

1 **UNINSURED AND UNDERINSURED MOTORIST COVERAGE**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael S. Kennedy**

6 Senate Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions related to motor vehicle insurance to disallow rejection of
11 uninsured and underinsured motorist coverage in certain instances.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ disallows a person from rejecting uninsured and underinsured motorist coverage if
15 that person:

- 16 • employs an employee; and
- 17 • the employee drives a vehicle insured by the employer; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **31A-22-305**, as last amended by Laws of Utah 2014, Chapters 290 and 300 and further
26 amended by Revisor Instructions, Laws of Utah 2014, Chapters 290 and 300

27 **31A-22-305.3**, as last amended by Laws of Utah 2016, Chapter 361



28

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

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

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

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

33 (a) the named insured;

34 (b) for a claim arising on or after May 13, 2014, the named insured's dependent minor
35 children;

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

39 (d) any person occupying or using a motor vehicle:

40 (i) referred to in the policy; or

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

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

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

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

48 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
49 [31A-22-304](#); and

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

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

54 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
55 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
56 60 days; or

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

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

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

64 (4) (a) ~~For~~ Except as provided in Subsection (4)(b), for new policies written on or
65 after January 1, 2001, the limits of uninsured motorist coverage shall be equal to the lesser of
66 the limits of the named insured's motor vehicle liability coverage or the maximum uninsured
67 motorist coverage limits available by the insurer under the named insured's motor vehicle
68 policy, unless a named insured rejects or purchases coverage in a lesser amount by signing an
69 acknowledgment form that:

70 (i) is filed with the department;

71 (ii) is provided by the insurer;

72 (iii) waives the higher coverage;

73 (iv) need only state in this or similar language that uninsured motorist coverage
74 provides benefits or protection to you and other covered persons for bodily injury resulting
75 from an accident caused by the fault of another party where the other party has no liability
76 insurance; and

77 (v) discloses the additional premiums required to purchase uninsured motorist
78 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
79 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
80 under the named insured's motor vehicle policy.

81 (b) (i) A person that employs an employee and allows the employee to drive a vehicle
82 insured by the person may not reject uninsured motorist coverage.

83 (ii) A person that employs an employee and allows the employee to drive a vehicle
84 insured by the person shall purchase uninsured motorist coverage in an amount not less than
85 the lesser of:

86 (A) the named insured's motor vehicle liability coverage; or

87 (B) the maximum uninsured motorist coverage limits made available by the insurer
88 under the named insured's motor vehicle policy.

89 ~~(b)~~ (c) Any selection or rejection under this Subsection (4) continues for that issuer of

90 the liability coverage until the insured requests, in writing, a change of uninsured motorist
91 coverage from that liability insurer.

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

95 (ii) The Legislature finds that the retroactive application of Subsections (4)(a) and ~~[(b)]~~
96 (c) clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

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

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

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

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

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

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

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

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

112 (A) in the same manner as described in Subsection (4)(a)(iv), explains the purpose of
113 uninsured motorist coverage; and

114 (B) encourages the named insured to contact the insurance company or insurance
115 producer for quotes as to the additional premiums required to purchase uninsured motorist
116 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
117 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
118 under the named insured's motor vehicle policy.

119 ~~[(f)]~~ (g) A change in policy number resulting from any policy change not identified
120 under Subsection (4)~~[(d)]~~(e)(ii) does not constitute a new policy.

121 ~~[(g)]~~ (h) (i) Subsection (4)~~[(d)]~~(e) applies retroactively to any claim arising on or after
122 January 1, 2001, for which, as of May 1, 2012, an insured has not made a written demand for
123 arbitration or filed a complaint in a court of competent jurisdiction.

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

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

126 (B) clarifies legislative intent.

127 ~~[(h)]~~ (i) A self-insured entity, including a governmental entity, may elect to provide
128 uninsured motorist coverage in an amount that is less than its maximum self-insured retention
129 under Subsections (4)(a) and (5)(a) by issuing a declaratory memorandum or policy statement
130 from the chief financial officer or chief risk officer that declares the:

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

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

133 ~~[(i)]~~ (j) Uninsured motorist coverage may not be sold with limits that are less than the
134 minimum bodily injury limits for motor vehicle liability policies under Section [31A-22-304](#).

