

House Bill 2384

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that when insured is injured while occupying vehicle not owned by named insured, uninsured motorist coverage of insured is excess coverage.

A BILL FOR AN ACT

1
2 Relating to the application of uninsured motorist coverage to occupants of motor vehicles with
3 similar uninsured motorist coverage; amending ORS 742.504.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 742.504 is amended to read:

6 742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide
7 uninsured motorist coverage that in each instance is no less favorable in any respect to the insured
8 or the beneficiary than if the following provisions were set forth in the policy. However, nothing
9 contained in this section requires the insurer to reproduce in the policy the particular language of
10 any of the following provisions:

11 (1)(a) The insurer will pay all sums that the insured, the heirs or the legal representative of the
12 insured is legally entitled to recover as general and special damages from the owner or operator
13 of an uninsured vehicle because of bodily injury sustained by the insured caused by accident and
14 arising out of the ownership, maintenance or use of the uninsured vehicle. Determination as to
15 whether the insured, the insured's heirs or the insured's legal representative is legally entitled to
16 recover such damages, and if so, the amount thereof, shall be made by agreement between the in-
17 sured and the insurer, or, in the event of disagreement, may be determined by arbitration as pro-
18 vided in subsection (10) of this section.

19 (b) No judgment against any person or organization alleged to be legally responsible for bodily
20 injury, except for proceedings instituted against the insurer as provided in this policy, shall be
21 conclusive, as between the insured and the insurer, on the issues of liability of the person or or-
22 ganization or of the amount of damages to which the insured is legally entitled.

23 (2) As used in this policy:

24 (a) "Bodily injury" means bodily injury, sickness or disease, including death resulting therefrom.

25 (b) "Hit-and-run vehicle" means a vehicle that causes bodily injury to an insured arising out of
26 physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the
27 time of the accident, provided:

28 (A) The identity of either the operator or the owner of the hit-and-run vehicle cannot be ascer-
29 tained;

30 (B) The insured or someone on behalf of the insured reported the accident within 72 hours to
31 a police, peace or judicial officer, to the Department of Transportation or to the equivalent depart-

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 ment in the state where the accident occurred, and filed with the insurer within 30 days thereafter
 2 a statement under oath that the insured or the legal representative of the insured has a cause or
 3 causes of action arising out of the accident for damages against a person or persons whose identities
 4 are unascertainable, and setting forth the facts in support thereof; and

5 (C) At the insurer's request, the insured or the legal representative of the insured makes avail-
 6 able for inspection the vehicle the insured was occupying at the time of the accident.

7 (c) "Insured," when unqualified and when applied to uninsured motorist coverage, means:

8 (A) The named insured as stated in the policy and any person designated as named insured in
 9 the schedule and, while residents of the same household, the spouse of any named insured and rel-
 10 atives of either, provided that neither the relative nor the spouse is the owner of a vehicle not de-
 11 scribed in the policy and that, if the named insured as stated in the policy is other than an
 12 individual or husband and wife who are residents of the same household, the named insured shall
 13 be only a person so designated in the schedule;

14 (B) Any child residing in the household of the named insured if the insured has performed the
 15 duties of a parent to the child by rearing the child as the insured's own although the child is not
 16 related to the insured by blood, marriage or adoption; and

17 (C) Any other person while occupying an insured vehicle, provided the actual use thereof is with
 18 the permission of the named insured.

19 (d) "Insured vehicle," except as provided in paragraph (e) of this provision, means:

20 (A) The vehicle described in the policy or a newly acquired or substitute vehicle, as each of
 21 those terms is defined in the public liability coverage of the policy, insured under the public liability
 22 provisions of the policy; or

23 (B) A nonowned vehicle operated by the named insured or spouse if a resident of the same
 24 household, provided that the actual use thereof is with the permission of the owner of the vehicle
 25 and the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any
 26 member of the same household.

27 (e) "Insured vehicle" does not include a trailer of any type unless the trailer is a described ve-
 28 hicle in the policy.

29 (f) "Occupying" means in or upon or entering into or alighting from.

