

Representative V. Lowry Snow proposes the following substitute bill:

MOTOR VEHICLE INSURANCE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends motor vehicle insurance provisions relating to subrogation.

Highlighted Provisions:

This bill:

▶ modifies the rights of subrogation on the part of an underinsured motorist carrier;

and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-22-305.3, as last amended by Laws of Utah 2014, Chapters 290 and 300 and further amended by Revisor Instructions, Laws of Utah 2014, Chapters 290 and 300

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

Section 1. Section **31A-22-305.3** is amended to read:



26 **31A-22-305.3. Underinsured motorist coverage.**

27 (1) As used in this section:

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

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

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

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

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

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

38 (I) a named insured;

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

40 (III) a dependent of a named insured.

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

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

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

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

50 (3) (a) For purposes of this Subsection (3), "new policy" means:

51 (i) any policy that is issued that does not include a renewal or reinstatement of an
52 existing policy; or

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

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

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

56 [~~a~~] (b) For new policies written on or after January 1, 2001, the limits of underinsured

57 motorist coverage shall be equal to the lesser of the limits of the named insured's motor vehicle
58 liability coverage or the maximum underinsured motorist coverage limits available by the
59 insurer under the named insured's motor vehicle policy, unless a named insured rejects or
60 purchases coverage in a lesser amount by signing an acknowledgment form that:

- 61 (i) is filed with the department;
- 62 (ii) is provided by the insurer;
- 63 (iii) waives the higher coverage;
- 64 (iv) need only state in this or similar language that "underinsured motorist coverage
65 provides benefits or protection to you and other covered persons for bodily injury resulting
66 from an accident caused by the fault of another party where the other party has insufficient
67 liability insurance"; and
- 68 (v) discloses the additional premiums required to purchase underinsured motorist
69 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
70 liability coverage or the maximum underinsured motorist coverage limits available by the
71 insurer under the named insured's motor vehicle policy.

72 ~~[(b)]~~ (c) Any selection or rejection under Subsection (3)~~[(a)]~~(b) continues for that
73 issuer of the liability coverage until the insured requests, in writing, a change of underinsured
74 motorist coverage from that liability insurer.

75 ~~[(c)]~~ (d) (i) Subsections (3)~~[(a)]~~(b) and ~~[(b)]~~ (c) apply retroactively to any claim arising
76 on or after January 1, 2001, for which, as of May 14, 2013, an insured has not made a written
77 demand for arbitration or filed a complaint in a court of competent jurisdiction.

78 (ii) The Legislature finds that the retroactive application of Subsections (3)~~[(a)]~~(b) and
79 ~~[(b)]~~ (c) clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

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

81 ~~[(i) any policy that is issued which does not include a renewal or reinstatement of an
82 existing policy; or]~~

83 ~~[(ii) a change to an existing policy that results in:]~~

84 ~~[(A) a named insured being added to or deleted from the policy; or]~~

85 ~~[(B) a change in the limits of the named insured's motor vehicle liability coverage.]~~

86 (e) (i) As used in this Subsection (3)(e), "additional motor vehicle" means a change
87 that increases the total number of vehicles insured by the policy, and does not include

88 replacement, substitute, or temporary vehicles.

89 (ii) The adding of an additional motor vehicle to an existing personal lines or
90 commercial lines policy does not constitute a new policy for purposes of Subsection (3)~~(a)~~(a).

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

95 (A) in the same manner described in Subsection (3)~~(a)~~(b)(iv), explains the purpose of
96 underinsured motorist coverage; and

97 (B) encourages the named insured to contact the insurance company or insurance
98 producer for quotes as to the additional premiums required to purchase underinsured 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 underinsured motorist coverage limits available by the
101 insurer under the named insured's motor vehicle policy.

102 (f) A change in policy number resulting from any policy change not identified under
103 Subsection (3)~~(a)~~(a)(ii) does not constitute a new policy.

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

107 (ii) The Legislature finds that the retroactive application of Subsection (3)~~(a)~~(a):

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

109 (B) clarifies legislative intent.

