

HB0355S01 compared with HB0355

~~text~~ shows text that was in HB0355 but was deleted in HB0355S01.

text shows text that was not in HB0355 but was inserted into HB0355S01.

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Representative Timothy D. Hawkes proposes the following substitute bill:

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

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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:

Section 1. Section ~~{31A-22-305}~~34A-2-103 is amended to read:

~~{ 31A-22-305. Uninsured motorist coverage.~~

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

~~— (a) the named insured;~~

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

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

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

~~— (i) referred to in the policy; or~~

~~— (ii) owned by a self-insured; and~~

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

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

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

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

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

~~— (b) an unidentified motor vehicle that left the scene of an accident proximately caused~~

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~~by the motor vehicle operator;~~

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

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

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

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

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

~~—— (i) is filed with the department;~~

~~—— (ii) is provided by the insurer;~~

~~—— (iii) waives the higher coverage;~~

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

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

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

~~—— (c) (i) Subsections (4)(a) and (b) apply retroactively to any claim arising on or after~~

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~~January 1, 2001, for which, as of May 14, 2013, an insured has not made a written demand for arbitration or filed a complaint in a court of competent jurisdiction:~~

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

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

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

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

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

~~—— (B) a change in the limits of the named insured's motor vehicle liability coverage:~~

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

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

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

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

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

~~—— (f) A change in policy number resulting from any policy change not identified under Subsection (4)(d)(ii) does not constitute a new policy:~~

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

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- ~~—— (i) The Legislature finds that the retroactive application of Subsection (4):~~
- ~~—— (A) does not enlarge, eliminate, or destroy vested rights; and~~
- ~~—— (B) clarifies legislative intent.~~
- ~~—— (h) A self-insured, including a governmental entity, may elect to provide uninsured motorist coverage in an amount that is less than its maximum self-insured retention under Subsections (4)(a) and (5)(a) by issuing a declaratory memorandum or policy statement from the chief financial officer or chief risk officer that declares the:~~
 - ~~—— (i) self-insured entity's coverage level; and~~
 - ~~—— (ii) process for filing an uninsured motorist claim.~~
- ~~—— (i) Uninsured motorist coverage may not be sold with limits that are less than the minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.~~
- ~~—— (j) The acknowledgment under Subsection (4)(a) continues for that issuer of the uninsured motorist coverage until the named insured requests, in writing, different uninsured motorist coverage from the insurer.~~
- ~~—— (k) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for policies existing on that date, the insurer shall disclose in the same medium as the premium renewal notice, an explanation of:~~
 - ~~—— (A) the purpose of uninsured motorist coverage in the same manner as described in Subsection (4)(a)(iv); and~~
 - ~~—— (B) a disclosure of the additional premiums required to purchase uninsured motorist coverage with limits equal to the lesser of the limits of the named insured's motor vehicle liability coverage or the maximum uninsured motorist coverage limits available by the insurer under the named insured's motor vehicle policy.~~
- ~~—— (ii) The disclosure required under Subsection (4)(k)(i) shall be sent to all named insureds that carry uninsured motorist coverage limits in an amount less than the named insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage limits available by the insurer under the named insured's motor vehicle policy.~~
- ~~—— (l) For purposes of this Subsection (4), a notice or disclosure sent to a named insured in a household constitutes notice or disclosure to all insureds within the household.~~
- ~~—— (5) (a) (i) Except as provided in Subsection (5)(b), the named insured may reject uninsured motorist coverage by an express writing to the insurer that provides liability~~

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~~coverage under Subsection 31A-22-302(1)(a):~~

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

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

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

~~—— (ii) This coverage is secondary to any other insurance covering an injured covered person:~~

~~—— (c) Uninsured motorist coverage:~~

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

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

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

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

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

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

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

~~—— (C) while committing a felony; and~~

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

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

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

~~—— (d) As used in this Subsection (5), "motor vehicle" has the same meaning as under~~

