

WORKERS' COMPENSATION REVISIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Workers' Compensation Act.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to an eligible employer;
- ▶ amends third parties against whom an action may be brought for the injury or death of an employee; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 31A-22-305**, as last amended by Laws of Utah 2020, Chapter 145
- 31A-22-305.3**, as last amended by Laws of Utah 2020, Chapter 145
- 34A-2-103**, as last amended by Laws of Utah 2017, Chapter 363
- 34A-2-106**, as last amended by Laws of Utah 2008, Chapter 3

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



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

29 **31A-22-305. Uninsured motorist coverage.**

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

31 (a) the named insured;

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

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

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

38 (i) referred to in the policy; or

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

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

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

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

46 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
47 31A-22-304; and

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

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

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

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

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

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

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

67 (i) is filed with the department;

68 (ii) is provided by the insurer;

69 (iii) waives the higher coverage;

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

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

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

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

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

86 (d) For purposes of this Subsection (4), "new policy" means:

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

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

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

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

92 (e) (i) As used in this Subsection (4)(e), "additional motor vehicle" means a change

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

94 replacement, substitute, or temporary vehicles.

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

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

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

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

108 (f) A change in policy number resulting from any policy change not identified under
109 Subsection (4)(d)(ii) does not constitute a new policy.

110 (g) (i) Subsection (4)(d) applies retroactively to any claim arising on or after January 1,
111 2001, for which, as of May 1, 2012, an insured has not made a written demand for arbitration
112 or filed a complaint in a court of competent jurisdiction.

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

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

115 (B) clarifies legislative intent.

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

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

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

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

124 (j) The acknowledgment under Subsection (4)(a) continues for that issuer of the
125 uninsured motorist coverage until the named insured requests, in writing, different uninsured
126 motorist coverage from the insurer.

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

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

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

136 (ii) The disclosure required under Subsection (4)(k)(i) shall be sent to all named
137 insureds that carry uninsured motorist coverage limits in an amount less than the named
138 insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage
139 limits available by the insurer under the named insured's motor vehicle policy.

140 (l) For purposes of this Subsection (4), a notice or disclosure sent to a named insured in
141 a household constitutes notice or disclosure to all insureds within the household.

142 (5) (a) (i) Except as provided in Subsection (5)(b), the named insured may reject
143 uninsured motorist coverage by an express writing to the insurer that provides liability
144 coverage under Subsection [31A-22-302\(1\)\(a\)](#).

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

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

149 (b) (i) All persons, including governmental entities, that are engaged in the business of,
150 or that accept payment for, transporting natural persons by motor vehicle, and all school
151 districts that provide transportation services for their students, shall provide coverage for all

152 motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance,
153 uninsured motorist coverage of at least \$25,000 per person and \$500,000 per accident.

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

156 (c) Uninsured motorist coverage:

157 (i) does not cover any benefit paid or payable under Title 34A, Chapter 2, Workers'
158 Compensation Act, except that the covered person is credited an amount described in
159 Subsection [34A-2-106](#)~~(5)~~(4);

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

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

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

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

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

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

168 (C) while committing a felony; and

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

170 (A) for a person under 18 years ~~[of age]~~ old who is injured within the scope of
171 Subsection (5)(c)(v) but limited to medical and funeral expenses; or

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

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

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

181 (7) (a) The limit of liability for uninsured motorist coverage for two or more motor
182 vehicles may not be added together, combined, or stacked to determine the limit of insurance

183 coverage available to an injured person for any one accident.

184 (b) (i) Subsection (7)(a) applies to all persons except a covered person as defined under
185 Subsection (8)(b).

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

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

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

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

195 (8) (a) Uninsured motorist coverage under this section applies to bodily injury,
196 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if
197 the motor vehicle is described in the policy under which a claim is made, or if the motor
198 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.
199 Except as provided in Subsection (7) or this Subsection (8), a covered person injured in a
200 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to
201 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
202 under which the person is a covered person.

203 (b) Each of the following persons may also recover uninsured motorist benefits under
204 any one other policy in which they are described as a "covered person" as defined in Subsection
205 (1):

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

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

209 (A) to the covered person;

