

**Representative Michael S. Kennedy** proposes the following substitute bill:

1                                   **UNINSURED AND UNDERINSURED MOTORIST**

2                                   **COVERAGE AMENDMENTS**

3                                   2017 GENERAL SESSION

4                                   STATE OF UTAH

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

6                                   Senate Sponsor: \_\_\_\_\_

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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                                  ▶ requires a business entity to maintain uninsured and underinsured motorist coverage  
15                                  if that business entity:

- 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



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) Except as provided in Subsections (4)(i) and (5)(b), beginning on January 1,  
82 2018, any policy of a business entity that allows an employee to drive a vehicle owned by the  
83 business entity shall include uninsured motorist coverage for the employee.

84 (ii) The uninsured motorist coverage of a policy described in Subsection (4)(b)(i) shall  
85 be an amount not less than the lesser of:

86 (A) the business entity's motor vehicle liability coverage; or

87 (B) the maximum uninsured motorist coverage limits made available by the insurer

88 under the business entity's motor vehicle policy, but not less than \$250,000 per person and  
89 \$500,000 per occurrence.

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

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

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

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

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

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

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

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

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

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

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

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

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

119 under the named insured's motor vehicle policy.

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

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

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

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

127 (B) clarifies legislative intent.

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

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

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

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

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

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

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

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

148 (ii) The disclosure required under Subsection (4)~~[(k)]~~(l)(i) shall be sent to all named  
149 insureds that carry uninsured motorist coverage limits in an amount less than the named

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

152 ~~(f)~~ (m) For purposes of this Subsection (4), a notice or disclosure sent to a named  
153 insured in a household constitutes notice or disclosure to all insureds within the household.

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

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

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

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

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

168 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

179 (C) while committing a felony; and

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

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

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

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

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

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

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

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

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

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

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

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

212 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy  
213 under which the person is a covered person.

214 (b) Each of the following persons may also recover uninsured motorist benefits under  
215 any one other policy in which they are described as a "covered person" as defined in Subsection  
216 (1):

217 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and  
218 (ii) except as provided in Subsection (8)(c), a covered person injured while occupying  
219 or using a motor vehicle that is not owned, leased, or furnished:

- 220 (A) to the covered person;
- 221 (B) to the covered person's spouse; or
- 222 (C) to the covered person's resident parent or resident sibling.

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

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

- 228 (I) to the covered person;
- 229 (II) to the covered person's resident parent; or
- 230 (III) to the covered person's resident sibling.

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

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

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

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

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

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



243 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the  
244 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 uninsured benefits are  
248 claimed, the election provided in Subsection (9)(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 (9)(a)(ii).

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

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

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

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

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

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

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

264 (f) Unless otherwise agreed to in writing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

305 (ii) either party, within 20 days after service of the arbitration award:  
306 (A) files a complaint requesting a trial de novo in the district court; and  
307 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo  
308 under Subsection (9)(o)(ii)(A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

345 (A) subject to Subsection (10)(I), 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 the 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  
352 uninsured motorist benefits are sought for a period of five years preceding the date of the event  
353 giving rise to the claim for uninsured 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 uninsured motorist benefits are sought, for a period of five years  
358 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the  
359 time the election for arbitration or litigation has been exercised that have not been disclosed  
360 under Subsection (10)(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 uninsured motorist benefits are sought, for a period of five years  
364 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the  
365 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 uninsured motorist benefits are sought,  
369 for a period of five years preceding the date of the event giving rise to the claim for uninsured  
370 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

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

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

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

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

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

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

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

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

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

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

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

398 health care insurers.

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

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

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

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

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

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

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

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

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

424 (ii) elect to:

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

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

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

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

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

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

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

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

445 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

478 **31A-22-305.3. Underinsured motorist coverage.**

479 (1) As used in this section:

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

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

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

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

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

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

490 (I) a named insured;



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

492 (III) a dependent of a named insured.

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

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

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

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

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

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

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

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

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

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

514 (i) is filed with the department;

515 (ii) is provided by the insurer;

516 (iii) waives the higher coverage;

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

521 (v) discloses the additional premiums required to purchase underinsured motorist

522 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle  
523 liability coverage or the maximum underinsured motorist coverage limits available by the  
524 insurer under the named insured's motor vehicle policy.

525 (c) (i) Except as provided in Subsection (3)(i), beginning on January 1, 2018, any  
526 policy of a business entity that allows an employee to drive a vehicle owned by the business  
527 entity shall include underinsured motorist coverage for the employee.

528 (ii) The underinsured motorist coverage of a policy described in Subsection (3)(c)(i)  
529 shall be an amount not less than the lesser of:

530 (A) the business entity's motor vehicle liability coverage; or

531 (B) the maximum underinsured motorist coverage limits made available by the insurer  
532 under the business entity's motor vehicle policy, but not less than \$250,000 per person and  
533 \$500,000 per occurrence.

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

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

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

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

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

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

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

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

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

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

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

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

565 (B) clarifies legislative intent.

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

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

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

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

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

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

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

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

581 (ii) Underinsured motorist coverage may not be set off against the liability coverage of  
582 the owner or operator of an underinsured motor vehicle, but shall be added to, combined with,  
583 or stacked upon the liability coverage of the owner or operator of the underinsured motor

584 vehicle to determine the limit of coverage available to the injured person.

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

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

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

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

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

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

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

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

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

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

615 (I) a dependent minor of parents who reside in separate households; and  
616 (II) injured while occupying or using a motor vehicle that is not owned, leased, or  
617 furnished to the covered person, the covered person's resident parent, or the covered person's  
618 resident sibling.

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

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

625 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is  
626 primary coverage, and the coverage elected by a person described under Subsections  
627 [31A-22-305\(1\)\(a\), \(b\), and \(c\)](#) is secondary coverage.

