

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass
Vote:	3 - 2 - 0
Yeas:	Prozanski, Walker, Burdick
Nays:	Beyer, Kruse
Exc.:	0
Prepared By:	Matt Kalmanson, Counsel
Meeting Dates:	5/21

WHAT THE MEASURE DOES: Requires insurance companies to pay insureds up to the limit of their policy when the insured sustains an injury from an accident with an underinsured or uninsured car, even if the car was owned or operated by a public body or employee who is subject to the Tort Claims Act.

ISSUES DISCUSSED:

- Liability limits in the Tort Claims Act
- Underinsured/uninsured motorist provisions in Oregon Insurance Code
- *Surface v. American Spirit Insurance Co.*, 154 Or App 696 (1998)
- Impact on insurance rates and accident victims
- Benefits to taxpayers

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: This bill arises out of the interaction of the uninsured motorist provisions in the Oregon Insurance Code with the Oregon Tort Claims Act. ORS 742.504 requires insurers to provide uninsured motorist coverage to their insureds and, if the insured is injured in an accident with an uninsured vehicle, to provide “all sums that the insured . . . is legally entitled to recover as general and special damages from the owner or operator of an uninsured vehicle because of bodily injury sustained by the insured caused by” the operator’s uninsured vehicle. (Emphasis added.) However, ORS 30.270 limits the liability of public bodies and its employees to \$200,000, irrespective of the actual amount of damages that a party may have suffered.

In *Surface v. American Spirit Insurance Co.*, 154 Or App 696 (1998), an insured was in an accident with a vehicle owned by a school district. The Oregon Court of Appeals held that, because ORS 742.504 limits uninsured and underinsured coverage to the amount that an insured “is legally entitled to recover” from the owner of the vehicle, the amount the insurance company was required to pay was limited by ORS 30.270, even though the plaintiff owned a million dollar (uninsured motorist) UIM policy. In so doing, the court noted that the plaintiff had identified “several policy reasons” why he should be entitled to coverage up to the limits of the policy, but “those arguments appropriately must be addressed to the legislature rather than to the courts.” HB 2908 would provide that an insurance company must pay the full amount that a party is entitled to recover, notwithstanding the Tort Claims Act.