135 ~~[(j)]~~ (k) The acknowledgment under Subsection (4)(a) continues for that issuer of the
136 uninsured motorist coverage until the named insured requests, in writing, different uninsured
137 motorist coverage from the insurer.

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

141 (A) the purpose of uninsured motorist coverage in the same manner as described in
142 Subsection (4)(a)(iv); and

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

147 (ii) The disclosure required under Subsection (4)~~[(k)]~~(l)(i) shall be sent to all named
148 insureds that carry uninsured motorist coverage limits in an amount less than the named
149 insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage
150 limits available by the insurer under the named insured's motor vehicle policy.

151 ~~[(l)]~~ (m) For purposes of this Subsection (4), a notice or disclosure sent to a named

152 insured in a household constitutes notice or disclosure to all insureds within the household.

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

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

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

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

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

167 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

178 (C) while committing a felony; and

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

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

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

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

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

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

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

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

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

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

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

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

205 (8) (a) Uninsured motorist coverage under this section applies to bodily injury,
206 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if
207 the motor vehicle is described in the policy under which a claim is made, or if the motor
208 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.
209 Except as provided in Subsection (7) or this Subsection (8), a covered person injured in a
210 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to
211 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
212 under which the person is a covered person.

213 (b) Each of the following persons may also recover uninsured motorist benefits under

214 any one other policy in which they are described as a "covered person" as defined in Subsection
215 (1):

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

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

219 (A) to the covered person;

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

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

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

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

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

227 (I) to the covered person;

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

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

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

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

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

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

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

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

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

245 (ii) through litigation.

246 (b) Unless otherwise provided in the policy under which uninsured benefits are
247 claimed, the election provided in Subsection (9)(a) is available to the claimant only, except that
248 if the policy under which insured benefits are claimed provides that either an insured or the
249 insurer may elect arbitration, the insured or the insurer may elect arbitration and that election to
250 arbitrate shall stay the litigation of the claim under Subsection (9)(a)(ii).

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

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

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

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

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

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

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

263 (f) Unless otherwise agreed to in writing:

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

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

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

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

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

273 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),
274 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of
275 Subsections (10)(a) through (c) are satisfied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

306 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo

307 under Subsection (9)(o)(ii)(A).

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

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

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

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

319 (iii) Except as provided in Subsection (9)(q)(iv), the costs under this Subsection (9)(q)
320 shall include:

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

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

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

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

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

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

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

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

337 (u) If there are multiple uninsured motorist policies, as set forth in Subsection (8), the

338 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist
339 carriers.

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

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

344 (A) subject to Subsection (10)(I), the specific monetary amount of the demand,
345 including a computation of the covered person's claimed past medical expenses, claimed past
346 lost wages, and the other claimed past economic damages; and

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

348 (ii) a written statement under oath disclosing:

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

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

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

365 (II) the names and last known addresses of the health insurers or other entities to whom
366 the covered person has submitted claims for health care services or benefits, which the covered
367 person claims are immaterial to the claims for which uninsured motorist benefits are sought,
368 for a period of five years preceding the date of the event giving rise to the claim for uninsured

369 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

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

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

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

379 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain records
380 and billings from the individuals or entities disclosed under Subsections (10)(a)(ii)(A)(I),
381 (B)(I), and (C).

382 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed
383 health care providers or health care insurers under Subsection (10)(a)(ii) is reasonably
384 necessary, the uninsured motorist carrier may:

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

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

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

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

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

395 (iii) The time periods imposed by Subsection (10)(c)(i) are tolled pending resolution of
396 the dispute concerning the disclosure and production of records of the health care providers or
397 health care insurers.

398 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice
399 of filing litigation and the demand for payment of uninsured motorist benefits under Subsection

400 (10)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and
401 receipt of the items specified in Subsections (10)(a)(i) through (iii), to:

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

404 (B) except as provided in Subsection (10)(c)(i)(C), tender the amount, if any, of the
405 uninsured motorist carrier's determination of the amount owed to the covered person; and

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

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

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

416 (ii) If the amount tendered by the uninsured motorist carrier under Subsection (10)(c)(i)
417 is the total amount of the uninsured motorist policy limits, the tendered amount shall be
418 accepted by the covered person.

