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MOTORIST INSURANCE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Keven J. Stratton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Insurance Code to disallow a rejection of uninsured and underinsured motorist coverage.

Highlighted Provisions:

This bill:

- ▶ modifies the Insurance Code to remove the option of an insured to reject uninsured or underinsured coverage; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-22-302, as last amended by Laws of Utah 2013, Chapter 91

31A-22-305, as last amended by Laws of Utah 2014, Chapters 290 and 300 and further amended by Revisor Instructions, Laws of Utah 2014, Chapters 290 and 300

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

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



28 Section 1. Section 31A-22-302 is amended to read:

29 **31A-22-302. Required components of motor vehicle insurance policies --**

30 **Exceptions.**

31 (1) Every policy of insurance or combination of policies purchased to satisfy the
32 owner's or operator's security requirement of Section 41-12a-301 shall include:

33 (a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;

34 (b) uninsured motorist coverage under Section 31A-22-305~~[-unless affirmatively
35 waived under Subsection 31A-22-305(5)];~~

36 (c) underinsured motorist coverage under Section 31A-22-305.3~~[-unless affirmatively
37 waived under Subsection 31A-22-305.3(3)];~~ and

38 (d) except as provided in Subsection (2) and subject to Subsection (4), personal injury
39 protection under Sections 31A-22-306 through 31A-22-309.

40 (2) A policy of insurance or combination of policies, purchased to satisfy the owner's
41 or operator's security requirement of Section 41-12a-301 for a motorcycle, off-highway vehicle,
42 street-legal all-terrain vehicle, trailer, or semitrailer is not required to have personal injury
43 protection under Sections 31A-22-306 through 31A-22-309.

44 (3) A card issued by an insurance company as evidence of owner's or operator's
45 security under Section 41-12a-303.2 on or after July 1, 2014, may not display the owner's or
46 operator's address on the card.

47 (4) (a) First party medical coverages may be offered or included in policies issued to
48 motorcycle, off-highway vehicle, street-legal all-terrain vehicle, trailer, and semitrailer owners
49 or operators.

50 (b) Owners and operators of motorcycles, off-highway vehicles, street-legal all-terrain
51 vehicles, trailers, and semitrailers are not covered by personal injury protection coverages in
52 connection with injuries incurred while operating any of these vehicles.

53 (5) First party medical coverage expenses shall be governed by the relative value study
54 provisions under Subsections 31A-22-307(2) and (3).

55 Section 2. Section 31A-22-305 is amended to read:

56 **31A-22-305. Uninsured motorist coverage.**

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

58 (a) the named insured;

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

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

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

65 (i) referred to in the policy; or

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

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

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

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

73 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
74 [31A-22-304](#); and

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

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

79 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
80 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
81 60 days; or

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

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

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

89 (4) (a) For new policies written on or after January 1, 2001, the limits of uninsured

90 motorist coverage shall be equal to the lesser of the limits of the named insured's motor vehicle
91 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
92 under the named insured's motor vehicle policy, unless a named insured [~~rejects or~~] purchases
93 coverage in a lesser amount by signing an acknowledgment form that:

94 (i) is filed with the department;

95 (ii) is provided by the insurer;

96 (iii) waives the higher coverage;

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

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

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

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

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

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

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

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

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

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

119 (e) (i) As used in this Subsection (4)(e), "additional motor vehicle" means a change
120 that increases the total number of vehicles insured by the policy, and does not include

121 replacement, substitute, or temporary vehicles.

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

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

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

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

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

137 (g) (i) Subsection (4)(d) applies retroactively to any claim arising on or after January 1,
138 2001, for which, as of May 1, 2012, an insured has not made a written demand for arbitration
139 or filed a complaint in a court of competent jurisdiction.

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

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

142 (B) clarifies legislative intent.

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

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

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

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

151 (j) The acknowledgment under Subsection (4)(a) continues for that issuer of the

152 uninsured motorist coverage until the named insured requests, in writing, different uninsured
153 motorist coverage from the insurer.