30 (g) "Phantom vehicle" means a vehicle that causes bodily injury to an insured arising out of a
 31 motor vehicle accident that is caused by a vehicle that has no physical contact with the insured or
 32 the vehicle the insured is occupying at the time of the accident, provided:

33 (A) The identity of either the operator or the owner of the phantom vehicle cannot be ascer-
 34 tained;

35 (B) The facts of the accident can be corroborated by competent evidence other than the testi-
 36 mony of the insured or any person having an uninsured motorist claim resulting from the accident;
 37 and

38 (C) The insured or someone on behalf of the insured reported the accident within 72 hours to
 39 a police, peace or judicial officer, to the Department of Transportation or to the equivalent depart-
 40 ment in the state where the accident occurred, and filed with the insurer within 30 days thereafter
 41 a statement under oath that the insured or the legal representative of the insured has a cause or
 42 causes of action arising out of the accident for damages against a person or persons whose identities
 43 are unascertainable, and setting forth the facts in support thereof.

44 (h) "State" includes the District of Columbia, a territory or possession of the United States and
 45 a province of Canada.

1 (i) "Stolen vehicle" means an insured vehicle that causes bodily injury to the insured arising
2 out of a motor vehicle accident if:

3 (A) The vehicle is operated without the consent of the insured;

4 (B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability
5 insurance;

6 (C) The insured or someone on behalf of the insured reported the accident within 72 hours to
7 a police, peace or judicial officer or to the equivalent department in the state where the accident
8 occurred; and

9 (D) The insured or someone on behalf of the insured cooperates with the appropriate law
10 enforcement agency in the prosecution of the theft of the vehicle.

11 (j) "Uninsured vehicle," except as provided in paragraph (k) of this provision, means:

12 (A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible
13 motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily
14 injury or death under ORS 806.070 applicable at the time of the accident with respect to any person
15 or organization legally responsible for the use of the vehicle, or with respect to which there is
16 collectible bodily injury liability insurance applicable at the time of the accident but the insurance
17 company writing the insurance denies coverage or the company writing the insurance becomes vol-
18 untarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insol-
19 vent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and
20 the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident,
21 the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at
22 the time of the accident.

23 (B) A hit-and-run vehicle.

24 (C) A phantom vehicle.

25 (D) A stolen vehicle.

26 (k) "Uninsured vehicle" does not include:

27 (A) An insured vehicle, unless the vehicle is a stolen vehicle;

28 (B) A vehicle that is owned or operated by a self-insurer within the meaning of any motor ve-
29 hicle financial responsibility law, motor carrier law or any similar law;

30 (C) A vehicle that is owned by the United States of America, Canada, a state, a political sub-
31 division of any such government or an agency of any such government;

32 (D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for
33 use as a residence or premises and not as a vehicle;

34 (E) A farm-type tractor or equipment designed for use principally off public roads, except while
35 actually upon public roads; or

36 (F) A vehicle owned by or furnished for the regular or frequent use of the insured or any
37 member of the household of the insured.

38 (L) "Vehicle" means every device in, upon or by which any person or property is or may be
39 transported or drawn upon a public highway, but does not include devices moved by human power
40 or used exclusively upon stationary rails or tracks.

41 (3) This coverage applies only to accidents that occur on and after the effective date of the
42 policy, during the policy period and within the United States of America, its territories or pos-
43 sessions, or Canada.

44 (4)(a) This coverage does not apply to bodily injury of an insured with respect to which the in-
45 sured or the legal representative of the insured shall, without the written consent of the insurer,

1 make any settlement with or prosecute to judgment any action against any person or organization
2 who may be legally liable therefor.

3 (b) This coverage does not apply to bodily injury to an insured while occupying a vehicle, other
4 than an insured vehicle, owned by, or furnished for the regular use of, the named insured or any
5 relative resident in the same household, or through being struck by the vehicle.

6 (c) This coverage does not apply so as to inure directly or indirectly to the benefit of any
7 workers' compensation carrier, any person or organization qualifying as a self-insurer under any
8 workers' compensation or disability benefits law or any similar law or the State Accident Insurance
9 Fund Corporation.

10 (d) This coverage does not apply with respect to underinsured motorist benefits unless:

11 (A) The limits of liability under any bodily injury liability insurance applicable at the time of
12 the accident regarding the injured person have been exhausted by payment of judgments or settle-
13 ments to the injured person or other injured persons;

14 (B) The described limits have been offered in settlement, the insurer has refused consent under
15 paragraph (a) of this subsection and the insured protects the insurer's right of subrogation to the
16 claim against the tortfeasor;

17 (C) The insured gives credit to the insurer for the unrealized portion of the described liability
18 limits as if the full limits had been received if less than the described limits have been offered in
19 settlement, and the insurer has consented under paragraph (a) of this subsection; or

20 (D) The insured gives credit to the insurer for the unrealized portion of the described liability
21 limits as if the full limits had been received if less than the described limits have been offered in
22 settlement and, if the insurer has refused consent under paragraph (a) of this subsection, the insured
23 protects the insurer's right of subrogation to the claim against the tortfeasor.