419 (d) A covered person who receives a written response from an uninsured motorist
420 carrier as provided for in Subsection (10)(c)(i), may:

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

423 (ii) elect to:

424 (A) accept the amount tendered in Subsection (10)(c)(i) as partial payment of all
425 uninsured motorist claims; and

426 (B) continue to litigate or arbitrate the remaining claim in accordance with the election
427 made under Subsections (9)(a), (b), and (c).

428 (e) If a covered person elects to accept the amount tendered under Subsection (10)(c)(i)
429 as partial payment of all uninsured motorist claims, the final award obtained through
430 arbitration, litigation, or later settlement shall be reduced by any payment made by the

431 uninsured motorist carrier under Subsection (10)(c)(i).

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

433 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
434 under Subsection (10)(c)(i) until after the arbitration award has been rendered; and

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

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

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

444 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

456 (i) (i) A covered person shall disclose all material information, other than rebuttal
457 evidence, within 30 days after a covered person elects to submit a claim for uninsured motorist
458 coverage benefits to binding arbitration or files litigation as specified in Subsection (10)(a).

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

461 (j) This Subsection (10) does not limit any other cause of action that arose or may arise

462 against the uninsured motorist carrier from the same dispute.

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

465 (l) (i) The written demand requirement in Subsection (10)(a)(i)(A) does not affect the
466 covered person's requirement to provide a computation of any other economic damages
467 claimed, and the one or more respondents shall have a reasonable time after the receipt of the
468 computation of any other economic damages claimed to conduct fact and expert discovery as to
469 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,
470 Section 10, and Chapter 300, Section 10, to this Subsection (10)(l) and Subsection
471 (10)(a)(i)(A) apply to a claim submitted to binding arbitration or through litigation on or after
472 May 13, 2014.

473 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 10, and Chapter
474 300, Section 10, to Subsections (10)(a)(ii)(A)(II) and (B)(II) apply to any claim submitted to
475 binding arbitration or through litigation on or after May 13, 2014.

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

477 **31A-22-305.3. Underinsured motorist coverage.**

478 (1) As used in this section:

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

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

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

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

487 (B) an uninsured motor vehicle as defined in Subsection [31A-22-305\(2\)](#); or

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

489 (I) a named insured;

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

491 (III) a dependent of a named insured.

492 (2) (a) Underinsured motorist coverage under Subsection [31A-22-302\(1\)\(c\)](#) provides

493 coverage for a covered person who is legally entitled to recover damages from an owner or
494 operator of an underinsured motor vehicle because of bodily injury, sickness, disease, or death.

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

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

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

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

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

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

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

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

507 (b) ~~For~~ Except as provided in Subsection (3)(c) below, for new policies written on or
508 after January 1, 2001, the limits of underinsured motorist coverage shall be equal to the lesser
509 of the limits of the named insured's motor vehicle liability coverage or the maximum
510 underinsured motorist coverage limits available by the insurer under the named insured's motor
511 vehicle policy, unless a named insured rejects or purchases coverage in a lesser amount by
512 signing an acknowledgment form that:

513 (i) is filed with the department;

514 (ii) is provided by the insurer;

515 (iii) waives the higher coverage;

516 (iv) need only state in this or similar language that "underinsured motorist coverage
517 provides benefits or protection to you and other covered persons for bodily injury resulting
518 from an accident caused by the fault of another party where the other party has insufficient
519 liability insurance"; and

520 (v) discloses the additional premiums required to purchase underinsured motorist
521 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
522 liability coverage or the maximum underinsured motorist coverage limits available by the
523 insurer under the named insured's motor vehicle policy.

524 (c) (i) A person that employs an employee and allows the employee to drive a vehicle
525 insured by the person may not reject underinsured motorist coverage.

526 (ii) A person that employs an employee and allows the employee to drive a vehicle
527 insured by the person shall purchase underinsured motorist coverage in an amount not less than
528 the lesser of:

529 (A) the named insured's motor vehicle liability coverage; or

530 (B) the maximum underinsured motorist coverage limits made available by the insurer
531 under the named insured's motor vehicle policy.

532 ~~(c)~~ (d) Any selection or rejection under Subsection (3)(b) continues for that issuer of
533 the liability coverage until the insured requests, in writing, a change of underinsured motorist
534 coverage from that liability insurer.

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

538 (ii) The Legislature finds that the retroactive application of Subsections (3)(b) and ~~(c)~~
539 (d) clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

540 ~~(c)~~ (f) (i) As used in this Subsection (3)~~(c)~~(f), "additional motor vehicle" means a
541 change that increases the total number of vehicles insured by the policy, and does not include
542 replacement, substitute, or temporary vehicles.

