

**UNDERINSURED MOTORIST COVERAGE AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Michael K. McKell

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**LONG TITLE**

**General Description:**

This bill amends provisions related to underinsured motorist coverage.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of "underinsured motor vehicle";
- ▶ addresses the priority between underinsured motorist coverage and workers' compensation benefits;
- ▶ repeals provisions related to an underinsured motorist insurer's right to subrogation;
- ▶ provides that an insurer does not have a right of reimbursement against another insurer if an insurer of a person liable for the damages resulting from the injury-causing occurrence has tendered the policy limit;
- ▶ addresses the effect on the applicable statute of limitations when a claimant submits an underinsured motorist claim to binding arbitration; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28 **31A-22-305.3**, as last amended by Laws of Utah 2016, Chapter 361



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

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

32 **31A-22-305.3. Underinsured motorist coverage.**

33 (1) As used in this section:

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

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

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

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

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

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

44 (I) a named insured;

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

46 (III) a dependent of a named insured[-]; or

47 (D) a motor vehicle described in Subsection (1)(b)(i) if the owner or operator of more  
48 than one motor vehicle is obligated to contribute to the damages.

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

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

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

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

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

- 59 (i) any policy that is issued that does not include a renewal or reinstatement of an  
60 existing policy; or
- 61 (ii) a change to an existing policy that results in:
- 62 (A) a named insured being added to or deleted from the policy; or
- 63 (B) a change in the limits of the named insured's motor vehicle liability coverage.
- 64 (b) For new policies written on or after January 1, 2001, the limits of underinsured  
65 motorist coverage shall be equal to the lesser of the limits of the named insured's motor vehicle  
66 liability coverage or the maximum underinsured motorist coverage limits available by the  
67 insurer under the named insured's motor vehicle policy, unless a named insured rejects or  
68 purchases coverage in a lesser amount by signing an acknowledgment form that:
- 69 (i) is filed with the department;
- 70 (ii) is provided by the insurer;
- 71 (iii) waives the higher coverage;
- 72 (iv) need only state in this or similar language that "underinsured motorist coverage  
73 provides benefits or protection to you and other covered persons for bodily injury resulting  
74 from an accident caused by the fault of another party where the other party has insufficient  
75 liability insurance"; and
- 76 (v) discloses the additional premiums required to purchase underinsured motorist  
77 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle  
78 liability coverage or the maximum underinsured motorist coverage limits available by the  
79 insurer under the named insured's motor vehicle policy.
- 80 (c) Any selection or rejection under Subsection (3)(b) continues for that issuer of the  
81 liability coverage until the insured requests, in writing, a change of underinsured motorist  
82 coverage from that liability insurer.
- 83 (d) (i) Subsections (3)(b) and (c) apply retroactively to any claim arising on or after  
84 January 1, 2001, for which, as of May 14, 2013, an insured has not made a written demand for  
85 arbitration or filed a complaint in a court of competent jurisdiction.
- 86 (ii) The Legislature finds that the retroactive application of Subsections (3)(b) and (c)  
87 clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.
- 88 (e) (i) As used in this Subsection (3)(e), "additional motor vehicle" means a change  
89 that increases the total number of vehicles insured by the policy, and does not include

90 replacement, substitute, or temporary vehicles.

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

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

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

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

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

106 (g) (i) Subsection (3)(a) applies retroactively to any claim arising on or after January 1,  
107 2001 for which, as of May 1, 2012, an insured has not made a written demand for arbitration or  
108 filed a complaint in a court of competent jurisdiction.

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

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

111 (B) clarifies legislative intent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

171 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is  
172 primary coverage, and the coverage elected by a person described under Subsections  
173 [31A-22-305\(1\)\(a\), \(b\), and \(c\)](#) is secondary coverage.

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

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

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

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

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

183 prohibited for underinsured motorist coverage.

184 (c) Underinsured motorist coverage:

185 ~~[(i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'~~  
186 ~~Compensation Act;]~~

187 ~~[(ii)] (i) may not be subrogated by a workers' compensation insurance carrier;~~

188 ~~[(iii)] (ii) may not be reduced by benefits provided by workers' compensation~~  
189 ~~insurance;~~

190 ~~[(iv)] (iii) may be reduced by health insurance subrogation only after the covered~~  
191 ~~person is made whole;~~

192 ~~[(v)] (iv) may not be collected for bodily injury or death sustained by a person:~~

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

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

196 (C) while committing a felony; and

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

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

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

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

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

207 ~~[(i) waive any subrogation claim the underinsured carrier may have against the person~~  
208 ~~liable for the injuries caused in the accident; or]~~

209 ~~[(ii) pay the insured an amount equal to the policy limits tendered by the liability~~  
210 ~~carrier.]~~