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

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

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

214 (A) a dependent minor of parents who reside in separate households; and
215 (B) injured while occupying or using a motor vehicle that is not owned, leased, or
216 furnished:
217 (I) to the covered person;
218 (II) to the covered person's resident parent; or
219 (III) to the covered person's resident sibling.
220 (ii) Each parent's policy under this Subsection (8)(c) is liable only for the percentage of
221 the damages that the limit of liability of each parent's policy of uninsured motorist coverage
222 bears to the total of both parents' uninsured coverage applicable to the accident.
223 (d) A covered person's recovery under any available policies may not exceed the full
224 amount of damages.
225 (e) A covered person in Subsection (8)(b) is not barred against making subsequent
226 elections if recovery is unavailable under previous elections.
227 (f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a
228 single incident of loss under more than one insurance policy.
229 (ii) Except to the extent permitted by Subsection (7) and this Subsection (8),
230 interpolicy stacking is prohibited for uninsured motorist coverage.
231 (9) (a) When a claim is brought by a named insured or a person described in
232 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the
233 claimant may elect to resolve the claim:
234 (i) by submitting the claim to binding arbitration; or
235 (ii) through litigation.
236 (b) Unless otherwise provided in the policy under which uninsured benefits are
237 claimed, the election provided in Subsection (9)(a) is available to the claimant only, except that
238 if the policy under which insured benefits are claimed provides that either an insured or the
239 insurer may elect arbitration, the insured or the insurer may elect arbitration and that election to
240 arbitrate shall stay the litigation of the claim under Subsection (9)(a)(ii).
241 (c) Once the claimant has elected to commence litigation under Subsection (9)(a)(ii),
242 the claimant may not elect to resolve the claim through binding arbitration under this section
243 without the written consent of the uninsured motorist carrier.
244 (d) For purposes of the statute of limitations applicable to a claim described in

245 Subsection (9)(a), if the claimant does not elect to resolve the claim through litigation, the
246 claim is considered filed when the claimant submits the claim to binding arbitration in
247 accordance with this Subsection (9).

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

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

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

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

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

255 (ii) the arbitrators appointed under Subsection (9)(f)(i) shall select one additional
256 arbitrator to be included in the panel.

257 (g) Unless otherwise agreed to in writing:

258 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
259 under Subsection (9)(e)(i); or

260 (ii) if an arbitration panel is selected under Subsection (9)(e)(iii):

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

262 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
263 under Subsection (9)(f)(ii).

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

267 (i) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),
268 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of
269 Subsections (10)(a) through (c) are satisfied.

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

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

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

276 (k) A written decision by a single arbitrator or by a majority of the arbitration panel
277 shall constitute a final decision.

278 (l) (i) Except as provided in Subsection (10), the amount of an arbitration award may
279 not exceed the uninsured motorist policy limits of all applicable uninsured motorist policies,
280 including applicable uninsured motorist umbrella policies.

281 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all
282 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount
283 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist
284 policies.

285 (m) The arbitrator or arbitration panel may not decide the issues of coverage or
286 extra-contractual damages, including:

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

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

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

290 (n) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
291 class-representative basis.

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

295 (p) An arbitration award issued under this section shall be the final resolution of all
296 claims not excluded by Subsection (9)(m) between the parties unless:

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

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

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

300 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
301 under Subsection (9)(p)(ii)(A).

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

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

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

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

313 (iii) Except as provided in Subsection (9)(r)(iv), the costs under this Subsection (9)(r)
314 shall include:

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

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

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

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

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

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

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

329 (u) Nothing in this section is intended to limit any claim under any other portion of an
330 applicable insurance policy.

331 (v) If there are multiple uninsured motorist policies, as set forth in Subsection (8), the
332 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist
333 carriers.

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

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

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

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

342 (ii) a written statement under oath disclosing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

417 (ii) elect to:

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

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

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

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

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

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

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

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

438 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

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

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

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

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

459 (l) (i) The written demand requirement in Subsection (10)(a)(i)(A) does not affect the
460 covered person's requirement to provide a computation of any other economic damages
461 claimed, and the one or more respondents shall have a reasonable time after the receipt of the

462 computation of any other economic damages claimed to conduct fact and expert discovery as to
463 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,
464 Section 10, and Chapter 300, Section 10, to this Subsection (10)(l) and Subsection
465 (10)(a)(i)(A) apply to a claim submitted to binding arbitration or through litigation on or after
466 May 13, 2014.

467 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 10, and Chapter
468 300, Section 10, to Subsections (10)(a)(ii)(A)(II) and (B)(II) apply to any claim submitted to
469 binding arbitration or through litigation on or after May 13, 2014.

470 (11) (a) Notwithstanding Section 31A-21-313, an action on a written policy or contract
471 for uninsured motorist coverage shall be commenced within four years after the inception of
472 loss.

473 (b) Subsection (11)(a) shall apply to all claims that have not been time barred by
474 Subsection 31A-21-313(1)(a) as of May 14, 2019.

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

476 **31A-22-305.3. Underinsured motorist coverage.**

477 (1) As used in this section:

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

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

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

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

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

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

488 (I) a named insured;

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

490 (III) a dependent of a named insured.

491 (2) (a) Underinsured motorist coverage under Subsection 31A-22-302(1)(c) provides
492 coverage for a covered person who is legally entitled to recover damages from an owner or

493 operator of an underinsured motor vehicle because of bodily injury, sickness, disease, or death.