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

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

549 (A) in the same manner described in Subsection (3)(b)(iv), explains the purpose of
550 underinsured motorist coverage; and

551 (B) encourages the named insured to contact the insurance company or insurance
552 producer for quotes as to the additional premiums required to purchase underinsured motorist
553 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
554 liability coverage or the maximum underinsured motorist coverage limits available by the

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

556 ~~[(f)]~~ (g) A change in policy number resulting from any policy change not identified
557 under Subsection (3)(a)(ii) does not constitute a new policy.

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

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

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

563 (B) clarifies legislative intent.

564 ~~[(h)]~~ (i) A self-insured, including a governmental entity, may elect to provide
565 underinsured motorist coverage in an amount that is less than its maximum self-insured
566 retention under Subsections (3)(b) and ~~[(h)]~~ (m) by issuing a declaratory memorandum or policy
567 statement from the chief financial officer or chief risk officer that declares the:

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

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

570 ~~[(i)]~~ (j) Underinsured motorist coverage may not be sold with limits that are less than:

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

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

573 ~~[(j)]~~ (k) An acknowledgment under Subsection (3)(b) continues for that issuer of the
574 underinsured motorist coverage until the named insured, in writing, requests different
575 underinsured motorist coverage from the insurer.

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

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

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

586 (A) the purpose of underinsured motorist coverage in the same manner as described in
587 Subsection (3)(b)(iv); and

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

592 (ii) The disclosure required under this Subsection (3)~~(f)~~(m) shall be sent to all named
593 insureds that carry underinsured motorist coverage limits in an amount less than the named
594 insured's motor vehicle liability policy limits or the maximum underinsured motorist coverage
595 limits available by the insurer under the named insured's motor vehicle policy.

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

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

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

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

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

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

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

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

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

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

623 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is
624 primary coverage, and the coverage elected by a person described under Subsections
625 [31A-22-305](#)(1)(a), (b), and (c) is secondary coverage.

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

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

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

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

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

636 (c) Underinsured motorist coverage:

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

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

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

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

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

644 (A) while committing a violation of Section [41-1a-1314](#);

645 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
646 in violation of Section [41-1a-1314](#); or

647 (C) while committing a felony; and

648 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:
649 (A) for a person under 18 years of age who is injured within the scope of Subsection
650 (4)(c)(v), but is limited to medical and funeral expenses; or
651 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
652 within the course and scope of the law enforcement officer's duties.
653 (5) The inception of the loss under Subsection 31A-21-313(1) for underinsured
654 motorist claims occurs upon the date of the last liability policy payment.
655 (6) (a) Except as provided in Subsection (6)(d), within five business days after
656 notification that all liability insurers have tendered the liability insurers' policy limits, the
657 underinsured carrier shall either:
658 (i) waive any subrogation claim the underinsured carrier may have against the person
659 liable for the injuries caused in the accident; or
660 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.
661 (b) If neither option is exercised under Subsection (6)(a), the subrogation claim is
662 considered to be waived by the underinsured carrier.
663 (c) The notification under Subsection (6)(a) shall include:
664 (i) the name, address, and phone number for all liability insurers;
665 (ii) the liability insurers' liability policy limits; and
666 (iii) the claim number associated with each liability insurer.
667 (d) (i) A claimant may demand payment of policy limits from all liability insurers by
668 sending notice to all applicable underinsured motorist insurers demanding payment.
669 (ii) The notice under Subsection (6)(d)(i) shall include the name, address, and claim
670 number of all liability insurers from which the claimant has demanded policy limits.
671 (iii) The claimant shall send a copy of the notice to all liability insurers from which the
672 claimant has demanded policy limits.
673 (e) Upon the liability insurer tendering limits to a claimant, the liability insurer shall
674 provide notice of the tender to all underinsured motorist insurers for which the liability insurer
675 received notice under Subsection (6)(d).
676 (f) If a claimant accepts the policy limits tender of each liability insurer, the liability
677 insurer shall pay the claimant the accepted policy limits.
678 (g) (i) The subrogation rights of an underinsured motorist insurer are waived, unless:

679 (A) within five days of delivery of the notice of tender from the liability insurer, the
680 underinsured motorist insurer affirmatively asserts the underinsured motorist insurer's rights to
681 subrogation by delivering notice to the liability insurer of the underinsured motorist insurer's
682 rights to subrogate; and

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

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

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

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

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

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

695 (b) that is not required to conform to Section [31A-22-302](#).

