

1 **UNINSURED AND UNDERINSURED MOTORIST COVERAGE**

2 **AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: Jack R. Draxler

7

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the acknowledgment form requirements for a named insured to sign to
15 reject the statutory minimum of uninsured or underinsured motorist coverage or
16 purchase coverage in a lesser amount;
- 17 ▶ makes the acknowledgment form requirement retroactive for any claim arising on or
18 after January 1, 2001, for which, as of May 14, 2013, an insured has not made a
19 written demand for arbitration or filed a complaint in a court of competent
20 jurisdiction;
- 21 ▶ provides that any selection or rejection of uninsured or underinsured motorist
22 coverage continues for that issuer of the liability coverage until the insured requests,
23 in writing, a change of uninsured or underinsured motorist coverage from that
24 liability insurer;
- 25 ▶ amends the Rules of Civil Procedure that an arbitration shall comply with when
26 arbitrating a claim that is brought by a named insured or a covered person and is
27 asserted against the covered person's uninsured or underinsured motorist carrier;



28 ▶ requires a covered person to disclose all material information, other than rebuttal
29 evidence, within 30 days after a covered person elects to submit a claim for
30 uninsured or underinsured motorist coverage benefits to binding arbitration or files
31 litigation; and

32 ▶ makes technical corrections.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **31A-22-305**, as last amended by Laws of Utah 2012, Chapter 283

40 **31A-22-305.3**, as last amended by Laws of Utah 2012, Chapter 283



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

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

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

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

46 (a) the named insured;

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

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

51 (i) referred to in the policy; or

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

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

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

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

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

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

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

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

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

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

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

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

80 (i) is filed with the department;

81 (ii) is provided by the insurer;

82 (iii) waives the higher coverage;

83 (iv) ~~reasonably explains the purpose of~~ need only state in this or similar language that
84 uninsured motorist coverage provides benefits or protection to you and other covered persons
85 for bodily injury resulting from an accident caused by the fault of another party where the other
86 party has no liability insurance; and

87 (v) discloses the premium required to purchase the statutory minimum uninsured
88 motorist coverage and additional premiums required to purchase uninsured motorist coverage
89 with limits equal to the lesser of the limits of the named insured's motor vehicle liability

90 coverage or the maximum uninsured motorist coverage limits available by the insurer under the
91 named insured's motor vehicle policy.

92 (b) Any selection or rejection under this Subsection (4) continues for that issuer of the
93 liability coverage until the insured requests, in writing, a change of uninsured motorist
94 coverage from that liability insurer.

95 (c) (i) Subsections (4)(a) and (b) apply retroactively to any claim arising on or after
96 January 1, 2001, for which, as of May 14, 2013, an insured has not made a written demand for
97 arbitration or filed a complaint in a court of competent jurisdiction.

98 (ii) The Legislature finds that the retroactive application of Subsections (4)(a) and (b)
99 clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

100 ~~[(b)]~~ (d) For purposes of this Subsection (4), "new policy" means:

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

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

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

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

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

109 (ii) The adding of an additional motor vehicle to an existing personal lines or
110 commercial lines policy does not constitute a new policy for purposes of Subsection
111 (4)~~[(b)]~~(d).

112 (iii) If an additional motor vehicle is added to a personal lines policy where uninsured
113 motorist coverage has been rejected, or where uninsured motorist limits are lower than the
114 named insured's motor vehicle liability limits, the insurer shall provide a notice to a named
115 insured within 30 days that:

116 (A) ~~[reasonably]~~ in the same manner as described in Subsection (4)(a)(iv), explains the
117 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 ~~(f)~~ (f) A change in policy number resulting from any policy change not identified
124 under Subsection (4)~~(b)~~(d)(ii) does not constitute a new policy.

125 ~~(e)~~ (g) (i) Subsection (4)~~(b)~~(d) applies retroactively to any claim arising on or after
126 January 1, 2001, for which, as of May 1, 2012, an insured has not made a written demand for
127 arbitration or 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 ~~(f)~~ (h) 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 (4)(a) and (5)(a) by issuing a declaratory memorandum or policy statement
134 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 ~~(g)~~ (i) 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 ~~(h)~~ (j) The acknowledgment under Subsection (4)(a) continues for that issuer of the
140 uninsured motorist coverage until the named insured requests, in writing, different uninsured
141 motorist coverage from the insurer.

142 ~~(i)~~ (k) (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 in the same manner as described in
146 Subsection (4)(a)(iv); and

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

151 (ii) The disclosure required under Subsection (4)~~(i)~~(k)(i) shall be sent to all named

152 insureds that carry uninsured motorist coverage limits in an amount less than the named
153 insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage
154 limits available by the insurer under the named insured's motor vehicle policy.

