

1 **UNINSURED AND UNDERINSURED MOTORIST**
2 **COVERAGE AMENDMENTS**

3 2018 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: Michael K. McKell

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions related to uninsured and underinsured motorist coverage.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ addresses the relationship between uninsured and underinsured motorist coverage
- 14 and workers' compensation benefits;
- 15 ▶ repeals provisions related to an underinsured motorist insurer's right to subrogation;
- 16 ▶ provides that an underinsured motorist insurer does not have a right of
- 17 reimbursement against another insurer if an insurer of a person liable for the
- 18 damages resulting from the injury-causing occurrence has tendered the policy limit;
- 19 ▶ addresses the effect on the applicable statute of limitations when a claimant submits
- 20 an uninsured or underinsured motorist claim to binding arbitration; and
- 21 ▶ makes technical and conforming changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **31A-22-305**, as last amended by Laws of Utah 2014, Chapters 290 and further amended

29 by Revisor Instructions, Laws of Utah 2014, Chapters 290, 300, and 300
30 [31A-22-305.3](#), as last amended by Laws of Utah 2016, Chapter 361

31

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

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

34 **31A-22-305. Uninsured motorist coverage.**

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

36 (a) the named insured;

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

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

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

43 (i) referred to in the policy; or

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

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

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

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

51 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
52 [31A-22-304](#); and

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

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

56 by the motor vehicle operator;

57 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
58 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
59 60 days; or

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

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

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

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

72 (i) is filed with the department;

73 (ii) is provided by the insurer;

74 (iii) waives the higher coverage;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

108 (B) encourages the named insured to contact the insurance company or insurance
109 producer for quotes as to the additional premiums required to purchase uninsured motorist

110 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle
111 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
112 under the named insured's motor vehicle policy.

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

115 (g) (i) Subsection (4)(d) applies retroactively to any claim arising on or after January 1,
116 2001, for which, as of May 1, 2012, an insured has not made a written demand for arbitration
117 or filed a complaint in a court of competent jurisdiction.

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

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

120 (B) clarifies legislative intent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

161 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

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

175 (C) while committing a felony; and

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

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

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

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

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

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

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

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

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

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

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

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

210 (b) Each of the following persons may also recover uninsured motorist benefits under
211 any one other policy in which they are described as a "covered person" as defined in Subsection
212 (1):

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

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

216 (A) to the covered person;

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

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

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

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

224 (I) to the covered person;
225 (II) to the covered person's resident parent; or
226 (III) to the covered person's resident sibling.

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

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

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

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

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

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

241 (i) by submitting the claim to binding arbitration; or
242 (ii) through litigation.

243 (b) Unless otherwise provided in the policy under which uninsured benefits are
244 claimed, the election provided in Subsection (9)(a) is available to the claimant only, except that

245 if the policy under which insured benefits are claimed provides that either an insured or the
246 insurer may elect arbitration, the insured or the insurer may elect arbitration and that election to
247 arbitrate shall stay the litigation of the claim under Subsection (9)(a)(ii).

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

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

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

258 (ii) All parties shall agree on the single arbitrator selected under Subsection
259 (9)[~~(e)~~](e)(i).

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

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

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

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

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

267 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
268 under Subsection (9)[~~(f)~~](f)(i); or

269 (ii) if an arbitration panel is selected under Subsection (9)[~~(f)~~](f)(ii):

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

271 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected

272 under Subsection (9)~~(e)~~(f)(ii).

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

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

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

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

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

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

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

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

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

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

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

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

300 ~~[(m)]~~ (n) The arbitrator or arbitration panel may not conduct arbitration on a class-wide
301 or class-representative basis.

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

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

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

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

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

311 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
312 under Subsection (9)~~[(o)]~~(p)(ii)(A).

313 ~~[(o)]~~ (q) (i) Upon filing a complaint for a trial de novo under Subsection (9)~~[(o)]~~(p), the
314 claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah
315 Rules of Evidence in the district court.

316 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
317 request a jury trial with a complaint requesting a trial de novo under Subsection
318 (9)~~[(o)]~~(p)(ii)(A).

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

323 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested
324 under Subsection (9)~~[(o)]~~(p), does not obtain a verdict that is at least 20% less than the
325 arbitration award, the uninsured motorist carrier is responsible for all of the nonmoving party's

326 costs.

327 (iii) Except as provided in Subsection (9)~~(q)~~(r)(iv), the costs under this Subsection
328 (9)~~(q)~~(r) shall include:

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

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

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

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

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

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

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

343 ~~(t)~~ (u) Nothing in this section is intended to limit any claim under any other portion
344 of an applicable insurance policy.

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

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

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

352 (A) subject to Subsection (10)(l), the specific monetary amount of the demand,

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

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

356 (ii) a written statement under oath disclosing:

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

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

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

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

378 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
379 employers of the covered person for a period of five years preceding the date of the event

380 giving rise to the claim for uninsured motorist benefits up to the time the election for
381 arbitration or litigation has been exercised;

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

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

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

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

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

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

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

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

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

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

406 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice

407 of filing litigation and the demand for payment of uninsured motorist benefits under Subsection
408 (10)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and
409 receipt of the items specified in Subsections (10)(a)(i) through (iii), to:

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

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

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

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

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

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

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

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

431 (ii) elect to:

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

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

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

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

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

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

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

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

452 (ii) any of the following applicable costs:

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

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

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

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

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

- 461 (B) The objection shall be resolved by the arbitrator or arbitration panel.
- 462 (iii) The award of costs by the arbitrator or arbitration panel under Subsection
- 463 (10)(g)(ii) may not exceed \$5,000.
- 464 (i) (i) A covered person shall disclose all material information, other than rebuttal
- 465 evidence, within 30 days after a covered person elects to submit a claim for uninsured motorist
- 466 coverage benefits to binding arbitration or files litigation as specified in Subsection (10)(a).
- 467 (ii) If the information under Subsection (10)(i)(i) is not disclosed, the covered person
- 468 may not recover costs or any amounts in excess of the policy under Subsection (10)(g).
- 469 (j) This Subsection (10) does not limit any other cause of action that arose or may arise
- 470 against the uninsured motorist carrier from the same dispute.
- 471 (k) The provisions of this Subsection (10) only apply to motor vehicle accidents that
- 472 occur on or after March 30, 2010.
- 473 (l) (i) The written demand requirement in Subsection (10)(a)(i)(A) does not affect the
- 474 covered person's requirement to provide a computation of any other economic damages
- 475 claimed, and the one or more respondents shall have a reasonable time after the receipt of the
- 476 computation of any other economic damages claimed to conduct fact and expert discovery as to
- 477 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,
- 478 Section 10, and Chapter 300, Section 10, to this Subsection (10)(l) and Subsection
- 479 (10)(a)(i)(A) apply to a claim submitted to binding arbitration or through litigation on or after
- 480 May 13, 2014.
- 481 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 10, and Chapter
- 482 300, Section 10, to Subsections (10)(a)(ii)(A)(II) and (B)(II) apply to any claim submitted to
- 483 binding arbitration or through litigation on or after May 13, 2014.
- 484 Section 2. Section **31A-22-305.3** is amended to read:
- 485 **31A-22-305.3. Underinsured motorist coverage.**
- 486 (1) As used in this section:
- 487 (a) "Covered person" has the same meaning as defined in Section [31A-22-305](#).

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

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

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

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

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

497 (I) a named insured;

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

499 (III) a dependent of a named insured.

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

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

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

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

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

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

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

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

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

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

520 (i) is filed with the department;

521 (ii) is provided by the insurer;

522 (iii) waives the higher coverage;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

562 (B) clarifies legislative intent.

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

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

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

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

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

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

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

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

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

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

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

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

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

595 (m) For purposes of this Subsection (3), a notice or disclosure sent to a named insured

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

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

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

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

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

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

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

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

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

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

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

623 primary coverage, and the coverage elected by a person described under Subsections
624 [31A-22-305](#)(1)(a), (b), and (c) is secondary coverage.

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

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

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

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

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

635 (c) Underinsured motorist coverage:

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

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

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

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

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

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

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

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

649 (C) while committing a felony; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

676 ~~[(e) Upon the liability insurer tendering limits to a claimant, the liability insurer shall~~

677 ~~provide notice of the tender to all underinsured motorist insurers for which the liability insurer~~
678 ~~received notice under Subsection (6)(d).]~~

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

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

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

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

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

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

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

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

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

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

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

702 (8) (a) When a claim is brought by a named insured or a person described in

703 Subsection 31A-22-305(1) and is asserted against the covered person's underinsured motorist

704 carrier, the claimant may elect to resolve the claim:

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

706 (ii) through litigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

749 ~~(j)~~ (k) A written decision by a single arbitrator or by a majority of the arbitration
750 panel constitutes a final decision.

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

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

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

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

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

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

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

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

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

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

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

785 costs.

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

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

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

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

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

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

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

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

802 ~~(s)~~ (t) If a district court determines, upon a motion of the nonmoving party, that a
803 moving party's use of the trial de novo process is filed in bad faith in accordance with Section
804 [78B-5-825](#), the district court may award reasonable attorney fees to the nonmoving party.

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

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

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

812 the underinsured motorist carrier:

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

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

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

819 (ii) a written statement under oath disclosing:

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

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

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

836 (II) the names and last known addresses of the health insurers or other entities to whom
837 the covered person has submitted claims for health care services or benefits, which the covered
838 person claims are immaterial to the claims for which underinsured motorist benefits are sought,

839 for a period of five years preceding the date of the event giving rise to the claim for
840 underinsured motorist benefits up to the time the election for arbitration or litigation have not
841 been disclosed;

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

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

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

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

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

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

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

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

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

864 (B) either the covered person or the underinsured motorist carrier may request the
865 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be

866 provided if the covered person has elected arbitration.

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

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

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

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

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

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

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

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

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

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

895 (ii) elect to:

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

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

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

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

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

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

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

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

916 (ii) any of the following applicable costs:

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

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

919 (C) the reasonable costs of expert witnesses and depositions used in the presentation of

920 evidence during arbitration or litigation.

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

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

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

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

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

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

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

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

938 (l) (i) The written demand requirement in Subsection (9)(a)(i)(A) does not affect the
939 covered person's requirement to provide a computation of any other economic damages
940 claimed, and the one or more respondents shall have a reasonable time after the receipt of the
941 computation of any other economic damages claimed to conduct fact and expert discovery as to
942 any additional damages claimed. The changes made by Laws of Utah 2014, Chapter 290,
943 Section 11, and Chapter 300, Section 11, to this Subsection (9)(l) and Subsection (9)(a)(i)(A)
944 apply to a claim submitted to binding arbitration or through litigation on or after May 13, 2014.

945 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter
946 300, Section 11, under Subsections (9)(a)(ii)(A)(II) and (B)(II) apply to a claim submitted to

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