

1                   **UNINSURED AND UNDERINSURED MOTORIST COVERAGE**

2                                   **AMENDMENTS**

3   2013 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Lyle W. Hillyard**

6                                   House Sponsor: \_\_\_\_\_

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies the Insurance Code by amending provisions relating to uninsured and  
11                   underinsured motorist coverage.

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ amends the acknowledgment form requirements for a named insured to sign to  
15                   reject the statutory minimum of uninsured or underinsured motorist coverage or  
16                   purchase coverage in a lesser amount;
- 17                   ▶ makes the acknowledgment form requirement retroactive for any claim arising on or  
18                   after January 1, 2001, for which, as of May 14, 2013, an insured has not made a  
19                   written demand for arbitration or filed a complaint in a court of competent  
20                   jurisdiction;
- 21                   ▶ provides that any selection or rejection of uninsured or underinsured motorist  
22                   coverage continues for that issuer of the liability coverage until the insured requests,  
23                   in writing, a change of uninsured or underinsured motorist coverage from that  
24                   liability insurer;
- 25                   ▶ amends the Rules of Civil Procedure that an arbitration shall comply with when  
26                   arbitrating a claim that is brought by a named insured or a covered person and is  
27                   asserted against the covered person's uninsured or underinsured motorist carrier;



28           ▶ requires a covered person to disclose all material information, other than rebuttal  
 29 evidence, within 30 days after a covered person elects to submit a claim for  
 30 uninsured or underinsured motorist coverage benefits to binding arbitration or files  
 31 litigation; and

32           ▶ makes technical corrections.

33 **Money Appropriated in this Bill:**

34           None

35 **Other Special Clauses:**

36           None

37 **Utah Code Sections Affected:**

38 AMENDS:

39           **31A-22-305**, as last amended by Laws of Utah 2012, Chapter 283

40           **31A-22-305.3**, as last amended by Laws of Utah 2012, Chapter 283



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

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

44           **31A-22-305. Uninsured motorist coverage.**

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

46           (a) the named insured;

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

50           (c) any person occupying or using a motor vehicle:

51           (i) referred to in the policy; or

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

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

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

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

59 (ii) (A) a motor vehicle covered with lower liability limits than required by Section  
60 31A-22-304; and

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

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

65 (c) a motor vehicle covered by a liability policy, but coverage for an accident is  
66 disputed by the liability insurer for more than 60 days or continues to be disputed for more than  
67 60 days; or

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

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

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

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

80 (i) is filed with the department;

81 (ii) is provided by the insurer;

82 (iii) waives the higher coverage;

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

87 (v) discloses the premium required to purchase the statutory minimum uninsured  
88 motorist coverage and additional premiums required to purchase uninsured motorist coverage  
89 with limits equal to the lesser of the limits of the named insured's motor vehicle liability

90 coverage or the maximum uninsured motorist coverage limits available by the insurer under the  
91 named insured's motor vehicle policy.

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

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

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

100 [~~(b)~~] (d) For purposes of this Subsection (4), "new policy" means:

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

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

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

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

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

109 (ii) The adding of an additional motor vehicle to an existing personal lines or  
110 commercial lines policy does not constitute a new policy for purposes of Subsection  
111 (4)[~~(b)~~](d).

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

116 (A) [~~reasonably~~] in the same manner as described in Subsection (4)(a)(iv), explains the  
117 purpose of uninsured motorist coverage; and

118 (B) encourages the named insured to contact the insurance company or insurance  
119 producer for quotes as to the additional premiums required to purchase uninsured motorist  
120 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle

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

123 ~~[(f)]~~ (f) A change in policy number resulting from any policy change not identified  
124 under Subsection (4)~~[(b)]~~(d)(ii) does not constitute a new policy.

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

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

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

130 (B) clarifies legislative intent.

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

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

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

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

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

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

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

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

151 (ii) The disclosure required under Subsection (4)~~[(i)]~~(k)(i) shall be sent to all named

152 insureds that carry uninsured motorist coverage limits in an amount less than the named  
153 insured's motor vehicle liability policy limits or the maximum uninsured motorist coverage  
154 limits available by the insurer under the named insured's motor vehicle policy.

155 ~~[(f)]~~ (l) For purposes of this Subsection (4), a notice or disclosure sent to a named  
156 insured in a household constitutes notice or disclosure to all insureds within the household.