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

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

700 (ii) through litigation.

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

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

709 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to

710 binding arbitration under Subsection (8)(a)(i) shall be resolved by a single arbitrator.
711 (ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).
712 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection
713 (8)(d)(ii), the parties shall select a panel of three arbitrators.
714 (e) If the parties select a panel of three arbitrators under Subsection (8)(d)(iii):
715 (i) each side shall select one arbitrator; and
716 (ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional
717 arbitrator to be included in the panel.
718 (f) Unless otherwise agreed to in writing:
719 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
720 under Subsection (8)(d)(i); or
721 (ii) if an arbitration panel is selected under Subsection (8)(d)(iii):
722 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and
723 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
724 under Subsection (8)(e)(ii).
725 (g) Except as otherwise provided in this section or unless otherwise agreed to in
726 writing by the parties, an arbitration proceeding conducted under this section is governed by
727 Title 78B, Chapter 11, Utah Uniform Arbitration Act.
728 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),
729 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of
730 Subsections (9)(a) through (c) are satisfied.
731 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure
732 shall be determined based on the claimant's specific monetary amount in the written demand
733 for payment of uninsured motorist coverage benefits as required in Subsection (9)(a)(i)(A).
734 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to
735 arbitration claims under this part.
736 (i) An issue of discovery shall be resolved by the arbitrator or the arbitration panel.
737 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
738 constitutes a final decision.
739 (k) (i) Except as provided in Subsection (9), the amount of an arbitration award may
740 not exceed the underinsured motorist policy limits of all applicable underinsured motorist

741 policies, including applicable underinsured motorist umbrella policies.

742 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all
743 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
744 equal to the combined underinsured motorist policy limits of all applicable underinsured
745 motorist policies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

771 (ii) If the underinsured motorist carrier, as the moving party in a trial de novo requested

772 under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration
773 award, the underinsured motorist carrier is responsible for all of the nonmoving party's costs.

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

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

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

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

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

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

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

786 (s) If a district court determines, upon a motion of the nonmoving party, that a moving
787 party's use of the trial de novo process is filed in bad faith in accordance with Section
788 [78B-5-825](#), the district court may award reasonable attorney fees to the nonmoving party.

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

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

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

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

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

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

803 (ii) a written statement under oath disclosing:

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

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

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

820 (II) the names and last known addresses of the health insurers or other entities to whom
821 the covered person has submitted claims for health care services or benefits, which the covered
822 person claims are immaterial to the claims for which underinsured motorist benefits are sought,
823 for a period of five years preceding the date of the event giving rise to the claim for
824 underinsured motorist benefits up to the time the election for arbitration or litigation have not
825 been disclosed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

865 tender the amount, if any, of the underinsured motorist carrier's determination of the amount
866 owed to the covered person less:

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

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

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

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

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

879 (ii) elect to:

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

882 (B) continue to litigate or arbitrate the remaining claim in accordance with the election
883 made under Subsections (8)(a), (b), and (c).

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

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

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

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

893 (g) If the final award obtained through arbitration or litigation is greater than the
894 average of the covered person's initial written demand for payment provided for in Subsection
895 (9)(a)(i) and the underinsured motorist carrier's initial written response provided for in

896 Subsection (9)(c)(i), the underinsured motorist carrier shall pay:

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

900 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

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

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

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

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

922 (l) (i) The written demand requirement in Subsection (9)(a)(i)(A) does not affect the
923 covered person's requirement to provide a computation of any other economic damages
924 claimed, and the one or more respondents shall have a reasonable time after the receipt of the
925 computation of any other economic damages claimed to conduct fact and expert discovery as to
926 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,

927 Section 11, and Chapter 300, Section 11, to this Subsection (9)(l) and Subsection (9)(a)(i)(A)
928 apply to a claim submitted to binding arbitration or through litigation on or after May 13, 2014.

929 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter
930 300, Section 11, under Subsections (9)(a)(ii)(A)(II) and (B)(II) apply to a claim submitted to
931 binding arbitration or through litigation on or after May 13, 2014.

Legislative Review Note
Office of Legislative Research and General Counsel