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~~Section 41-1a-102:~~

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

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

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

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

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

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

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

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

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

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- ~~—— (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and~~
- ~~—— (ii) except as provided in Subsection (8)(c), a covered person injured while occupying or using a motor vehicle that is not owned, leased, or furnished:
 - ~~—— (A) to the covered person;~~
 - ~~—— (B) to the covered person's spouse; or~~
 - ~~—— (C) to the covered person's resident parent or resident sibling.~~~~
- ~~—— (c) (i) A covered person may recover benefits from no more than two additional policies, one additional policy from each parent's household if the covered person is:
 - ~~—— (A) a dependent minor of parents who reside in separate households; and~~
 - ~~—— (B) injured while occupying or using a motor vehicle that is not owned, leased, or furnished:
 - ~~—— (I) to the covered person;~~
 - ~~—— (II) to the covered person's resident parent; or~~
 - ~~—— (III) to the covered person's resident sibling.~~~~~~
- ~~—— (ii) Each parent's policy under this Subsection (8)(c) is liable only for the percentage of the damages that the limit of liability of each parent's policy of uninsured motorist coverage bears to the total of both parents' uninsured coverage applicable to the accident.~~
- ~~—— (d) A covered person's recovery under any available policies may not exceed the full amount of damages.~~
- ~~—— (e) A covered person in Subsection (8)(b) is not barred against making subsequent elections if recovery is unavailable under previous elections.~~
- ~~—— (f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a single incident of loss under more than one insurance policy.~~
- ~~—— (ii) Except to the extent permitted by Subsection (7) and this Subsection (8), interpolicy stacking is prohibited for uninsured motorist coverage.~~
- ~~—— (9) (a) When a claim is brought by a named insured or a person described in Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the claimant may elect to resolve the claim:
 - ~~—— (i) by submitting the claim to binding arbitration; or~~
 - ~~—— (ii) through litigation.~~~~
- ~~—— (b) Unless otherwise provided in the policy under which uninsured benefits are~~

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

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

~~—— (d) For purposes of the statute of limitations applicable to a claim described in Subsection (9)(a), if the claimant does not elect to resolve the claim through litigation, the claim is considered filed when the claimant submits the claim to binding arbitration in accordance with this Subsection (9):~~

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

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

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

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

~~—— (i) each side shall select one arbitrator; and~~

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

~~—— (g) Unless otherwise agreed to in writing:~~

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

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

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

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

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

~~—— (i) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f);~~

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~~27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of Subsections (10)(a) through (c) are satisfied:~~

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

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

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

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

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

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

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

~~—— (i) whether the claimant is a covered person;~~

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

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

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

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

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

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

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

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- ~~—— (A) files a complaint requesting a trial de novo in the district court; and~~
- ~~—— (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo under Subsection (9)(p)(ii)(A).~~
- ~~—— (q) (i) Upon filing a complaint for a trial de novo under Subsection (9)(p), the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of Evidence in the district court.~~
- ~~—— (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may request a jury trial with a complaint requesting a trial de novo under Subsection (9)(p)(ii)(A).~~
- ~~—— (r) (i) If the claimant, as the moving party in a trial de novo requested under Subsection (9)(p), does not obtain a verdict that is at least \$5,000 and is at least 20% greater than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.~~
- ~~—— (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested under Subsection (9)(p), does not obtain a verdict that is at least 20% less than the arbitration award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.~~
- ~~—— (iii) Except as provided in Subsection (9)(r)(iv), the costs under this Subsection (9)(r) shall include:~~
 - ~~—— (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and~~
 - ~~—— (B) the costs of expert witnesses and depositions.~~
- ~~—— (iv) An award of costs under this Subsection (9)(r) may not exceed \$2,500 unless Subsection (10)(h)(iii) applies.~~
- ~~—— (s) For purposes of determining whether a party's verdict is greater or less than the arbitration award under Subsection (9)(r), a court may not consider any recovery or other relief granted on a claim for damages if the claim for damages:~~
 - ~~—— (i) was not fully disclosed in writing prior to the arbitration proceeding; or~~
 - ~~—— (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil Procedure.~~
- ~~—— (t) If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith in accordance with Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.~~
- ~~—— (u) Nothing in this section is intended to limit any claim under any other portion of an~~

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~~applicable insurance policy.~~