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

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

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

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

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

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

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

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

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

511 (i) is filed with the department;

512 (ii) is provided by the insurer;

513 (iii) waives the higher coverage;

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

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

522 (c) Any selection or rejection under Subsection (3)(b) continues for that issuer of the
523 liability coverage until the insured requests, in writing, a change of underinsured motorist

524 coverage from that liability insurer.

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

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

530 (e) (i) As used in this Subsection (3)(e), "additional motor vehicle" means a change
531 that increases the total number of vehicles insured by the policy, and does not include
532 replacement, substitute, or temporary vehicles.

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

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

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

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

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

548 (g) (i) Subsection (3)(a) applies retroactively to any claim arising on or after January 1,
549 2001 for which, as of May 1, 2012, an insured has not made a written demand for arbitration or
550 filed a complaint in a court of competent jurisdiction.

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

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

553 (B) clarifies legislative intent.

554 (h) A self-insured, including a governmental entity, may elect to provide underinsured

555 motorist coverage in an amount that is less than its maximum self-insured retention under
556 Subsections (3)(b) and (l) by issuing a declaratory memorandum or policy statement from the
557 chief financial officer or chief risk officer that declares the:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

596 (b) (i) A covered person injured as a pedestrian by an underinsured motor vehicle may
597 recover underinsured motorist benefits under any one other policy in which they are described
598 as a covered person.

599 (ii) Except as provided in Subsection (4)(b)(iii), a covered person injured while
600 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the
601 covered person, the covered person's spouse, or the covered person's resident parent or resident
602 sibling, may also recover benefits under any one other policy under which the covered person is
603 also a covered person.

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

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

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

610 (B) Each parent's policy under this Subsection (4)(b)(iii) is liable only for the
611 percentage of the damages that the limit of liability of each parent's policy of underinsured
612 motorist coverage bears to the total of both parents' underinsured coverage applicable to the
613 accident.

614 (iv) A covered person's recovery under any available policies may not exceed the full
615 amount of damages.

616 (v) Underinsured coverage on a motor vehicle occupied at the time of an accident is

617 primary coverage, and the coverage elected by a person described under Subsections
618 31A-22-305(1)(a), (b), and (c) is secondary coverage.

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

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

623 (viii) A covered injured person is not barred against making subsequent elections if
624 recovery is unavailable under previous elections.

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

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

629 (c) Underinsured motorist coverage:

630 (i) does not cover any benefit paid or payable under Title 34A, Chapter 2, Workers'
631 Compensation Act, except that the covered person is credited an amount described in
632 Subsection 34A-2-106[~~(5)~~](4);

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

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

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

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

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

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

641 (C) while committing a felony; and

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

643 (A) for a person under 18 years [~~of age~~] old who is injured within the scope of
644 Subsection (4)(c)(v), but is limited to medical and funeral expenses; or

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

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

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

649 (6) An underinsured motorist insurer does not have a right of reimbursement against a
650 person liable for the damages resulting from an injury-causing occurrence if the person's
651 liability insurer has tendered the policy limit and the limits have been accepted by the claimant.

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

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

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

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

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

660 (ii) through litigation.

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

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

669 (d) For purposes of the statute of limitations applicable to a claim described in
670 Subsection (8)(a), if the claimant does not elect to resolve the claim through litigation, the
671 claim is considered filed when the claimant submits the claim to binding arbitration in
672 accordance with this Subsection (8).

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

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

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

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

- 679 (i) each side shall select one arbitrator; and
- 680 (ii) the arbitrators appointed under Subsection (8)(f)(i) shall select one additional
681 arbitrator to be included in the panel.
- 682 (g) Unless otherwise agreed to in writing:
- 683 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
684 under Subsection (8)(e)(i); or
- 685 (ii) if an arbitration panel is selected under Subsection (8)(e)(iii):
- 686 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and
- 687 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
688 under Subsection (8)(f)(ii).
- 689 (h) Except as otherwise provided in this section or unless otherwise agreed to in
690 writing by the parties, an arbitration proceeding conducted under this section is governed by
691 Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- 692 (i) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),
693 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of
694 Subsections (9)(a) through (c) are satisfied.
- 695 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure
696 shall be determined based on the claimant's specific monetary amount in the written demand
697 for payment of uninsured motorist coverage benefits as required in Subsection (9)(a)(i)(A).
- 698 (iii) Rules 26.1 and 26.2 of the Utah Rules of Civil Procedure do not apply to
699 arbitration claims under this part.
- 700 (j) An issue of discovery shall be resolved by the arbitrator or the arbitration panel.
- 701 (k) A written decision by a single arbitrator or by a majority of the arbitration panel
702 constitutes a final decision.
- 703 (l) (i) Except as provided in Subsection (9), the amount of an arbitration award may not
704 exceed the underinsured motorist policy limits of all applicable underinsured motorist policies,
705 including applicable underinsured motorist umbrella policies.
- 706 (ii) If the initial arbitration award exceeds the underinsured motorist policy limits of all
707 applicable underinsured motorist policies, the arbitration award shall be reduced to an amount
708 equal to the combined underinsured motorist policy limits of all applicable underinsured
709 motorist policies.