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

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

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

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

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

171 (c) Uninsured motorist coverage:

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

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

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

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

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

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

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

182 (C) while committing a felony; and

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

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

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

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

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

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

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

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

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

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

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

209 (8) (a) Uninsured motorist coverage under this section applies to bodily injury,  
210 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if  
211 the motor vehicle is described in the policy under which a claim is made, or if the motor  
212 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.  
213 Except as provided in Subsection (7) or this Subsection (8), a covered person injured in a

214 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to  
215 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy  
216 under which the person is a covered person.

217 (b) Each of the following persons may also recover uninsured motorist benefits under  
218 any one other policy in which they are described as a "covered person" as defined in Subsection  
219 (1):

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

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

223 (A) to the covered person;

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

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

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

228 (A) a dependent minor of parents who reside in separate households; and

229 (B) injured while occupying or using a motor vehicle that is not owned, leased, or  
230 furnished:

231 (I) to the covered person;

232 (II) to the covered person's resident parent; or

233 (III) to the covered person's resident sibling.

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

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

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

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

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



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

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

249 (ii) through litigation.

250 (b) Unless otherwise provided in the policy under which uninsured benefits are  
251 claimed, the election provided in Subsection (9)(a) is available to the claimant only.

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

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

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

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

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

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

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

264 (f) Unless otherwise agreed to in writing:

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

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

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

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

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

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

276 Subsections (10)(a) through (c) are satisfied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

307 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo  
308 under Subsection (9)(o)(ii)(A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

345 (A) the specific monetary amount of the demand; and

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

347 (ii) a written statement under oath disclosing:

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

353 (II) whether the covered person has seen other health care providers who have rendered  
354 health care services to the covered person, which the covered person claims are immaterial to  
355 the claims for which uninsured motorist benefits are sought, for a period of five years  
356 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the  
357 time the election for arbitration or litigation has been exercised that have not been disclosed  
358 under Subsection (10)(a)(ii)(A)(I);

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

364 (II) whether the identity of any health insurers or other entities to whom the covered  
365 person has submitted claims for health care services or benefits, which the covered person  
366 claims are immaterial to the claims for which uninsured motorist benefits are sought, for a  
367 period of five years preceding the date of the event giving rise to the claim for uninsured  
368 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

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

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

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

378 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain records  
379 and billings from the individuals or entities disclosed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

421 (ii) elect to:

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

424 (B) litigate or arbitrate the remaining claim.

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

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

430 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid

431 under Subsection (10)(c)(i) until after the arbitration award has been rendered; and

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

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

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

441 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

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

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

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

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

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

463 **31A-22-305.3. Underinsured motorist coverage.**

464 (1) As used in this section:

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

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

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

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

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

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

475 (I) a named insured;

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

477 (III) a dependent of a named insured.

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

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

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

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

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

492 (i) is filed with the department;



493 (ii) is provided by the insurer;

494 (iii) waives the higher coverage;

495 (iv) ~~[reasonably explains the purpose of]~~ need only state in this or similar language that

496 underinsured motorist coverage provides benefits or protection to you and other covered

497 persons for bodily injury resulting from an accident caused by the fault of another party where

498 the other party has insufficient liability insurance; and

499 (v) discloses the premium required to purchase the statutory minimum underinsured

500 motorist coverage and additional premiums required to purchase underinsured motorist

501 coverage with limits equal to the lesser of the limits of the named insured's motor vehicle

502 liability coverage or the maximum underinsured motorist coverage limits available by the

503 insurer under the named insured's motor vehicle policy.

504 (b) Any selection or rejection under Subsection (3)(a) continues for that issuer of the

505 liability coverage until the insured requests, in writing, a change of underinsured motorist

506 coverage from that liability insurer.

507 (c) (i) Subsections (3)(a) and (b) apply retroactively to any claim arising on or after

508 January 1, 2001, for which, as of May 14, 2013, an insured has not made a written demand for

509 arbitration or filed a complaint in a court of competent jurisdiction.

510 (ii) The Legislature finds that the retroactive application of Subsections (3)(a) and (b)

511 clarifies legislative intent and does not enlarge, eliminate, or destroy vested rights.

512 ~~[(b)]~~ (d) For purposes of this Subsection (3), "new policy" means:

513 (i) any policy that is issued which does not include a renewal or reinstatement of an

514 existing policy; or

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

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

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

518 ~~[(c)]~~ (e) (i) As used in this Subsection (3)~~[(c)]~~(e), "additional motor vehicle" means a

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

520 replacement, substitute, or temporary vehicles.

521 (ii) The adding of an additional motor vehicle to an existing personal lines or

522 commercial lines policy does not constitute a new policy for purposes of Subsection

523 (3)~~[(b)]~~(d).