155 ~~[(f)]~~ (l) For purposes of this Subsection (4), a notice or disclosure sent to a named
156 insured in a household constitutes notice or disclosure to all insureds within the household.

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

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

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

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

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

171 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

182 (C) while committing a felony; and

183 (vi) notwithstanding Subsection (5)(c)(v), may be recovered:

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

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

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

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

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

198 (b) (i) Subsection (7)(a) applies to all persons except a covered person as defined under
199 Subsection (8)(b)(ii).

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

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

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

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

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

214 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to
215 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
216 under which the person is a covered person.

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

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

221 (ii) except as provided in Subsection (8)(c), a covered person injured while occupying
222 or using a motor vehicle that is not owned, leased, or furnished:

223 (A) to the covered person;

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

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

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

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

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

231 (I) to the covered person;

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

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

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

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

239 (e) A covered person in Subsection (8)(b) is not barred against making subsequent
240 elections if recovery is unavailable under previous elections.

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

243 (ii) Except to the extent permitted by Subsection (7) and this Subsection (8),
244 interpolicy stacking is prohibited for uninsured motorist coverage.

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

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

249 (ii) through litigation.

250 (b) Unless otherwise provided in the policy under which uninsured benefits are
251 claimed, the election provided in Subsection (9)(a) is available to the claimant only.

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

255 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
256 binding arbitration under Subsection (9)(a)(i) shall be resolved by a single arbitrator.

257 (ii) All parties shall agree on the single arbitrator selected under Subsection (9)(d)(i).

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

260 (e) If the parties select a panel of three arbitrators under Subsection (9)(d)(iii):

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

262 (ii) the arbitrators appointed under Subsection (9)(e)(i) shall select one additional
263 arbitrator to be included in the panel.

264 (f) Unless otherwise agreed to in writing:

265 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
266 under Subsection (9)(d)(i); or

267 (ii) if an arbitration panel is selected under Subsection (9)(d)(iii):

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

269 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
270 under Subsection (9)(e)(ii).

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

274 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),
275 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of

276 Subsections (10)(a) through (c) are satisfied.

277 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure
278 shall be determined based on the claimant's specific monetary amount in the written demand
279 for payment of uninsured motorist coverage benefits as required in Subsection (10)(a)(i)(A).

280 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to claims
281 under this part.

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

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

285 (k) (i) Except as provided in Subsection (10), the amount of an arbitration award may
286 not exceed the uninsured motorist policy limits of all applicable uninsured motorist policies,
287 including applicable uninsured motorist umbrella policies.

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

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

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

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

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

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

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

302 (o) An arbitration award issued under this section shall be the final resolution of all
303 claims not excluded by Subsection (9)(l) between the parties unless:

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

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

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

307 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
308 under Subsection (9)(o)(ii)(A).

309 (p) (i) Upon filing a complaint for a trial de novo under Subsection (9)(o), the claim
310 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules
311 of Evidence in the district court.

312 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
313 request a jury trial with a complaint requesting a trial de novo under Subsection (9)(o)(ii)(A).

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

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

320 (iii) Except as provided in Subsection (9)(q)(iv), the costs under this Subsection (9)(q)
321 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 (9)(q) may not exceed \$2,500 unless
325 Subsection (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 (9)(q), a court may not consider any recovery or other relief
328 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 (8), the
339 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist
340 carriers.

341 (10) (a) Within 30 days after a covered person elects to submit a claim for uninsured
342 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
343 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 (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 (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 (10)(c)(i) are tolled pending resolution of
394 the dispute concerning the disclosure and production of records of the health care providers or
395 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 (10)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and
399 receipt of the items specified in Subsections (10)(a)(i) through (iii), to:

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

402 (B) except as provided in Subsection (10)(c)(i)(C), tender the amount, if any, of the
403 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 (10)(c)(i)
415 is the total amount of the uninsured motorist policy limits, the tendered amount shall be
416 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 (10)(c)(i), may:

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

421 (ii) elect to:

422 (A) accept the amount tendered in Subsection (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 (10)(c)(i)
426 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 (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 (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 (10)(a)(i) and the uninsured motorist carrier's initial written response provided for in
437 Subsection (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
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, within 30 days after a covered person elects to submit a claim for uninsured motorist
455 coverage benefits to binding arbitration or files litigation as specified in Subsection (10)(a).