710 (m) The arbitrator or arbitration panel may not decide an issue of coverage or
711 extra-contractual damages, including:

- 712 (i) whether the claimant is a covered person;
- 713 (ii) whether the policy extends coverage to the loss; or
- 714 (iii) an allegation or claim asserting consequential damages or bad faith liability.

715 (n) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or
716 class-representative basis.

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

720 (p) An arbitration award issued under this section shall be the final resolution of all
721 claims not excluded by Subsection (8)(m) between the parties unless:

- 722 (i) the award is procured by corruption, fraud, or other undue means;
 - 723 (ii) either party, within 20 days after service of the arbitration award:
 - 724 (A) files a complaint requesting a trial de novo in the district court; and
 - 725 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
- 726 under Subsection (8)(p)(ii)(A).

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

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

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

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

738 (iii) Except as provided in Subsection (8)(r)(iv), the costs under this Subsection (8)(r)
739 shall include:

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

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

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

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

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

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

750 (t) If a district court determines, upon a motion of the nonmoving party, that a moving
751 party's use of the trial de novo process is filed in bad faith in accordance with Section
752 [78B-5-825](#), the district court may award reasonable attorney fees to the nonmoving party.

753 (u) Nothing in this section is intended to limit a claim under another portion of an
754 applicable insurance policy.

755 (v) If there are multiple underinsured motorist policies, as set forth in Subsection (4),
756 the claimant may elect to arbitrate in one hearing the claims against all the underinsured
757 motorist carriers.

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

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

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

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

767 (ii) a written statement under oath disclosing:

768 (A) (I) the names and last known addresses of all health care providers who have
769 rendered health care services to the covered person that are material to the claims for which the
770 underinsured motorist benefits are sought for a period of five years preceding the date of the
771 event giving rise to the claim for underinsured motorist benefits up to the time the election for

772 arbitration or litigation has been exercised; and

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

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

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

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

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

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

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

802 (b) (i) If the underinsured motorist carrier determines that the disclosure of undisclosed

803 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary,
804 the underinsured motorist carrier may:

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

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

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

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

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

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

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

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

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

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

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

833 (II) if the amount of the state or federal statutory lien is not established, two times the

834 amount of the medical expenses subject to the state or federal statutory lien until such time as
835 the amount of the state or federal statutory lien is established.

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

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

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

843 (ii) elect to:

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

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

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

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

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

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

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

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

864 (ii) any of the following applicable costs:

- 865 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;
- 866 (B) the arbitrator or arbitration panel's fee; and
- 867 (C) the reasonable costs of expert witnesses and depositions used in the presentation of
868 evidence during arbitration or litigation.
- 869 (h) (i) The covered person shall provide an affidavit of costs within five days of an
870 arbitration award.
- 871 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to
872 which the underinsured motorist carrier objects.
- 873 (B) The objection shall be resolved by the arbitrator or arbitration panel.
- 874 (iii) The award of costs by the arbitrator or arbitration panel under Subsection (9)(g)(ii)
875 may not exceed \$5,000.
- 876 (i) (i) A covered person shall disclose all material information, other than rebuttal
877 evidence, within 30 days after a covered person elects to submit a claim for underinsured
878 motorist coverage benefits to binding arbitration or files litigation as specified in Subsection
879 (9)(a).
- 880 (ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person
881 may not recover costs or any amounts in excess of the policy under Subsection (9)(g).
- 882 (j) This Subsection (9) does not limit any other cause of action that arose or may arise
883 against the underinsured motorist carrier from the same dispute.
- 884 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that
885 occur on or after March 30, 2010.
- 886 (l) (i) The written demand requirement in Subsection (9)(a)(i)(A) does not affect the
887 covered person's requirement to provide a computation of any other economic damages
888 claimed, and the one or more respondents shall have a reasonable time after the receipt of the
889 computation of any other economic damages claimed to conduct fact and expert discovery as to
890 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,
891 Section 11, and Chapter 300, Section 11, to this Subsection (9)(l) and Subsection (9)(a)(i)(A)
892 apply to a claim submitted to binding arbitration or through litigation on or after May 13, 2014.
- 893 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter
894 300, Section 11, under Subsections (9)(a)(ii)(A)(II) and (B)(II) apply to a claim submitted to
895 binding arbitration or through litigation on or after May 13, 2014.