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

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

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

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

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

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

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

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

176 ~~[(b)]~~ (5) (a) (i) All persons, including governmental entities, that are engaged in the
177 business of, or that accept payment for, transporting natural persons by motor vehicle, and all
178 school districts that provide transportation services for their students, shall provide coverage
179 for all motor vehicles used for that purpose, by purchase of a policy of insurance or by
180 self-insurance, uninsured motorist coverage of at least \$25,000 per person and \$500,000 per
181 accident.

182 (ii) This coverage is secondary to any other insurance covering an injured covered

183 person.

184 ~~(e)~~ (b) Uninsured motorist coverage:

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

186 Compensation Act;

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

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

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

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

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

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

195 (C) while committing a felony; and

196 (vi) notwithstanding Subsection (5)~~(e)~~(b)(v), may be recovered:

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

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

201 ~~(d)~~ (c) As used in this Subsection (5), "motor vehicle" ~~[has the same meaning as~~
202 under] means the same as that term is defined in Section 41-1a-102.

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

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

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

213 (ii) A covered person as defined under Subsection (8)(b)(ii) is entitled to the highest

214 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered
215 person is the named insured or an insured family member.

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

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

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

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

230 (b) Each of the following persons may also recover uninsured motorist benefits under
231 any one other policy in which they are described as a "covered person" as defined in Subsection
232 (1):

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

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

236 (A) to the covered person;

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

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

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

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

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

244 (I) to the covered person;

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

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

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

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

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

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

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

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

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

262 (ii) through litigation.

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

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

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

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

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

276 (e) If the parties select a panel of three arbitrators under Subsection (9)(d)(iii):
277 (i) each side shall select one arbitrator; and
278 (ii) the arbitrators appointed under Subsection (9)(e)(i) shall select one additional
279 arbitrator to be included in the panel.

280 (f) Unless otherwise agreed to in writing:
281 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
282 under Subsection (9)(d)(i); or
283 (ii) if an arbitration panel is selected under Subsection (9)(d)(iii):
284 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and
285 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
286 under Subsection (9)(e)(ii).

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

290 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),
291 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of
292 Subsections (10)(a) through (c) are satisfied.

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

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

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

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

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

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

307 policies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

338 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and
339 (B) the costs of expert witnesses and depositions.
340 (iv) An award of costs under this Subsection (9)(q) may not exceed \$2,500 unless
341 Subsection (10)(h)(iii) applies.
342 (r) For purposes of determining whether a party's verdict is greater or less than the
343 arbitration award under Subsection (9)(q), a court may not consider any recovery or other relief
344 granted on a claim for damages if the claim for damages:
345 (i) was not fully disclosed in writing prior to the arbitration proceeding; or
346 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil
347 Procedure.
348 (s) If a district court determines, upon a motion of the nonmoving party, that the
349 moving party's use of the trial de novo process was filed in bad faith in accordance with
350 Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving
351 party.
352 (t) Nothing in this section is intended to limit any claim under any other portion of an
353 applicable insurance policy.
354 (u) If there are multiple uninsured motorist policies, as set forth in Subsection (8), the
355 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist
356 carriers.
357 (10) (a) Within 30 days after a covered person elects to submit a claim for uninsured
358 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
359 the uninsured motorist carrier:
360 (i) a written demand for payment of uninsured motorist coverage benefits, setting forth:
361 (A) subject to Subsection (10)(l), the specific monetary amount of the demand,
362 including a computation of the covered person's claimed past medical expenses, claimed past
363 lost wages, and the other claimed past economic damages; and
364 (B) the factual and legal basis and any supporting documentation for the demand;
365 (ii) a written statement under oath disclosing:
366 (A) (I) the names and last known addresses of all health care providers who have
367 rendered health care services to the covered person that are material to the claims for which
368 uninsured motorist benefits are sought for a period of five years preceding the date of the event

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

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

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

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

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

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

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

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

399 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed

400 health care providers or health care insurers under Subsection (10)(a)(ii) is reasonably
401 necessary, the uninsured motorist carrier may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

440 (ii) elect to:

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

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

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

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

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

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

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

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

461 (ii) any of the following applicable costs:

462 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;
463 (B) the arbitrator or arbitration panel's fee; and
464 (C) the reasonable costs of expert witnesses and depositions used in the presentation of
465 evidence during arbitration or litigation.