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

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

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

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

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

484 (i) described in the policy under which a claim is made; or

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

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

492 (i) is filed with the department;

493 (ii) is provided by the insurer;

494 (iii) waives the higher coverage;

495 (iv) ~~[reasonably explains the purpose of]~~ need only state in this or similar language that

496 underinsured motorist coverage provides benefits or protection to you and other covered

497 persons for bodily injury resulting from an accident caused by the fault of another party where

498 the other party has insufficient liability insurance; and

499 (v) discloses the premium required to purchase the statutory minimum underinsured

500 motorist coverage and additional premiums required to purchase underinsured motorist

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

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

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

504 (b) Any selection or rejection under Subsection (3)(a) continues for that issuer of the

505 liability coverage until the insured requests, in writing, a change of underinsured motorist

506 coverage from that liability insurer.

507 (c) (i) Subsections (3)(a) and (b) apply retroactively to any claim arising on or after

508 January 1, 2001, for which, as of May 14, 2013, an insured has not made a written demand for

509 arbitration or filed a complaint in a court of competent jurisdiction.

510 (ii) The Legislature finds that the retroactive application of Subsections (3)(a) and (b)

511 clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

512 ~~[(b)]~~ (d) For purposes of this Subsection (3), "new policy" means:

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

514 existing policy; or

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

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

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

518 ~~[(e)]~~ (e) (i) As used in this Subsection (3)~~[(e)]~~(e), "additional motor vehicle" means a

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

520 replacement, substitute, or temporary vehicles.

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

522 commercial lines policy does not constitute a new policy for purposes of Subsection

523 (3)~~[(b)]~~(d).

524 (iii) If an additional motor vehicle is added to a personal lines policy where
525 underinsured motorist coverage has been rejected, or where underinsured motorist limits are
526 lower than the named insured's motor vehicle liability limits, the insurer shall provide a notice
527 to a named insured within 30 days that:

528 (A) ~~reasonably~~ in the same manner described in Subsection (3)(a)(iv), explains the
529 purpose of underinsured motorist coverage; and

530 (B) encourages the named insured to contact the insurance company or insurance
531 producer for quotes as to the additional premiums required to purchase underinsured motorist
532 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
533 liability coverage or the maximum underinsured motorist coverage limits available by the
534 insurer under the named insured's motor vehicle policy.

535 ~~(f)~~ (f) A change in policy number resulting from any policy change not identified
536 under Subsection (3)~~(b)~~(d)(ii) does not constitute a new policy.

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

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

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

542 (B) clarifies legislative intent.

543 ~~(h)~~ (h) A self-insured, including a governmental entity, may elect to provide
544 underinsured motorist coverage in an amount that is less than its maximum self-insured
545 retention under Subsections (3)(a) and ~~(3)(j)~~(l) by issuing a declaratory memorandum or
546 policy statement from the chief financial officer or chief risk officer that declares the:

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

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

549 ~~(i)~~ (i) Underinsured motorist coverage may not be sold with limits that are less than:

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

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

552 ~~(j)~~ (j) An acknowledgment under Subsection (3)(a) continues for that issuer of the
553 underinsured motorist coverage until the named insured, in writing, requests different
554 underinsured motorist coverage from the insurer.

555 ~~[(†)]~~ (k) (i) The named insured's underinsured motorist coverage, as described in
556 Subsection (2), is secondary to the liability coverage of an owner or operator of an
557 underinsured motor vehicle, as described in Subsection (1).

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

562 ~~[(†)]~~ (l) (i) In conjunction with the first two renewal notices sent after January 1, 2001,
563 for policies existing on that date, the insurer shall disclose in the same medium as the premium
564 renewal notice, an explanation of:

565 (A) the purpose of underinsured motorist coverage in the same manner as described in
566 Subsection (3)(a)(iv); and

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

571 (ii) The disclosure required under this Subsection (3)~~[(†)]~~(l) shall be sent to all named
572 insureds that carry underinsured motorist coverage limits in an amount less than the named
573 insured's motor vehicle liability policy limits or the maximum underinsured motorist coverage
574 limits available by the insurer under the named insured's motor vehicle policy.

575 ~~[(†)]~~ (m) For purposes of this Subsection (3), a notice or disclosure sent to a named
576 insured in a household constitutes notice or disclosure to all insureds within the household.

577 (4) (a) (i) Except as provided in this Subsection (4), a covered person injured in a
578 motor vehicle described in a policy that includes underinsured motorist benefits may not elect
579 to collect underinsured motorist coverage benefits from another motor vehicle insurance policy.

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

583 (iii) Subsection (4)(a)(ii) applies to all persons except a covered person described
584 under Subsections (4)(b)(i) and (ii).

585 (b) (i) Except as provided in Subsection (4)(b)(ii), a covered person injured while

586 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the
587 covered person, the covered person's spouse, or the covered person's resident parent or resident
588 sibling, may also recover benefits under any one other policy under which the covered person is
589 also a covered person.