24 (e) When seeking consent under paragraph (a) or (d) of this subsection, the insured shall allow
25 the insurer a reasonable time in which to collect and evaluate information related to consent to the
26 proposed offer of settlement. The insured shall provide promptly to the insurer any information that
27 is reasonably requested by the insurer and that is within the custody and control of the insured.
28 Consent will be presumed to be given if the insurer does not respond within a reasonable time. For
29 purposes of this paragraph, a "reasonable time" is no more than 30 days from the insurer's receipt
30 of a written request for consent, unless the insured and the insurer agree otherwise.

31 (5)(a) As soon as practicable, the insured or other person making claim shall give to the insurer
32 written proof of claim, under oath if required, including full particulars of the nature and extent of
33 the injuries, treatment and other details entering into the determination of the amount payable
34 hereunder. The insured and every other person making claim hereunder shall submit to examinations
35 under oath by any person named by the insurer and subscribe the same, as often as may reasonably
36 be required. Proof of claim shall be made upon forms furnished by the insurer unless the insurer fails
37 to furnish the forms within 15 days after receiving notice of claim.

38 (b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit
39 to physical examinations by physicians selected by the insurer and shall, upon each request from the
40 insurer, execute authorization to enable the insurer to obtain medical reports and copies of records.

41 (6) If, before the insurer makes payment of loss hereunder, the insured or the legal represen-
42 tative of the insured institutes any legal action for bodily injury against any person or organization
43 legally responsible for the use of a vehicle involved in the accident, a copy of the summons and
44 complaint or other process served in connection with the legal action shall be forwarded imme-
45 diately to the insurer by the insured or the legal representative of the insured.

1 (7)(a) The limit of liability stated in the declarations as applicable to “each person” is the limit
 2 of the insurer’s liability for all damages because of bodily injury sustained by one person as the
 3 result of any one accident and, subject to the above provision respecting each person, the limit of
 4 liability stated in the declarations as applicable to “each accident” is the total limit of the compa-
 5 ny’s liability for all damages because of bodily injury sustained by two or more persons as the result
 6 of any one accident.

7 (b) Any payment made under this coverage to or for an insured shall be applied in reduction
 8 of any amount that the insured may be entitled to recover from any person who is an insured under
 9 the bodily injury liability coverage of this policy.

10 (c) Any amount payable under the terms of this coverage because of bodily injury sustained in
 11 an accident by a person who is an insured under this coverage shall be reduced by:

12 (A) All sums paid on account of the bodily injury by or on behalf of the owner or operator of
 13 the uninsured vehicle and by or on behalf of any other person or organization jointly or severally
 14 liable together with the owner or operator for the bodily injury, including all sums paid under the
 15 bodily injury liability coverage of the policy; and

16 (B) The amount paid and the present value of all amounts payable on account of the bodily in-
 17 jury under any workers’ compensation law, disability benefits law or any similar law.

18 (d) Any amount payable under the terms of this coverage because of bodily injury sustained in
 19 an accident by a person who is an insured under this coverage shall be reduced by the credit given
 20 to the insurer pursuant to subsection (4)(d)(C) or (D) of this section.

21 (e) The amount payable under the terms of this coverage may not be reduced by the amount of
 22 liability proceeds offered, described in subsection (4)(d)(B) or (D) of this section, that has not been
 23 paid to the injured person. If liability proceeds have been offered and not paid, the amount payable
 24 under the terms of the coverage shall include the amount of liability limits offered but not accepted
 25 due to the insurer’s refusal to consent. The insured shall cooperate so as to permit the insurer to
 26 proceed by subrogation or assignment to prosecute the claim against the uninsured motorist.

27 (8) No action shall lie against the insurer unless, as a condition precedent thereto, the insured
 28 or the legal representative of the insured has fully complied with all the terms of this policy.

29 (9)(a) With respect to bodily injury to an insured:

30 (A) While occupying a vehicle owned by a named insured under this coverage, the insurance
 31 under this coverage is primary.