896 Section 3. Section 34A-2-103 is amended to read:

897 **34A-2-103. Employers enumerated and defined -- Regularly employed --**
898 **Statutory employers -- Exceptions.**

899 (1) (a) The state, and each county, city, town, and school district in the state are
900 considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.

901 (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah
902 Occupational Disease Act, prescribed in Sections 34A-2-105 and 34A-3-102, the state is
903 considered to be a single employer and includes any office, department, agency, authority,
904 commission, board, institution, hospital, college, university, or other instrumentality of the
905 state.

906 (2) (a) Subject to the other provisions of this section, each person, including each
907 public utility and each independent contractor, who regularly employs one or more workers or
908 operatives in the same business, or in or about the same establishment, under any contract of
909 hire, express or implied, oral or written, is considered an employer under this chapter and
910 Chapter 3, Utah Occupational Disease Act.

911 (b) As used in this Subsection (2):

912 (i) "Independent contractor" means any person engaged in the performance of any work
913 for another who, while so engaged, is:

914 (A) independent of the employer in all that pertains to the execution of the work;

915 (B) not subject to the routine rule or control of the employer;

916 (C) engaged only in the performance of a definite job or piece of work; and

917 (D) subordinate to the employer only in effecting a result in accordance with the
918 employer's design.

919 (ii) "Regularly" includes all employments in the usual course of the trade, business,
920 profession, or occupation of the employer, whether continuous throughout the year or for only a
921 portion of the year.

922 (3) (a) The client under a professional employer organization agreement regulated
923 under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:

924 (i) is considered the employer of a covered employee; and

925 (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a
926 covered employee by complying with Subsection 34A-2-201(1) and commission rules.

927 (b) The division shall promptly inform the Insurance Department if the division has
928 reason to believe that a professional employer organization is not in compliance with
929 Subsection 34A-2-201(1) and commission rules.

930 (4) A domestic employer who does not employ one employee or more than one
931 employee at least 40 hours per week is not considered an employer under this chapter and
932 Chapter 3, Utah Occupational Disease Act.

933 (5) (a) As used in this Subsection (5):

934 (i) (A) "Agricultural employer" means a person who employs agricultural labor as
935 defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in
936 Subsection 35A-4-206(3).

937 (B) Notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a
938 member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural
939 employer is a corporation, partnership, or other business entity, "agricultural employer" means
940 an officer, director, or partner of the business entity.

941 (ii) "Employer's immediate family" means:

942 (A) an agricultural employer's:

943 (I) spouse;

944 (II) grandparent;

945 (III) parent;

946 (IV) sibling;

947 (V) child;

948 (VI) grandchild;

949 (VII) nephew; or

950 (VIII) niece;

951 (B) a spouse of any person provided in Subsections (5)(a)(ii)(A)(II) through (VIII); or

952 (C) an individual who is similar to those listed in Subsection (5)(a)(ii)(A) or (B) as
953 defined by rules of the commission.

954 (iii) "Nonimmediate family" means a person who is not a member of the employer's
955 immediate family.

956 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
957 agricultural employer is not considered an employer of a member of the employer's immediate

958 family.

959 (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
960 agricultural employer is not considered an employer of a nonimmediate family employee if:

961 (i) for the previous calendar year the agricultural employer's total annual payroll for all
962 nonimmediate family employees was less than \$8,000; or

963 (ii) (A) for the previous calendar year the agricultural employer's total annual payroll
964 for all nonimmediate family employees was equal to or greater than \$8,000 but less than
965 \$50,000; and

966 (B) the agricultural employer maintains insurance that covers job-related injuries of the
967 employer's nonimmediate family employees in at least the following amounts:

968 (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and

969 (II) \$5,000 for health care benefits similar to benefits under health care insurance as
970 defined in Section 31A-1-301.

971 (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
972 agricultural employer is considered an employer of a nonimmediate family employee if:

973 (i) for the previous calendar year the agricultural employer's total annual payroll for all
974 nonimmediate family employees is equal to or greater than \$50,000; or

975 (ii) (A) for the previous year the agricultural employer's total payroll for nonimmediate
976 family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

977 (B) the agricultural employer fails to maintain the insurance required under Subsection
978 (5)(c)(ii)(B).

979 (6) An employer of agricultural laborers or domestic servants who is not considered an
980 employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under
981 this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

982 (a) this chapter and Chapter 3, Utah Occupational Disease Act; and

983 (b) the rules of the commission.

984 (7) (a) (i) As used in this Subsection (7)(a), "employer" includes any of the following
985 persons that procures work to be done by a contractor notwithstanding whether or not the
986 person directly employs a person:

987 (A) a sole proprietorship;

988 (B) a corporation;

989 (C) a partnership;

990 (D) a limited liability company; or

991 (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

992 (ii) If an employer procures any work to be done wholly or in part for the employer by
993 a contractor over whose work the employer retains supervision or control, and this work is a
994 part or process in the trade or business of the employer, the contractor, all persons employed by
995 the contractor, all subcontractors under the contractor, and all persons employed by any of
996 these subcontractors, are considered employees of the original employer for the purposes of
997 this chapter and Chapter 3, Utah Occupational Disease Act.