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

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

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

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

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

638 (c) Underinsured motorist coverage:

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

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

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

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

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

- 646 (A) while committing a violation of Section 41-1a-1314;
- 647 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
- 648 in violation of Section 41-1a-1314; or
- 649 (C) while committing a felony; and
- 650 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:
- 651 (A) for a person under 18 years of age who is injured within the scope of Subsection
- 652 (4)(c)(v), but is limited to medical and funeral expenses; or
- 653 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
- 654 within the course and scope of the law enforcement officer's duties.
- 655 (5) The inception of the loss under Subsection 31A-21-313(1) for underinsured
- 656 motorist claims occurs upon the date of the last liability policy payment.
- 657 (6) (a) Except as provided in Subsection (6)(d), within five business days after
- 658 notification that all liability insurers have tendered the liability insurers' policy limits, the
- 659 underinsured carrier shall either:
- 660 (i) waive any subrogation claim the underinsured carrier may have against the person
- 661 liable for the injuries caused in the accident; or
- 662 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.
- 663 (b) If neither option is exercised under Subsection (6)(a), the subrogation claim is
- 664 considered to be waived by the underinsured carrier.
- 665 (c) The notification under Subsection (6)(a) shall include:
- 666 (i) the name, address, and phone number for all liability insurers;
- 667 (ii) the liability insurers' liability policy limits; and
- 668 (iii) the claim number associated with each liability insurer.
- 669 (d) (i) A claimant may demand payment of policy limits from all liability insurers by
- 670 sending notice to all applicable underinsured motorist insurers demanding payment.
- 671 (ii) The notice under Subsection (6)(d)(i) shall include the name, address, and claim
- 672 number of all liability insurers from which the claimant has demanded policy limits.
- 673 (iii) The claimant shall send a copy of the notice to all liability insurers from which the
- 674 claimant has demanded policy limits.
- 675 (e) Upon the liability insurer tendering limits to a claimant, the liability insurer shall
- 676 provide notice of the tender to all underinsured motorist insurers for which the liability insurer

677 received notice under Subsection (6)(d).

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

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

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

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

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

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

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

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

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

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

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

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

702 (ii) through litigation.

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

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

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

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

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

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

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

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

720 (f) Unless otherwise agreed to in writing:

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

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

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

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

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

730 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),  
731 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of  
732 Subsections (9)(a) through (c) are satisfied.

733 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure  
734 shall be determined based on the claimant's specific monetary amount in the written demand  
735 for payment of uninsured motorist coverage benefits as required in Subsection (9)(a)(i)(A).

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

788 (s) If a district court determines, upon a motion of the nonmoving party, that a moving  
789 party's use of the trial de novo process is filed in bad faith in accordance with Section  
790 [78B-5-825](#), the district court may award reasonable attorney fees to the nonmoving party.

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

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

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

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

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

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

805 (ii) a written statement under oath disclosing:

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

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

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

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

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

832 (D) other documents to reasonably support the claims being asserted; and  
833 (E) all state and federal statutory lienholders including a statement as to whether the  
834 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health  
835 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,  
836 or if the claim is subject to any other state or federal statutory liens; and  
837 (iii) signed authorizations to allow the underinsured motorist carrier to only obtain  
838 records and billings from the individuals or entities disclosed under Subsections  
839 (9)(a)(ii)(A)(I), (B)(I), and (C).  
840 (b) (i) If the underinsured motorist carrier determines that the disclosure of undisclosed  
841 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary,  
842 the underinsured motorist carrier may:  
843 (A) make a request for the disclosure of the identity of the health care providers or  
844 health care insurers; and  
845 (B) make a request for authorizations to allow the underinsured motorist carrier to only  
846 obtain records and billings from the individuals or entities not disclosed.  
847 (ii) If the covered person does not provide the requested information within 10 days:  
848 (A) the covered person shall disclose, in writing, the legal or factual basis for the  
849 failure to disclose the health care providers or health care insurers; and  
850 (B) either the covered person or the underinsured motorist carrier may request the  
851 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be  
852 provided if the covered person has elected arbitration.  
853 (iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of  
854 the dispute concerning the disclosure and production of records of the health care providers or  
855 health care insurers.  
856 (c) (i) An underinsured motorist carrier that receives an election for arbitration or a  
857 notice of filing litigation and the demand for payment of underinsured motorist benefits under  
858 Subsection (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the  
859 demand and receipt of the items specified in Subsections (9)(a)(i) through (iii), to:  
860 (A) provide a written response to the written demand for payment provided for in  
861 Subsection (9)(a)(i);  
862 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the

863 underinsured motorist carrier's determination of the amount owed to the covered person; and

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

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

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

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

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

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

881 (ii) elect to:

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

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

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

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

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

893 (ii) the parties may not disclose the amount of the limits of underinsured motorist

894 benefits provided by the policy.

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

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

902 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

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

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

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

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

924 (l) (i) The written demand requirement in Subsection (9)(a)(i)(A) does not affect the

925 covered person's requirement to provide a computation of any other economic damages  
926 claimed, and the one or more respondents shall have a reasonable time after the receipt of the  
927 computation of any other economic damages claimed to conduct fact and expert discovery as to  
928 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,  
929 Section 11, and Chapter 300, Section 11, to this Subsection (9)(l) and Subsection (9)(a)(i)(A)  
930 apply to a claim submitted to binding arbitration or through litigation on or after May 13, 2014.

931 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter  
932 300, Section 11, under Subsections (9)(a)(ii)(A)(II) and (B)(II) apply to a claim submitted to  
933 binding arbitration or through litigation on or after May 13, 2014.