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

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

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

596 (B) Each parent's policy under this Subsection (4)(b)(ii) is liable only for the
597 percentage of the damages that the limit of liability of each parent's policy of underinsured
598 motorist coverage bears to the total of both parents' underinsured coverage applicable to the
599 accident.

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

602 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is
603 primary coverage, and the coverage elected by a person described under Subsections
604 31A-22-305(1)(a) and (b) is secondary coverage.

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

606 (vi) A covered person as described under Subsection (4)(b)(i) is entitled to the highest
607 limits of underinsured motorist coverage under only one additional policy per household
608 applicable to that covered person as a named insured, spouse, or relative.

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

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

613 (B) Except to the extent permitted by this Subsection (4), interpolicy stacking is
614 prohibited for underinsured motorist coverage.

615 (c) Underinsured motorist coverage:

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

617 Compensation Act;

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

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

620 (iv) may be reduced by health insurance subrogation only after the covered person is

621 made whole;

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

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

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

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

626 (C) while committing a felony; and

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

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

629 (4)(c)(v), but is limited to medical and funeral expenses; or

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

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

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

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

634 (6) (a) Within five business days after notification that all liability insurers have

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

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

637 liable for the injuries caused in the accident; or

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

639 (b) If neither option is exercised under Subsection (6)(a), the subrogation claim is

640 considered to be waived by the underinsured carrier.

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

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

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

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

645 (8) (a) When a claim is brought by a named insured or a person described in

646 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist

647 carrier, the claimant may elect to resolve the claim:

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

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

652 (c) Once a claimant elects to commence litigation under Subsection (8)(a)(ii), the
653 claimant may not elect to resolve the claim through binding arbitration under this section
654 without the written consent of the underinsured motorist coverage carrier.

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

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

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

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

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

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

664 (f) Unless otherwise agreed to in writing:

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

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

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

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

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

674 (h) (i) ~~Ar~~ The arbitration shall be conducted in accordance with Rules 26(a)(4)
675 through (f), 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the
676 requirements of Subsections (9)(a) through (c) are satisfied.

677 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure
678 shall be determined based on the claimant's specific monetary amount in the written demand

679 for payment of uninsured motorist coverage benefits as required in Subsection (9)(a)(i)(A).

680 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to claims

681 under this part.

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

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

685 (k) (i) Except as provided in Subsection (9), the amount of an arbitration award may
686 not exceed the underinsured motorist policy limits of all applicable underinsured motorist
687 policies, including applicable underinsured motorist umbrella policies.

688 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all
689 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
690 equal to the combined underinsured motorist policy limits of all applicable underinsured
691 motorist policies.

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

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

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

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

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

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

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

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

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

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

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

709 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), a claim shall

710 proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of
711 Evidence in the district court.

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

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

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

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

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

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

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

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

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

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

732 (s) If a district court determines, upon a motion of the nonmoving party, that a moving
733 party's use of the trial de novo process is filed in bad faith in accordance with Section
734 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

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

737 (u) If there are multiple underinsured motorist policies, as set forth in Subsection (4),
738 the claimant may elect to arbitrate in one hearing the claims against all the underinsured
739 motorist carriers.

740 (9) (a) Within 30 days after a covered person elects to submit a claim for underinsured

741 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
742 the underinsured motorist carrier:

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

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

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

747 (ii) a written statement under oath disclosing:

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

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

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

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

769 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
770 employers of the covered person for a period of five years preceding the date of the event
771 giving rise to the claim for underinsured motorist benefits up to the time the election for

772 arbitration or litigation has been exercised;

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

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

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

780 (b) (i) If the underinsured motorist carrier determines that the disclosure of undisclosed
781 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary,
782 the underinsured motorist carrier may:

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

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

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

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

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

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

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

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

802 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the

803 underinsured motorist carrier's determination of the amount owed to the covered person; and
804 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
805 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
806 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,
807 tender the amount, if any, of the underinsured motorist carrier's determination of the amount
808 owed to the covered person less:

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

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

814 (ii) If the amount tendered by the underinsured motorist carrier under Subsection
815 (9)(c)(i) is the total amount of the underinsured motorist policy limits, the tendered amount
816 shall be accepted by the covered person.

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

819 (i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all
820 underinsured motorist claims; or

821 (ii) elect to:

822 (A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all
823 underinsured motorist claims; and

824 (B) litigate or arbitrate the remaining claim.

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

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

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

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

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

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

841 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

853 (i) (i) A covered person shall disclose all material information, other than rebuttal
854 evidence, within 30 days after a covered person elects to submit a claim for underinsured
855 motorist coverage benefits to binding arbitration or files litigation as specified in Subsection
856 (9)(a).

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

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

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

Legislative Review Note
as of 2-25-13 10:35 AM

Office of Legislative Research and General Counsel