998 (b) Any person who is engaged in constructing, improving, repairing, or remodeling a
999 residence that the person owns or is in the process of acquiring as the person's personal
1000 residence may not be considered an employee or employer solely by operation of Subsection
1001 (7)(a).

1002 (c) A partner in a partnership or an owner of a sole proprietorship is not considered an
1003 employee under Subsection (7)(a) if the employer who procures work to be done by the
1004 partnership or sole proprietorship obtains and relies on either:

1005 (i) a valid certification of the partnership's or sole proprietorship's compliance with
1006 Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of
1007 workers' compensation benefits pursuant to Section 34A-2-201; or

1008 (ii) if a partnership or sole proprietorship with no employees other than a partner of the
1009 partnership or owner of the sole proprietorship, a workers' compensation coverage waiver
1010 issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:

1011 (A) the partnership or sole proprietorship is customarily engaged in an independently
1012 established trade, occupation, profession, or business; and

1013 (B) the partner or owner personally waives the partner's or owner's entitlement to the
1014 benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the
1015 partnership or sole proprietorship.

1016 (d) A director or officer of a corporation is not considered an employee under
1017 Subsection (7)(a) if the director or officer is excluded from coverage under Subsection
1018 34A-2-104(4).

1019 (e) A contractor or subcontractor is not an employee of the employer under Subsection

1020 (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains
1021 and relies on either:

1022 (i) a valid certification of the contractor's or subcontractor's compliance with Section
1023 [34A-2-201](#); or

1024 (ii) if a partnership, corporation, or sole proprietorship with no employees other than a
1025 partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a
1026 workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation
1027 Coverage Waivers Act, stating that:

1028 (A) the partnership, corporation, or sole proprietorship is customarily engaged in an
1029 independently established trade, occupation, profession, or business; and

1030 (B) the partner, corporate officer, or owner personally waives the partner's, corporate
1031 officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah
1032 Occupational Disease Act, in the operation of the partnership's, corporation's, or sole
1033 proprietorship's enterprise under a contract of hire for services.

1034 (f) (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:

1035 (A) is an employer; and

1036 (B) procures work to be done wholly or in part for the employer by a contractor,
1037 including:

1038 (I) all persons employed by the contractor;

1039 (II) all subcontractors under the contractor; and

1040 (III) all persons employed by any of these subcontractors.

1041 (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of
1042 Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of
1043 Section [34A-2-105](#) of the contractor, subcontractor, and all persons employed by the contractor
1044 or subcontractor described in Subsection (7)(f)(i)(B).

1045 (iii) Subsection (7)(f)(ii) applies if the eligible employer:

1046 (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an
1047 original employer under Subsection (7)(a) because the contractor or subcontractor fails to
1048 comply with Section [34A-2-201](#);

1049 (B) (I) secures, in accordance with Section [34A-2-201](#), or ensures the payment of
1050 workers' compensation benefits for the contractor or subcontractor [~~pursuant to Section~~

- 1051 [34A-2-201](#)];
- 1052 (II) procures work to be done that is part or process of the trade or business of the
1053 eligible employer; and
- 1054 (III) does the following with regard to a written workplace accident and injury
1055 reduction program that meets the requirements of Subsection [34A-2-111\(3\)\(d\)](#):
- 1056 (Aa) adopts the workplace accident and injury reduction program;
- 1057 (Bb) posts the workplace accident and injury reduction program at the work site at
1058 which the eligible employer procures work; and
- 1059 (Cc) enforces the workplace accident and injury reduction program according to the
1060 terms of the workplace accident and injury reduction program; or
- 1061 (C) (I) obtains and relies on:
- 1062 (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);
- 1063 (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or
1064 (7)(e)(ii); or
- 1065 (Cc) proof that a director or officer is excluded from coverage under Subsection
1066 [34A-2-104\(4\)](#);
- 1067 (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits
1068 if the contractor or subcontractor fails to comply with Section [34A-2-201](#);
- 1069 (III) procures work to be done that is part or process in the trade or business of the
1070 eligible employer; and
- 1071 (IV) does the following with regard to a written workplace accident and injury
1072 reduction program that meets the requirements of Subsection [34A-2-111\(3\)\(d\)](#):
- 1073 (Aa) adopts the workplace accident and injury reduction program;
- 1074 (Bb) posts the workplace accident and injury reduction program at the work site at
1075 which the eligible employer procures work; and
- 1076 (Cc) enforces the workplace accident and injury reduction program according to the
1077 terms of the workplace accident and injury reduction program.
- 1078 (8) (a) For purposes of this Subsection (8), "unincorporated entity" means an entity
1079 organized or doing business in the state that is not:
- 1080 (i) an individual;
- 1081 (ii) a corporation; or

1082 (iii) publicly traded.