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

213 ~~[(c) The notification under Subsection (6)(a) shall include:]~~

214 ~~[(i) the name, address, and phone number for all liability insurers;]~~

215 ~~[(ii) the liability insurers' liability policy limits; and]~~

216 ~~[(iii) the claim number associated with each liability insurer.]~~

217 ~~[(d) (i) A claimant may demand payment of policy limits from all liability insurers by~~  
218 ~~sending notice to all applicable underinsured motorist insurers demanding payment.]~~

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

221 ~~[(iii) The claimant shall send a copy of the notice to all liability insurers from which~~  
222 ~~the claimant has demanded policy limits.]~~

223 ~~[(e) Upon the liability insurer tendering limits to a claimant, the liability insurer shall~~  
224 ~~provide notice of the tender to all underinsured motorist insurers for which the liability insurer~~  
225 ~~received notice under Subsection (6)(d).]~~

226 ~~[(f) If a claimant accepts the policy limits tender of each liability insurer, the liability~~  
227 ~~insurer shall pay the claimant the accepted policy limits.]~~

228 ~~[(g) (i) The subrogation rights of an underinsured motorist insurer are waived, unless:]~~

229 ~~[(A) within five days of delivery of the notice of tender from the liability insurer, the~~  
230 ~~underinsured motorist insurer affirmatively asserts the underinsured motorist insurer's rights to~~  
231 ~~subrogation by delivering notice to the liability insurer of the underinsured motorist insurer's~~  
232 ~~rights to subrogate; and]~~

233 ~~[(B) the underinsured motorist insurer reimburses the liability insurer for the policy~~  
234 ~~limits paid to the claimant.]~~

235 ~~[(ii) If the subrogation rights of an underinsured motorist insurer are not waived under~~  
236 ~~Subsection (6)(g)(i), any liability release signed by the claimant or the claimant's representative~~  
237 ~~is rescinded.]~~

238 ~~[(iii) A claimant's underinsured motorist coverage is preserved if the claimant provides~~  
239 ~~notice to the underinsured motorist insurer as described in Subsection (6)(d).]~~

240 ~~[(h) A person providing a notice required in this Subsection (6) shall deliver the notice~~  
241 ~~by a service that provides proof of delivery.]~~

242 (6) An insurer does not have a right of reimbursement against another insurer if an  
243 insurer of a person liable for the damages resulting from an injury-causing occurrence has  
244 tendered the policy limit.



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

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

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

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

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

253 (ii) through litigation.

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

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

262 (d) For purposes of the statute of limitations applicable to a claim described in  
263 Subsection (8)(a), the claim is considered filed when the claimant submits the claim to binding  
264 arbitration in accordance with this Subsection (8).

265 ~~(e)~~ (e) (i) Unless otherwise agreed to in writing by the parties, a claim that is  
266 submitted to binding arbitration under Subsection (8)(a)(i) shall be resolved by a single  
267 arbitrator.

268 (ii) All parties shall agree on the single arbitrator selected under Subsection  
269 (8)~~(e)~~(e)(i).

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

272 ~~(f)~~ (f) If the parties select a panel of three arbitrators under Subsection (8)~~(e)~~(f)(iii):

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

274 (ii) the arbitrators appointed under Subsection (8)~~(e)~~(f)(i) shall select one additional  
275 arbitrator to be included in the panel.

276 [~~(f)~~] (g) Unless otherwise agreed to in writing:

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

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

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

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

283 [~~(g)~~] (h) Except as otherwise provided in this section or unless otherwise agreed to in  
284 writing by the parties, an arbitration proceeding conducted under this section is governed by  
285 Title 78B, Chapter 11, Utah Uniform Arbitration Act.

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

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

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

294 [~~(i)~~] (j) An issue of discovery shall be resolved by the arbitrator or the arbitration panel.

295 [~~(j)~~] (k) A written decision by a single arbitrator or by a majority of the arbitration  
296 panel constitutes a final decision.

297 [~~(k)~~] (l) (i) Except as provided in Subsection (9), the amount of an arbitration award  
298 may not exceed the underinsured motorist policy limits of all applicable underinsured motorist  
299 policies, including applicable underinsured motorist umbrella policies.

300 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all  
301 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount  
302 equal to the combined underinsured motorist policy limits of all applicable underinsured  
303 motorist policies.

304 [~~(l)~~] (m) The arbitrator or arbitration panel may not decide an issue of coverage or  
305 extra-contractual damages, including:

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

- 307 (ii) whether the policy extends coverage to the loss; or  
308 (iii) an allegation or claim asserting consequential damages or bad faith liability.
- 309 ~~[(m)]~~ (n) The arbitrator or arbitration panel may not conduct arbitration on a class-wide  
310 or class-representative basis.
- 311 ~~[(n)]~~ (o) If the arbitrator or arbitration panel finds that the arbitration is not brought,  
312 pursued, or defended in good faith, the arbitrator or arbitration panel may award reasonable  
313 attorney fees and costs against the party that failed to bring, pursue, or defend the arbitration in  
314 good faith.
- 315 ~~[(o)]~~ (p) An arbitration award issued under this section shall be the final resolution of  
316 all claims not excluded by Subsection (8)~~[(h)]~~~~[(m)]~~ between the parties unless:
- 317 (i) the award is procured by corruption, fraud, or other undue means;  
318 (ii) either party, within 20 days after service of the arbitration award:  
319 (A) files a complaint requesting a trial de novo in the district court; and  
320 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo  
321 under Subsection (8)~~[(o)]~~~~[(p)]~~(ii)(A).
- 322 ~~[(p)]~~ (q) (i) Upon filing a complaint for a trial de novo under Subsection (8)~~[(o)]~~~~[(p)]~~, a  
323 claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah  
324 Rules of Evidence in the district court.
- 325 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may  
326 request a jury trial with a complaint requesting a trial de novo under Subsection  
327 (8)~~[(o)]~~~~[(p)]~~(ii)(A).
- 328 ~~[(q)]~~ (r) (i) If the claimant, as the moving party in a trial de novo requested under  
329 Subsection (8)~~[(o)]~~~~[(p)]~~, does not obtain a verdict that is at least \$5,000 and is at least 20%  
330 greater than the arbitration award, the claimant is responsible for all of the nonmoving party's  
331 costs.
- 332 (ii) If the underinsured motorist carrier, as the moving party in a trial de novo requested  
333 under Subsection (8)~~[(o)]~~~~[(p)]~~, does not obtain a verdict that is at least 20% less than the  
334 arbitration award, the underinsured motorist carrier is responsible for all of the nonmoving  
335 party's costs.
- 336 (iii) Except as provided in Subsection (8)~~[(q)]~~~~[(r)]~~(iv), the costs under this Subsection  
337 (8)~~[(q)]~~~~[(r)]~~ shall include:

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

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

340 (iv) An award of costs under this Subsection (8)~~(r)~~(r) may not exceed \$2,500 unless  
341 Subsection (9)(h)(iii) applies.

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

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

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

348 ~~(s)~~ (t) If a district court determines, upon a motion of the nonmoving party, that a  
349 moving party's use of the trial de novo process is filed in bad faith in accordance with Section  
350 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

351 ~~(t)~~ (u) Nothing in this section is intended to limit a claim under another portion of an  
352 applicable insurance policy.

353 ~~(u)~~ (v) If there are multiple underinsured motorist policies, as set forth in Subsection  
354 (4), the claimant may elect to arbitrate in one hearing the claims against all the underinsured  
355 motorist carriers.

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

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

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

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

365 (ii) a written statement under oath disclosing:

366 (A) (I) the names and last known addresses of all health care providers who have  
367 rendered health care services to the covered person that are material to the claims for which the  
368 underinsured motorist benefits are sought for a period of five years preceding the date of the

369 event giving rise to the claim for underinsured motorist benefits up to the time the election for  
370 arbitration or litigation has been exercised; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

441 (ii) elect to:

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

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

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

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

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

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

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

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

- 462 (ii) any of the following applicable costs:
- 463 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;
- 464 (B) the arbitrator or arbitration panel's fee; and
- 465 (C) the reasonable costs of expert witnesses and depositions used in the presentation of
- 466 evidence during arbitration or litigation.
- 467 (h) (i) The covered person shall provide an affidavit of costs within five days of an
- 468 arbitration award.
- 469 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to
- 470 which the underinsured motorist carrier objects.
- 471 (B) The objection shall be resolved by the arbitrator or arbitration panel.
- 472 (iii) The award of costs by the arbitrator or arbitration panel under Subsection (9)(g)(ii)
- 473 may not exceed \$5,000.
- 474 (i) (i) A covered person shall disclose all material information, other than rebuttal
- 475 evidence, within 30 days after a covered person elects to submit a claim for underinsured
- 476 motorist coverage benefits to binding arbitration or files litigation as specified in Subsection
- 477 (9)(a).
- 478 (ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person
- 479 may not recover costs or any amounts in excess of the policy under Subsection (9)(g).
- 480 (j) This Subsection (9) does not limit any other cause of action that arose or may arise
- 481 against the underinsured motorist carrier from the same dispute.
- 482 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that
- 483 occur on or after March 30, 2010.
- 484 (l) (i) The written demand requirement in Subsection (9)(a)(i)(A) does not affect the
- 485 covered person's requirement to provide a computation of any other economic damages
- 486 claimed, and the one or more respondents shall have a reasonable time after the receipt of the
- 487 computation of any other economic damages claimed to conduct fact and expert discovery as to
- 488 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,
- 489 Section 11, and Chapter 300, Section 11, to this Subsection (9)(l) and Subsection (9)(a)(i)(A)
- 490 apply to a claim submitted to binding arbitration or through litigation on or after May 13, 2014.
- 491 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter
- 492 300, Section 11, under Subsections (9)(a)(ii)(A)(II) and (B)(II) apply to a claim submitted to



493 binding arbitration or through litigation on or after May 13, 2014.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**