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

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

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

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

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

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

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

122 (k) (i) The named insured's underinsured motorist coverage, as described in Subsection
123 (2), is secondary to the liability coverage of an owner or operator of an underinsured motor
124 vehicle, as described in Subsection (1).

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

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

132 (A) the purpose of underinsured motorist coverage in the same manner as described in
133 Subsection (3)(~~a~~)(b)(iv); and

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

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

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

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

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

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

152 (b) (i) Except as provided in Subsection (4)(b)(ii), a covered person injured while
153 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the
154 covered person, the covered person's spouse, or the covered person's resident parent or resident
155 sibling, may also recover benefits under any one other policy under which the covered person is
156 also a covered person.

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

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

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

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

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

169 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is
170 primary coverage, and the coverage elected by a person described under Subsections
171 [31A-22-305\(1\)\(a\), \(b\), and \(c\)](#) is secondary coverage.

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

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

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

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

180 (B) Except to the extent permitted by this Subsection (4), interpolicy stacking is

181 prohibited for underinsured motorist coverage.

182 (c) Underinsured motorist coverage:

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

184 Compensation Act;

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

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

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

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

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

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

193 (C) while committing a felony; and

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

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

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

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

201 (6) (a) ~~Within~~ Except as provided in Subsection (6)(d), within five business days
202 after notification that all liability insurers have tendered ~~[their liability]~~ the liability insurers'
203 policy limits, the underinsured carrier shall either:

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

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

207 (b) If neither option is exercised under Subsection (6)(a), the subrogation claim is
208 considered to be waived by the underinsured carrier.

209 (c) The notification under Subsection (6)(a) shall include:

210 (i) the name, address, and phone number for all liability insurers;

211 (ii) the liability insurers' liability policy limits; and

212 (iii) the claim number associated with each liability insurer.

213 (d) (i) A claimant may demand payment of policy limits from all liability insurers by
214 sending notice to all applicable underinsured motorist insurers demanding payment.

215 (ii) The notice under Subsection (6)(d)(i) shall include the name, address, and claim
216 number of all liability insurers from which the claimant has demanded policy limits.

217 (iii) The claimant shall send a copy of the notice to all liability insurers from which the
218 claimant has demanded policy limits.

219 (e) Upon the liability insurer tendering limits to a claimant, the liability insurer shall
220 provide notice of the tender to all underinsured motorist insurers for which the liability insurer
221 received notice under Subsection (6)(d).

222 (f) If a claimant accepts the policy limits tender of each liability insurer, the liability
223 insurer shall pay the claimant the accepted policy limits.

224 (g) (i) The subrogation rights of an underinsured motorist insurer are waived, unless:

225 (A) within five days of delivery of the notice of tender from the liability insurer, the
226 underinsured motorist insurer affirmatively asserts the underinsured motorist insurer's rights to
227 subrogation by delivering notice to the liability insurer of the underinsured motorist insurer's
228 rights to subrogate; and

229 (B) the underinsured motorist insurer reimburses the liability insurer for the policy
230 limits paid to the claimant.

231 (ii) If the subrogation rights of an underinsured motorist insurer are not waived under
232 Subsection (6)(g)(i), any liability release signed by the claimant or the claimant's representative
233 is rescinded.

234 (iii) A claimant's underinsured motorist coverage is preserved if the claimant provides
235 notice to the underinsured motorist insurer as described in Subsection (6)(d).

236 (h) A person providing a notice required in this Subsection (6) shall deliver the notice
237 by a service that provides proof of delivery.

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

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

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

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

243 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist
244 carrier, the claimant may elect to resolve the claim:

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

246 (ii) through litigation.

247 (b) Unless otherwise provided in the policy under which underinsured benefits are
248 claimed, the election provided in Subsection (8)(a) is available to the claimant only, except that
249 if the policy under which insured benefits are claimed provides that either an insured or the
250 insurer may elect arbitration, the insured or the insurer may elect arbitration and that election to
251 arbitrate shall stay the litigation of the claim under Subsection (8)(a)(ii).