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

528 (A) ~~reasonably~~ in the same manner described in Subsection (3)(a)(iv), explains the  
529 purpose of underinsured motorist coverage; and

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

535 ~~(f)~~ (f) A change in policy number resulting from any policy change not identified  
536 under Subsection (3)~~(b)~~(d)(ii) does not constitute a new policy.

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

540 (ii) The Legislature finds that the retroactive application of Subsection (3)(d):

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

542 (B) clarifies legislative intent.

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

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

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

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

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

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

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

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

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

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

565           (A) the purpose of underinsured motorist coverage in the same manner as described in  
566 Subsection (3)(a)(iv); and

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

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

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

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

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

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

585           (b) (i) Except as provided in Subsection (4)(b)(ii), a covered person injured while

586 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the  
587 covered person, the covered person's spouse, or the covered person's resident parent or resident  
588 sibling, may also recover benefits under any one other policy under which the covered person is  
589 also a covered person.

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

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

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

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

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

602 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is  
603 primary coverage, and the coverage elected by a person described under Subsections  
604 31A-22-305(1)(a) and (b) is secondary coverage.

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

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

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

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

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

615 (c) Underinsured motorist coverage:

616 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'

617 Compensation Act;

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

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

620 (iv) may be reduced by health insurance subrogation only after the covered person is

621 made whole;

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

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

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

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

626 (C) while committing a felony; and

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

628 (A) for a person under 18 years of age who is injured within the scope of Subsection

629 (4)(c)(v), but is limited to medical and funeral expenses; or

630 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured

631 within the course and scope of the law enforcement officer's duties.

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

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

634 (6) (a) Within five business days after notification that all liability insurers have

635 tendered their liability policy limits, the underinsured carrier shall either:

636 (i) waive any subrogation claim the underinsured carrier may have against the person

637 liable for the injuries caused in the accident; or

638 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.

639 (b) If neither option is exercised under Subsection (6)(a), the subrogation claim is

640 considered to be waived by the underinsured carrier.

641 (7) Except as otherwise provided in this section, a covered person may seek, subject to

642 the terms and conditions of the policy, additional coverage under any policy:

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

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

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

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

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

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

650 (b) Unless otherwise provided in the policy under which underinsured benefits are  
651 claimed, the election provided in Subsection (8)(a) is available to the claimant only.

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

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

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

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

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

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

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

664 (f) Unless otherwise agreed to in writing:

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

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

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

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

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

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

677 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure  
678 shall be determined based on the claimant's specific monetary amount in the written demand

679 for payment of uninsured motorist coverage benefits as required in Subsection (9)(a)(i)(A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

709 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), a claim shall

710 proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules of  
711 Evidence in the district court.

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

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

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

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

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

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

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

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

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

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

732 (s) If a district court determines, upon a motion of the nonmoving party, that a moving  
733 party's use of the trial de novo process is filed in bad faith in accordance with Section  
734 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.

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

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

740 (9) (a) Within 30 days after a covered person elects to submit a claim for underinsured



741 motorist benefits to binding arbitration or files litigation, the covered person shall provide to  
742 the underinsured motorist carrier:

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

745 (A) the specific monetary amount of the demand; and

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

747 (ii) a written statement under oath disclosing:

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

753 (II) whether the covered person has seen other health care providers who have rendered  
754 health care services to the covered person, which the covered person claims are immaterial to  
755 the claims for which underinsured motorist benefits are sought, for a period of five years  
756 preceding the date of the event giving rise to the claim for underinsured motorist benefits up to  
757 the time the election for arbitration or litigation has been exercised that have not been disclosed  
758 under Subsection (9)(a)(ii)(A)(I);

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

764 (II) whether the identity of any health insurers or other entities to whom the covered  
765 person has submitted claims for health care services or benefits, which the covered person  
766 claims are immaterial to the claims for which underinsured motorist benefits are sought, for a  
767 period of five years preceding the date of the event giving rise to the claim for underinsured  
768 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

769 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all  
770 employers of the covered person for a period of five years preceding the date of the event  
771 giving rise to the claim for underinsured motorist benefits up to the time the election for

772 arbitration or litigation has been exercised;

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

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

778 (iii) signed authorizations to allow the underinsured motorist carrier to only obtain  
779 records and billings from the individuals or entities disclosed.

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

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

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

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

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

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

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

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

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

802 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the

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

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

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

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

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

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

821 (ii) elect to:

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

824 (B) litigate or arbitrate the remaining claim.

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

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

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

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

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

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

841 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

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

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

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

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

**Legislative Review Note**  
as of 2-25-13 10:35 AM

**Office of Legislative Research and General Counsel**