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

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

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

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

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

~~—— (ii) a written statement under oath disclosing:~~

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

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

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

~~—— (H) the names and last known addresses of the health insurers or other entities to whom the covered person has submitted claims for health care services or benefits, which the covered~~

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~~person claims are immaterial to the claims for which uninsured motorist benefits are sought, for a period of five years preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the time the election for arbitration or litigation have not been disclosed;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~—— (ii) elect to:~~

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

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

~~—— (c) If a covered person elects to accept the amount tendered under Subsection (10)(c)(i)~~

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~~as partial payment of all uninsured motorist claims, the final award obtained through arbitration, litigation, or later settlement shall be reduced by any payment made by the uninsured motorist carrier under Subsection (10)(c)(i).~~

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

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

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

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

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

~~—— (ii) any of the following applicable costs:~~

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

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

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

~~—— (h) (i) The covered person shall provide an affidavit of costs within five days of an arbitration award:~~

~~—— (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to which the uninsured motorist carrier objects:~~

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

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

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

~~—— (ii) If the information under Subsection (10)(i)(i) is not disclosed, the covered person~~

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~~may not recover costs or any amounts in excess of the policy under Subsection (10)(g).~~

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

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

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

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

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

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

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

~~—— **31A-22-305.3. Underinsured motorist coverage.**~~

~~—— (1) As used in this section:~~

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

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

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

~~—— (A) a motor vehicle that is covered under the liability coverage of the same policy that~~

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~~also contains the underinsured motorist coverage;~~

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

~~—— (C) a motor vehicle owned or leased by:~~

~~—— (I) a named insured;~~

~~—— (II) a named insured's spouse; or~~

~~—— (III) a dependent of a named insured.~~

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

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

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

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

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

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

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

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

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

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

~~—— (i) is filed with the department;~~

~~—— (ii) is provided by the insurer;~~

~~—— (iii) waives the higher coverage;~~

~~—— (iv) need only state in this or similar language that "underinsured motorist coverage provides benefits or protection to you and other covered persons for bodily injury resulting~~

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~~from an accident caused by the fault of another party where the other party has insufficient liability insurance"; and~~

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

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

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

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

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

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

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

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

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

~~—— (f) A change in policy number resulting from any policy change not identified under~~

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~~Subsection (3)(a)(ii) does not constitute a new policy.~~

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

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

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

~~—— (B) clarifies legislative intent.~~

~~—— (h) A self-insured, including a governmental entity, may elect to provide underinsured motorist coverage in an amount that is less than its maximum self-insured retention under Subsections (3)(b) and (1) by issuing a declaratory memorandum or policy statement from the chief financial officer or chief risk officer that declares the:~~

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

~~—— (ii) process for filing an underinsured motorist claim.~~

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

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

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

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

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

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

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

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

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

~~—— (ii) The disclosure required under this Subsection (3)(1) shall be sent to all named insureds that carry underinsured motorist coverage limits in an amount less than the named insured's motor vehicle liability policy limits or the maximum underinsured motorist coverage limits available by the insurer under the named insured's motor vehicle policy.~~

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

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

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

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

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

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

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

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

~~—— (II) injured while occupying or using a motor vehicle that is not owned, leased, or furnished to the covered person, the covered person's resident parent, or the covered person's~~

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~~resident sibling:~~

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

~~—— (iv) A covered person's recovery under any available policies may not exceed the full amount of damages:~~

~~—— (v) Underinsured coverage on a motor vehicle occupied at the time of an accident is primary coverage, and the coverage elected by a person described under Subsections 31A-22-305(1)(a), (b), and (c) is secondary coverage:~~

~~—— (vi) The primary and the secondary coverage may not be set off against the other:~~

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

~~—— (viii) A covered injured person is not barred against making subsequent elections if recovery is unavailable under previous elections:~~

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

~~—— (B) Except to the extent permitted by this Subsection (4), interpolicy stacking is prohibited for underinsured motorist coverage:~~

~~—— (c) Underinsured motorist coverage:~~

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

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

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

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

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

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

~~—— (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated~~

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~~in violation of Section 41-1a-1314; or~~