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

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

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

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

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

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

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

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

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

490 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 10, and Chapter
491 300, Section 10, to Subsections (10)(a)(ii)(A)(II) and (B)(II) apply to any claim submitted to
492 binding arbitration or through litigation on or after May 13, 2014.

493 Section 3. Section **31A-22-305.3** is amended to read:

494 **31A-22-305.3. Underinsured motorist coverage.**

495 (1) As used in this section:

496 (a) "Covered person" [~~has the same meaning as~~] means the same as that term is defined
497 in Section **31A-22-305**.

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

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

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

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

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

507 (I) a named insured;

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

509 (III) a dependent of a named insured.

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

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

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

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

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

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

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

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

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

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

530 (i) is filed with the department;

531 (ii) is provided by the insurer;

532 (iii) waives the higher coverage;

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

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

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

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

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

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

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

554 (iii) If an additional motor vehicle is added to a personal lines policy where

555 ~~[underinsured motorist coverage has been rejected, or where]~~ underinsured motorist limits are
556 lower than the named insured's motor vehicle liability limits, the insurer shall provide a notice
557 to a named insured within 30 days that:

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

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

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

567 (g) (i) Subsection (3)(a) applies retroactively to any claim arising on or after January 1,
568 2001 for which, as of May 1, 2012, an insured has not made a written demand for arbitration or
569 filed a complaint in a court of competent jurisdiction.

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

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

572 (B) clarifies legislative intent.

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

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

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

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

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

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

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

585 (k) (i) The named insured's underinsured motorist coverage, as described in Subsection

586 (2), is secondary to the liability coverage of an owner or operator of an underinsured motor
587 vehicle, as described in Subsection (1).

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

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

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

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

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

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

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

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

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

615 (b) (i) Except as provided in Subsection (4)(b)(ii), a covered person injured while
616 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the

617 covered person, the covered person's spouse, or the covered person's resident parent or resident
618 sibling, may also recover benefits under any one other policy under which the covered person is
619 also a covered person.

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

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

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

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

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

632 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident is
633 primary coverage, and the coverage elected by a person described under Subsections
634 [31A-22-305\(1\)\(a\), \(b\), and \(c\)](#) is secondary coverage.

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

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

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

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

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

645 (c) Underinsured motorist coverage:

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

648 (ii) may not be subrogated by a workers' compensation insurance carrier;
649 (iii) may not be reduced by benefits provided by workers' compensation insurance;
650 (iv) may be reduced by health insurance subrogation only after the covered person is
651 made whole;
652 (v) may not be collected for bodily injury or death sustained by a person:
653 (A) while committing a violation of Section 41-1a-1314;
654 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
655 in violation of Section 41-1a-1314; or
656 (C) while committing a felony; and
657 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:
658 (A) for a person under 18 years of age who is injured within the scope of Subsection
659 (4)(c)(v), but is limited to medical and funeral expenses; or
660 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
661 within the course and scope of the law enforcement officer's duties.
662 (5) The inception of the loss under Subsection 31A-21-313(1) for underinsured
663 motorist claims occurs upon the date of the last liability policy payment.
664 (6) (a) Except as provided in Subsection (6)(d), within five business days after
665 notification that all liability insurers have tendered the liability insurers' policy limits, the
666 underinsured carrier shall either:
667 (i) waive any subrogation claim the underinsured carrier may have against the person
668 liable for the injuries caused in the accident; or
669 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.
670 (b) If neither option is exercised under Subsection (6)(a), the subrogation claim is
671 considered to be waived by the underinsured carrier.
672 (c) The notification under Subsection (6)(a) shall include:
673 (i) the name, address, and phone number for all liability insurers;
674 (ii) the liability insurers' liability policy limits; and
675 (iii) the claim number associated with each liability insurer.
676 (d) (i) A claimant may demand payment of policy limits from all liability insurers by
677 sending notice to all applicable underinsured motorist insurers demanding payment.
678 (ii) The notice under Subsection (6)(d)(i) shall include the name, address, and claim

679 number of all liability insurers from which the claimant has demanded policy limits.

