability insurers have
632 tendered their liability policy limits, the underinsured carrier shall either:

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

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

636 (b) If neither option is exercised under Subsection [~~(5)~~] (6)(a), the subrogation claim is
637 considered to be waived by the underinsured carrier.

638 [~~(6)~~] (7) Except as otherwise provided in this section, a covered person may seek,
639 subject to the terms and conditions of the policy, additional coverage under any policy:

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

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

642 [~~(7)~~] (8) (a) When a claim is brought by a named insured or a person described in
643 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist
644 carrier, the claimant may elect to resolve the claim:

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

646 (ii) through litigation.

647 (b) Unless otherwise provided in the policy under which underinsured benefits are

648 claimed, the election provided in Subsection [~~(7)~~] (8)(a) is available to the claimant only.

649 (c) Once a claimant elects to commence litigation under Subsection [~~(7)~~] (8)(a)(ii), the
650 claimant may not elect to resolve the claim through binding arbitration under this section
651 without the written consent of the underinsured motorist coverage carrier.

652 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
653 binding arbitration under Subsection [~~(7)~~] (8)(a)(i) shall be resolved by a single arbitrator.

654 (ii) All parties shall agree on the single arbitrator selected under Subsection [~~(7)~~]
655 (8)(d)(i).

656 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection
657 [~~(7)~~] (8)(d)(ii), the parties shall select a panel of three arbitrators.

658 (e) If the parties select a panel of three arbitrators under Subsection [~~(7)~~] (8)(d)(iii):

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

660 (ii) the arbitrators appointed under Subsection [~~(7)~~] (8)(e)(i) shall select one additional
661 arbitrator to be included in the panel.

662 (f) Unless otherwise agreed to in writing:

663 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
664 under Subsection [~~(7)~~] (8)(d)(i); or

665 (ii) if an arbitration panel is selected under Subsection [~~(7)~~] (8)(d)(iii):

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

667 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
668 under Subsection [~~(7)~~] (8)(e)(ii).

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

672 (h) An arbitration shall be conducted in accordance with Rules 26 through 37, 54, and
673 68 of the Utah Rules of Civil Procedure.

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

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

677 (k) (i) Except as provided in Subsection [~~(8)~~] (9), the amount of an arbitration award
678 may not exceed the underinsured motorist policy limits of all applicable underinsured motorist

679 policies, including applicable underinsured motorist umbrella policies.

680 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all
681 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
682 equal to the combined underinsured motorist policy limits of all applicable underinsured
683 motorist policies.

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

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

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

688 (iii) an allegation or claim asserting consequential damages or bad faith liability.

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

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

694 (o) An arbitration award issued under this section shall be the final resolution of all
695 claims not excluded by Subsection [~~(7)~~] (8)(l) between the parties unless:

696 (i) the award is procured by corruption, fraud, or other undue means;

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

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

699 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
700 under Subsection [~~(7)~~] (8)(o)(ii)(A).

701 (p) (i) Upon filing a complaint for a trial de novo under Subsection [~~(7)~~] (8)(o), a claim
702 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules
703 of Evidence in the district court.

704 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
705 request a jury trial with a complaint requesting a trial de novo under Subsection [~~(7)~~]
706 (8)(o)(ii)(A).

707 (q) (i) If the claimant, as the moving party in a trial de novo requested under
708 Subsection [~~(7)~~] (8)(o), does not obtain a verdict that is at least \$5,000 and is at least 20%
709 greater than the arbitration award, the claimant is responsible for all of the nonmoving party's

710 costs.

711 (ii) If the underinsured motorist carrier, as the moving party in a trial de novo requested
712 under Subsection [~~7~~] (8)(o), does not obtain a verdict that is at least 20% less than the
713 arbitration award, the underinsured motorist carrier is responsible for all of the nonmoving
714 party's costs.

715 (iii) Except as provided in Subsection [~~7~~] (8)(q)(iv), the costs under this Subsection
716 [~~7~~] (8)(q) shall include:

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

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

719 (iv) An award of costs under this Subsection [~~7~~] (8)(q) may not exceed \$2,500 unless
720 Subsection [~~8~~] (9)(h)(iii) applies.

721 (r) For purposes of determining whether a party's verdict is greater or less than the
722 arbitration award under Subsection [~~7~~] (8)(q), a court may not consider any recovery or other
723 relief granted on a claim for damages if the claim for damages:

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

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

727 (s) If a district court determines, upon a motion of the nonmoving party, that a moving
728 party's use of the trial de novo process is filed in bad faith in accordance with Section
729 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

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

732 (u) If there are multiple underinsured motorist policies, as set forth in Subsection [~~3~~]
733 (4), the claimant may elect to arbitrate in one hearing the claims against all the underinsured
734 motorist carriers.