~~—— (C) while committing a felony; and~~

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

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

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

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

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

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

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

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

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

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

~~—— (ii) through litigation.~~

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

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

~~—— (d) For purposes of the statute of limitations applicable to a claim described in Subsection (8)(a), if the claimant does not elect to resolve the claim through litigation, the~~

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~~claim is considered filed when the claimant submits the claim to binding arbitration in accordance with this Subsection (8):~~

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

~~—— (ii) All parties shall agree on the single arbitrator selected under Subsection (8)(c)(i).~~

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

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

~~—— (i) each side shall select one arbitrator; and~~

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

~~—— (g) Unless otherwise agreed to in writing:~~

~~—— (i) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (8)(c)(i); or~~

~~—— (ii) if an arbitration panel is selected under Subsection (8)(c)(iii):~~

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

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

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

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

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

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

~~—— (j) An issue of discovery shall be resolved by the arbitrator or the arbitration panel.~~

~~—— (k) A written decision by a single arbitrator or by a majority of the arbitration panel~~

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~~constitutes a final decision.~~

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

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

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

~~—— (i) whether the claimant is a covered person;~~

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

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

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

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

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

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

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

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

~~—— (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo under Subsection (8)(p)(ii)(A).~~

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

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

~~—— (r) (i) If the claimant, as the moving party in a trial de novo requested under Subsection~~

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~~(8)(p), does not obtain a verdict that is at least \$5,000 and is at least 20% greater than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.~~

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

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

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

~~—— (B) the costs of expert witnesses and depositions.~~

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

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

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

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

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

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

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

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

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

~~—— (A) subject to Subsection (9)(l), the specific monetary amount of the demand;~~

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~~including a computation of the covered person's claimed past medical expenses, claimed past lost wages, and all other claimed past economic damages; and~~

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

~~—— (ii) a written statement under oath disclosing:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~—— (II) if the amount of the state or federal statutory lien is not established, two times the amount of the medical expenses subject to the state or federal statutory lien until such time as the amount of the state or federal statutory lien is established:~~

~~—— (ii) If the amount tendered by the underinsured motorist carrier under Subsection (9)(c)(i) is the total amount of the underinsured motorist policy limits, the tendered amount shall be accepted by the covered person:~~

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

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

~~—— (ii) elect to:~~

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

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

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

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

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

~~—— (ii) the parties may not disclose the amount of the limits of underinsured motorist benefits provided by the policy:~~

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

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

~~—— (ii) any of the following applicable costs:~~

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

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

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

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

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

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

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

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

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

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

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

~~—— (l) (i) The written demand requirement in Subsection (9)(a)(i)(A) does not affect the covered person's requirement to provide a computation of any other economic damages~~

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~~claimed, and the one or more respondents shall have a reasonable time after the receipt of the computation of any other economic damages claimed to conduct fact and expert discovery as to any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter 300, Section 11, to this Subsection (9)(f) and Subsection (9)(a)(i)(A) apply to a claim submitted to binding arbitration or through litigation on or after May 13, 2014.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) an agricultural employer's:

(I) spouse;

(II) grandparent;

(III) parent;

(IV) sibling;

(V) child;

(VI) grandchild;

(VII) nephew; or

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(VIII) niece;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:

- (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
- (b) the rules of the commission.

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

- (A) a sole proprietorship;
- (B) a corporation;
- (C) a partnership;
- (D) a limited liability company; or
- (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).

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

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

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

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

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

- (A) the partnership or sole proprietorship is customarily engaged in an independently

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established trade, occupation, profession, or business; and

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

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

(e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:

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

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

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

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

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

(A) is an employer; and

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

including:

(I) all persons employed by the contractor;

(II) all subcontractors under the contractor; and

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

(ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of

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Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor or subcontractor described in Subsection (7)(f)(i)(B).