680 (iii) The claimant shall send a copy of the notice to all liability insurers from which the
681 claimant has demanded policy limits.

682 (e) Upon the liability insurer tendering limits to a claimant, the liability insurer shall
683 provide notice of the tender to all underinsured motorist insurers for which the liability insurer
684 received notice under Subsection (6)(d).

685 (f) If a claimant accepts the policy limits tender of each liability insurer, the liability
686 insurer shall pay the claimant the accepted policy limits.

687 (g) (i) The subrogation rights of an underinsured motorist insurer are waived, unless:

688 (A) within five days of delivery of the notice of tender from the liability insurer, the
689 underinsured motorist insurer affirmatively asserts the underinsured motorist insurer's rights to
690 subrogation by delivering notice to the liability insurer of the underinsured motorist insurer's
691 rights to subrogate; and

692 (B) the underinsured motorist insurer reimburses the liability insurer for the policy
693 limits paid to the claimant.

694 (ii) If the subrogation rights of an underinsured motorist insurer are not waived under
695 Subsection (6)(g)(i), any liability release signed by the claimant or the claimant's representative
696 is rescinded.

697 (iii) A claimant's underinsured motorist coverage is preserved if the claimant provides
698 notice to the underinsured motorist insurer as described in Subsection (6)(d).

699 (h) A person providing a notice required in this Subsection (6) shall deliver the notice
700 by a service that provides proof of delivery.

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

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

704 (b) that is not required to conform to Section [31A-22-302](#).

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

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

709 (ii) through litigation.

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

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

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

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

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

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

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

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

727 (f) Unless otherwise agreed to in writing:

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

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

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

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

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

737 (h) (i) The arbitration shall be conducted in accordance with Rules 26(a)(4) through (f),
738 27 through 37, 54, and 68 of the Utah Rules of Civil Procedure, once the requirements of
739 Subsections (9)(a) through (c) are satisfied.

740 (ii) The specified tier as defined by Rule 26(c)(3) of the Utah Rules of Civil Procedure

741 shall be determined based on the claimant's specific monetary amount in the written demand
742 for payment of uninsured motorist coverage benefits as required in Subsection (9)(a)(i)(A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

795 (s) If a district court determines, upon a motion of the nonmoving party, that a moving
796 party's use of the trial de novo process is filed in bad faith in accordance with Section
797 [78B-5-825](#), the district court may award reasonable attorney fees to the nonmoving party.

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

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

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

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

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

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

812 (ii) a written statement under oath disclosing:

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

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

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

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

834 been disclosed;

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

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

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

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

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

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

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

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

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

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

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

863 (c) (i) An underinsured motorist carrier that receives an election for arbitration or a
864 notice of filing litigation and the demand for payment of underinsured motorist benefits under

865 Subsection (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the
866 demand and receipt of the items specified in Subsections (9)(a)(i) through (iii), to:

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

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

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

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

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

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

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

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

888 (ii) elect to:

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

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

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

896 underinsured motorist carrier under Subsection (9)(c)(i).

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

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

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

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

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

909 (ii) any of the following applicable costs:

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

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

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

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

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

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

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

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

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

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

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

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

938 (ii) The changes made by Laws of Utah 2014, Chapter 290, Section 11, and Chapter
939 300, Section 11, under Subsections (9)(a)(ii)(A)(II) and (B)(II) apply to a claim submitted to
940 binding arbitration or through litigation on or after May 13, 2014.

Legislative Review Note
Office of Legislative Research and General Counsel