735 [~~8~~] (9) (a) Within 30 days after a covered person elects to submit a claim for
736 underinsured motorist benefits to binding arbitration or files litigation, the covered person shall
737 provide to the underinsured motorist carrier:

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

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

741 (B) the factual and legal basis and any supporting documentation for the demand;
742 (ii) a written statement under oath disclosing:

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

748 (II) whether the covered person has seen other health care providers who have rendered
749 health care services to the covered person, which the covered person claims are immaterial to
750 the claims for which underinsured motorist benefits are sought, for a period of five years
751 preceding the date of the event giving rise to the claim for underinsured motorist benefits up to
752 the time the election for arbitration or litigation has been exercised that have not been disclosed
753 under Subsection [~~(8)~~] (9)(a)(ii)(A)(I);

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

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

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

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

769 (E) all state and federal statutory lienholders including a statement as to whether the
770 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health
771 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,

772 or if the claim is subject to any other state or federal statutory liens; and

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

775 (b) (i) If the underinsured motorist carrier determines that the disclosure of undisclosed
776 health care providers or health care insurers under Subsection [~~8~~] 9(a)(ii) is reasonably
777 necessary, the underinsured motorist carrier may:

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

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

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

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

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

788 (iii) The time periods imposed by Subsection [~~8~~] 9(c)(i) are tolled pending
789 resolution of the dispute concerning the disclosure and production of records of the health care
790 providers or health care insurers.

791 (c) (i) An underinsured motorist carrier that receives an election for arbitration or a
792 notice of filing litigation and the demand for payment of underinsured motorist benefits under
793 Subsection [~~8~~] 9(a)(i) shall have a reasonable time, not to exceed 60 days from the date of
794 the demand and receipt of the items specified in Subsections [~~8~~] 9(a)(i) through (iii), to:

795 (A) provide a written response to the written demand for payment provided for in
796 Subsection [~~8~~] 9(a)(i);

797 (B) except as provided in Subsection [~~8~~] 9(c)(i)(C), tender the amount, if any, of the
798 underinsured motorist carrier's determination of the amount owed to the covered person; and

799 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
800 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
801 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,
802 tender the amount, if any, of the underinsured motorist carrier's determination of the amount

803 owed to the covered person less:

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

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

809 (ii) If the amount tendered by the underinsured motorist carrier under Subsection [~~8~~]
810 9(c)(i) is the total amount of the underinsured motorist policy limits, the tendered amount
811 shall be accepted by the covered person.

812 (d) A covered person who receives a written response from an underinsured motorist
813 carrier as provided for in Subsection [~~8~~] 9(c)(i), may:

814 (i) elect to accept the amount tendered in Subsection [~~8~~] 9(c)(i) as payment in full
815 of all underinsured motorist claims; or

816 (ii) elect to:

817 (A) accept the amount tendered in Subsection [~~8~~] 9(c)(i) as partial payment of all
818 underinsured motorist claims; and

819 (B) litigate or arbitrate the remaining claim.

820 (e) If a covered person elects to accept the amount tendered under Subsection [~~8~~]
821 9(c)(i) as partial payment of all underinsured motorist claims, the final award obtained
822 through arbitration, litigation, or later settlement shall be reduced by any payment made by the
823 underinsured motorist carrier under Subsection [~~8~~] 9(c)(i).

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

825 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
826 under Subsection [~~8~~] 9(c)(i) until after the arbitration award has been rendered; and

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

829 (g) If the final award obtained through arbitration or litigation is greater than the
830 average of the covered person's initial written demand for payment provided for in Subsection
831 [~~8~~] 9(a)(i) and the underinsured motorist carrier's initial written response provided for in
832 Subsection [~~8~~] 9(c)(i), the underinsured motorist carrier shall pay:

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

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

836 (ii) any of the following applicable costs:

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

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

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

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

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

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

846 (iii) The award of costs by the arbitrator or arbitration panel under Subsection [~~8~~]
847 9(g)(ii) may not exceed \$5,000.

848 (i) (i) A covered person shall disclose all material information, other than rebuttal
849 evidence, as specified in Subsection [~~8~~] 9(a).

850 (ii) If the information under Subsection [~~8~~] 9(i)(i) is not disclosed, the covered
851 person may not recover costs or any amounts in excess of the policy under Subsection [~~8~~]
852 9(g).

853 (j) This Subsection [~~8~~] 9 does not limit any other cause of action that arose or may
854 arise against the underinsured motorist carrier from the same dispute.

855 (k) The provisions of this Subsection [~~8~~] 9 only apply to motor vehicle accidents
856 that occur on or after March 30, 2010.

Legislative Review Note
as of 2-21-12 5:21 PM

Office of Legislative Research and General Counsel