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

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

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

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

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

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

262 (ii) the arbitrators appointed under Subsection (8)(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 (8)(d)(i); or

267 (ii) if an arbitration panel is selected under Subsection (8)(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 (8)(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 is governed by
273 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 (9)(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 (9)(a)(i)(A).

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

282 (i) An issue 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 constitutes a final decision.

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

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

292 (l) The arbitrator or arbitration panel may not decide an issue 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) an allegation or claim 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 arbitration is 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 arbitration 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 (8)(l) between the parties unless:

304 (i) the award is 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 (8)(o)(ii)(A).

309 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), a claim shall
310 proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of
311 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 (8)(o)(ii)(A).

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

320 (iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(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 (8)(q) may not exceed \$2,500 unless
325 Subsection (9)(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)(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 a moving
333 party's use of the trial de novo process is filed in bad faith in accordance with Section
334 [78B-5-825](#), the district court may award reasonable attorney fees to the nonmoving party.

335 (t) Nothing in this section is intended to limit a claim under another portion of an

336 applicable insurance policy.

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

340 (9) (a) Within 30 days after a covered person elects to submit a claim for underinsured
341 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
342 the underinsured motorist carrier:

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

345 (A) subject to Subsection (9)(l), the specific monetary amount of the demand,
346 including a computation of the covered person's claimed past medical expenses, claimed past
347 lost wages, and all other claimed past economic damages; and

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

349 (ii) a written statement under oath disclosing:

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

355 (II) the names and last known addresses of the health care providers who have rendered
356 health care services to the covered person, which the covered person claims are immaterial to
357 the claims for which underinsured motorist benefits are sought, for a period of five years
358 preceding the date of the event giving rise to the claim for underinsured motorist benefits up to
359 the time the election for arbitration or litigation has been exercised that have not been disclosed
360 under Subsection (9)(a)(ii)(A)(I);

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

366 (II) the names and last known addresses of the health insurers or other entities to whom

367 the covered person has submitted claims for health care services or benefits, which the covered
368 person claims are immaterial to the claims for which underinsured motorist benefits are sought,
369 for a period of five years preceding the date of the event giving rise to the claim for
370 underinsured motorist benefits up to the time the election for arbitration or litigation have not
371 been disclosed;

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

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

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

381 (iii) signed authorizations to allow the underinsured motorist carrier to only obtain
382 records and billings from the individuals or entities disclosed under Subsections
383 (9)(a)(ii)(A)(I), (B)(I), and (C).

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

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

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

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

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

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

397 (iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of

398 the dispute concerning the disclosure and production of records of the health care providers or
399 health care insurers.

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

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

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

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

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

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

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

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

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

425 (ii) elect to:

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

428 (B) continue to litigate or arbitrate the remaining claim in accordance with the election

429 made under Subsections (8)(a), (b), and (c).

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

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

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

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

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

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

446 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

458 (i) (i) A covered person shall disclose all material information, other than rebuttal
459 evidence, within 30 days after a covered person elects to submit a claim for underinsured

460 motorist coverage benefits to binding arbitration or files litigation as specified in Subsection
461 (9)(a).

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

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

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

468 (l) (i) The written demand requirement in Subsection (9)(a)(i)(A) does not affect the
469 covered person's requirement to provide a computation of any other economic damages
470 claimed, and the one or more respondents shall have a reasonable time after the receipt of the
471 computation of any other economic damages claimed to conduct fact and expert discovery as to
472 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,
473 Section 11, and Chapter 300, Section 11, to this Subsection (9)(l) and Subsection (9)(a)(i)(A)
474 apply to a claim submitted to binding arbitration or through litigation on or after May 13, 2014.

475 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter
476 300, Section 11, under Subsections (9)(a)(ii)(A)(II) and (B)(II) apply to a claim submitted to
477 binding arbitration or through litigation on or after May 13, 2014.