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

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

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

(II) procures work to be done that is part or process of the trade or business of the eligible employer; and

(III) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

(Aa) adopts the workplace accident and injury reduction program;

(Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and

(Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program; or

(C) (I) obtains and relies on:

(Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);

(Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or (7)(e)(ii); or

(Cc) proof that a director or officer is excluded from coverage under Subsection 34A-2-104(4);

(II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits if the contractor or subcontractor fails to comply with Section 34A-2-201;

(III) procures work to be done that is part or process in the trade or business of the eligible employer; and

(IV) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

(Aa) adopts the workplace accident and injury reduction program;

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(Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and

(Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program.

(8) (a) For purposes of this Subsection (8), "unincorporated entity" means an entity organized or doing business in the state that is not:

- (i) an individual;
- (ii) a corporation; or
- (iii) publicly traded.

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

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

- (i) is an active manager of the unincorporated entity;
 - (ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or
 - (iii) is not subject to supervision or control in the performance of work by:
 - (A) the unincorporated entity; or
 - (B) a person with whom the unincorporated entity contracts.
- (d) As part of the rules made under Subsection (8)(c), the commission may define:
- (i) "active manager";
 - (ii) "directly or indirectly holds at least an 8% ownership interest"; and
 - (iii) "subject to supervision or control in the performance of work."

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

- (i) respite care;
 - (ii) skilled nursing;
 - (iii) nursing assistant services;
 - (iv) home health aide services;
 - (v) personal care and attendant services;
 - (vi) other in-home care, such as support for the daily activities of the individual with a disability;
 - (vii) specialized in-home training for the individual with a disability or a family member of the individual with a disability;
 - (viii) specialized in-home support, coordination, and other supported living services;
- and
- (ix) other home and community based services unique to the individual with a disability or the family of the individual with a disability that help prevent the individual with a disability from being placed in a more restrictive setting.

(b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with a disability or designated representative of the individual with a disability is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual who provides home and community based services if the individual with a disability or designated representative of the individual with a disability:

- (i) employs the individual to provide home and community based services for seven hours per week or more; and
- (ii) pays the individual providing the home and community based services from state or federal money received by the individual with a disability or designated representative of the individual with a disability to fund home and community based services, including through a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or disposal of, or pays the wages of, the individual providing the home and community based

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services.

(c) The state and federal money received by an individual with a disability or designated representative of an individual with a disability shall include the cost of the workers' compensation coverage required by this Subsection (9) in addition to the money necessary to fund the home and community based services that the individual with a disability or family of the individual with a disability is eligible to receive so that the home and community based services are not reduced in order to pay for the workers' compensation coverage required by this Subsection (9).

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

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

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

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

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

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

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

(i) a franchisee; or

(ii) a franchisee's employee.

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

Section ~~44~~2. Section **34A-2-106** is amended to read:

34A-2-106. Injuries or death caused by wrongful acts of persons other than employer, officer, agent, or employee of employer -- Rights of employer or insurance carrier in cause of action -- Maintenance of action -- Notice of intention to proceed

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against third party -- Right to maintain action not involving employee-employer relationship -- Disbursement of proceeds of recovery -- Exclusive remedy.

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

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

(b) the injured employee or the employee's heirs or personal representative may have an action for damages against the third person.

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

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

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

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

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

(i) the carrier; and

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

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

(i) by way of settlement; or

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

~~ff~~(4) For the purposes of this section and [~~notwithstanding~~] subject to Section

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34A-2-103, the injured employee or the employee's heirs or personal representative may also maintain an action for damages against any of the following persons who do not occupy an employee-employer relationship with the injured or deceased employee at the time of the employee's injury or death and who are not considered eligible employers under Section 34A-2-103:~~††~~

~~††~~(a) a subcontractor;~~††~~

~~††~~(b) a general contractor;~~††~~

~~††~~(c) an independent contractor;~~††~~

~~††~~(d) a property owner; or~~††~~

~~††~~(e) a lessee or assignee of a property owner.~~††~~

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

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

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

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

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

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

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

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

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

(c) Any court in which a civil action is pending shall issue a partial summary judgment to an employer with respect to the employer's immunity as provided in Section 34A-2-105 or 34A-3-102, even though the conduct of the employer may be considered in allocating fault to the employer in a ~~[third party]~~ third-party action in the manner provided in Sections 78B-5-817 through 78B-5-823.