1083 (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an
1084 unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah
1085 Construction Trades Licensing Act, is presumed to be the employer of each individual who
1086 holds, directly or indirectly, an ownership interest in the unincorporated entity.
1087 Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity
1088 shall provide the individual who holds the ownership interest workers' compensation coverage
1089 under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is
1090 rebutted under Subsection (8)(c).

1091 (c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3,
1092 Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption
1093 under Subsection (8)(b) for an individual by establishing by clear and convincing evidence that
1094 the individual:

1095 (i) is an active manager of the unincorporated entity;
1096 (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated
1097 entity; or

1098 (iii) is not subject to supervision or control in the performance of work by:

1099 (A) the unincorporated entity; or

1100 (B) a person with whom the unincorporated entity contracts.

1101 (d) As part of the rules made under Subsection (8)(c), the commission may define:

1102 (i) "active manager";

1103 (ii) "directly or indirectly holds at least an 8% ownership interest"; and

1104 (iii) "subject to supervision or control in the performance of work."

1105 (9) (a) As used in this Subsection (9), "home and community based services" means
1106 one or more of the following services provided to an individual with a disability or to the
1107 individual's family that helps prevent the individual with a disability from being placed in a
1108 more restrictive setting:

1109 (i) respite care;

1110 (ii) skilled nursing;

1111 (iii) nursing assistant services;

1112 (iv) home health aide services;

- 1113 (v) personal care and attendant services;
- 1114 (vi) other in-home care, such as support for the daily activities of the individual with a
1115 disability;
- 1116 (vii) specialized in-home training for the individual with a disability or a family
1117 member of the individual with a disability;
- 1118 (viii) specialized in-home support, coordination, and other supported living services;
1119 and
- 1120 (ix) other home and community based services unique to the individual with a
1121 disability or the family of the individual with a disability that help prevent the individual with a
1122 disability from being placed in a more restrictive setting.
- 1123 (b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with
1124 a disability or designated representative of the individual with a disability is considered an
1125 employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual
1126 who provides home and community based services if the individual with a disability or
1127 designated representative of the individual with a disability:
- 1128 (i) employs the individual to provide home and community based services for seven
1129 hours per week or more; and
- 1130 (ii) pays the individual providing the home and community based services from state or
1131 federal money received by the individual with a disability or designated representative of the
1132 individual with a disability to fund home and community based services, including through a
1133 person designated by the Secretary of the Treasury in accordance with Section 3504, Internal
1134 Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or
1135 disposal of, or pays the wages of, the individual providing the home and community based
1136 services.
- 1137 (c) The state and federal money received by an individual with a disability or
1138 designated representative of an individual with a disability shall include the cost of the workers'
1139 compensation coverage required by this Subsection (9) in addition to the money necessary to
1140 fund the home and community based services that the individual with a disability or family of
1141 the individual with a disability is eligible to receive so that the home and community based
1142 services are not reduced in order to pay for the workers' compensation coverage required by
1143 this Subsection (9).

1144 (10) (a) For purposes of this Subsection (10), "federal executive agency" means an
1145 executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.

1146 (b) For purposes of determining whether two or more persons are considered joint
1147 employers under this chapter or Chapter 3, Utah Occupational Disease Act, an administrative
1148 ruling of a federal executive agency may not be considered a generally applicable law unless
1149 that administrative ruling is determined to be generally applicable by a court of law, or adopted
1150 by statute or rule.

1151 (11) (a) As used in this Subsection (11):

1152 (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

1153 (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

1154 (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

1155 (b) For purposes of this chapter, a franchisor is not considered to be an employer of:

1156 (i) a franchisee; or

1157 (ii) a franchisee's employee.

1158 (c) With respect to a specific claim for relief under this chapter made by a franchisee or
1159 a franchisee's employee, this Subsection (11) does not apply to a franchisor under a franchise
1160 that exercises a type or degree of control over the franchisee or the franchisee's employee not
1161 customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks
1162 and brand.

1163 Section 4. Section **34A-2-106** is amended to read:

1164 **34A-2-106. Injuries or death caused by wrongful acts of persons other than**
1165 **employer, officer, agent, or employee of employer -- Rights of employer or insurance**
1166 **carrier in cause of action -- Maintenance of action -- Notice of intention to proceed**
1167 **against third party -- Right to maintain action not involving employee-employer**
1168 **relationship -- Disbursement of proceeds of recovery -- Exclusive remedy.**

1169 (1) When any injury or death for which compensation is payable under this chapter or
1170 Chapter 3, Utah Occupational Disease Act is caused by the wrongful act or neglect of a person
1171 other than an employer, officer, agent, or employee of the employer:

1172 (a) the injured employee, or in case of death, the employee's dependents, may claim
1173 compensation; and

1174 (b) the injured employee or the employee's heirs or personal representative may have

1175 an action for damages against the third person.

1176 (2) (a) If compensation is claimed and the employer or insurance carrier becomes
1177 obligated to pay compensation, the employer or insurance carrier:

1178 (i) shall become trustee of the cause of action against the third party; and

1179 (ii) may bring and maintain the action either in ~~[its]~~ the employer or insurance carrier's
1180 own name or in the name of the injured employee, or the employee's heirs or the personal
1181 representative of the deceased.

1182 (b) Notwithstanding Subsection (2)(a), an employer or insurance carrier may not settle
1183 and release a cause of action of which ~~[it]~~ the employer or insurance carrier is a trustee under
1184 Subsection (2)(a) without the consent of the commission.

1185 (3) (a) Before proceeding against a third party, to give a person described in
1186 Subsections (3)(a)(i) and (ii) a reasonable opportunity to enter an appearance in the proceeding,
1187 the injured employee or, in case of death, the employee's heirs, shall give written notice of the
1188 intention to bring an action against the third party to:

1189 (i) the carrier; and

1190 (ii) any other person obligated for the compensation payments.

1191 (b) The injured employee, or, in case of death, the employee's heirs, shall give written
1192 notice to the carrier and other person obligated for the compensation payments of any known
1193 attempt to attribute fault to the employer, officer, agent, or employee of the employer:

1194 (i) by way of settlement; or

1195 (ii) in a proceeding brought by the injured employee, or, in case of death, the
1196 employee's heirs.

1197 ~~[(4) For the purposes of this section and notwithstanding Section 34A-2-103, the~~
1198 ~~injured employee or the employee's heirs or personal representative may also maintain an~~
1199 ~~action for damages against any of the following persons who do not occupy an~~
1200 ~~employee-employer relationship with the injured or deceased employee at the time of the~~
1201 ~~employee's injury or death:]~~

1202 ~~[(a) a subcontractor;]~~

1203 ~~[(b) a general contractor;]~~

1204 ~~[(c) an independent contractor;]~~

1205 ~~[(d) a property owner; or]~~

1206 [~~(e)~~ a lessee or assignee of a property owner.]

1207 [~~(5)~~] (4) If any recovery is obtained against a third person, it shall be disbursed in
1208 accordance with Subsections [~~(5)~~] (4)(a) through (c).

1209 (a) (i) The reasonable expense of the action, including attorney fees, shall be paid and
1210 charged proportionately against the parties as their interests may appear.

1211 (ii) Any fee chargeable to the employer or carrier is to be a credit upon any fee payable
1212 by the injured employee or, in the case of death, by the dependents, for any recovery had
1213 against the third party.

1214 (b) The person liable for compensation payments shall be reimbursed, less the
1215 proportionate share of costs and attorney fees provided for in Subsection [~~(5)~~] (4)(a), for the
1216 payments made as follows:

1217 (i) without reduction based on fault attributed to the employer, officer, agent, or
1218 employee of the employer in the action against the third party if the combined percentage of
1219 fault attributed to persons immune from suit is determined to be less than 40% prior to any
1220 reallocation of fault under Subsection 78B-5-819(2); or

1221 (ii) less the amount of payments made multiplied by the percentage of fault attributed
1222 to the employer, officer, agent, or employee of the employer in the action against the third party
1223 if the combined percentage of fault attributed to persons immune from suit is determined to be
1224 40% or more prior to any reallocation of fault under Subsection 78B-5-819(2).

1225 (c) The balance shall be paid to the injured employee, or the employee's heirs in case of
1226 death, to be applied to reduce or satisfy in full any obligation thereafter accruing against the
1227 person liable for compensation.

1228 [~~(6)~~] (5) (a) The apportionment of fault to the employer in a civil action against a third
1229 party is not an action at law and does not impose any liability on the employer.

1230 (b) The apportionment of fault does not alter or diminish the exclusiveness of the
1231 remedy provided to [~~employees, their~~] an employee, the employee's heirs, or the employee's
1232 personal representatives, or the immunity provided [~~employers~~] an employer pursuant to
1233 Section 34A-2-105 or 34A-3-102 for injuries sustained by an employee, whether resulting in
1234 death or not.

1235 (c) Any court in which a civil action is pending shall issue a partial summary judgment
1236 to an employer with respect to the employer's immunity as provided in Section 34A-2-105 or

1237 [34A-3-102](#), even though the conduct of the employer may be considered in allocating fault to
1238 the employer in a third party action in the manner provided in Sections [78B-5-817](#) through
1239 [78B-5-823](#).