32 (B) While occupying a vehicle not owned by a named insured under this coverage, the insurance
 33 under this coverage shall apply only as excess insurance over any primary insurance available to
 34 the occupant that is similar to this coverage, and this excess insurance shall then apply only in the
 35 amount by which the applicable limit of liability of this excess coverage exceeds the sum of the
 36 applicable limits of liability of all primary insurance available to the occupant.

37 (b) If an insured is an insured under other primary or excess insurance available to the insured
 38 that is similar to this coverage, then the insured’s damages are deemed not to exceed the higher of
 39 the applicable limits of liability of **this insurance** or the additional primary or excess insurance
 40 available to the insured, and the insurer is not liable under this coverage for a greater proportion
 41 of the insured’s damages than the applicable limit of liability of this coverage bears to the sum of
 42 the applicable limits of liability of this insurance and other primary or excess insurance available
 43 to the insured.

44 (c) With respect to bodily injury to an insured while occupying any motor vehicle used as a
 45 public or livery conveyance, the insurance under this coverage shall apply only as excess insurance

1 over any other insurance available to the insured that is similar to this coverage, and this insurance
 2 shall then apply only in the amount by which the applicable limit of liability of this coverage ex-
 3 ceeds the sum of the applicable limits of liability of all other insurance.

4 (10) If any person making claim hereunder and the insurer do not agree that the person is le-
 5 gally entitled to recover damages from the owner or operator of an uninsured vehicle because of
 6 bodily injury to the insured, or do not agree as to the amount of payment that may be owing under
 7 this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time
 8 of the dispute to settle the matter by arbitration, the arbitration shall take place under the arbi-
 9 tration laws of the State of Oregon or, if the parties agree, according to any other procedure. Any
 10 judgment upon the award rendered by the arbitrators may be entered in any court having jurisdic-
 11 tion thereof, provided, however, that the costs to the insured of the arbitration proceeding do not
 12 exceed \$100 and that all other costs of arbitration are borne by the insurer. "Costs" as used in this
 13 provision does not include attorney fees or expenses incurred in the production of evidence or wit-
 14 nesses or the making of transcripts of the arbitration proceedings. The person and the insurer each
 15 agree to consider themselves bound and to be bound by any award made by the arbitrators pursuant
 16 to this coverage in the event of such election. At the election of the insured, the arbitration shall
 17 be held:

18 (a) In the county and state of residence of the insured;

19 (b) In the county and state where the insured's cause of action against the uninsured motorist
 20 arose; or

21 (c) At any other place mutually agreed upon by the insured and the insurer.

22 (11) In the event of payment to any person under this coverage:

23 (a) The insurer shall be entitled to the extent of the payment to the proceeds of any settlement
 24 or judgment that may result from the exercise of any rights of recovery of the person against any
 25 uninsured motorist legally responsible for the bodily injury because of which payment is made;

26 (b) The person shall hold in trust for the benefit of the insurer all rights of recovery that the
 27 person shall have against such other uninsured person or organization because of the damages that
 28 are the subject of claim made under this coverage, but only to the extent that the claim is made or
 29 paid herein;

30 (c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one
 31 or more of whom is uninsured, the insured shall have the election to receive from the insurer any
 32 payment to which the insured would be entitled under this coverage by reason of the act or acts
 33 of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with
 34 legal action against any or all persons claimed to be liable to the insured for the injuries. If the
 35 insured elects to receive payment from the insurer under this coverage, then the insured shall hold
 36 in trust for the benefit of the insurer all rights of recovery the insured shall have against any other
 37 person, firm or organization because of the damages that are the subject of claim made under this
 38 coverage, but only to the extent of the actual payment made by the insurer;

39 (d) The person shall do whatever is proper to secure and shall do nothing after loss to prejudice
 40 such rights;

41 (e) If requested in writing by the insurer, the person shall take, through any representative not
 42 in conflict in interest with the person, designated by the insurer, such action as may be necessary
 43 or appropriate to recover payment as damages from such other uninsured person or organization,
 44 such action to be taken in the name of the person, but only to the extent of the payment made
 45 hereunder. In the event of a recovery, the insurer shall be reimbursed out of the recovery for ex-

1 penses, costs and attorney fees incurred by the insurer in connection therewith; and

2 (f) The person shall execute and deliver to the insurer any instruments and papers as may be
3 appropriate to secure the rights and obligations of the person and the insurer established by this
4 provision.

5 (12)(a) The parties to this coverage agree that no cause of action shall accrue to the insured
6 under this coverage unless within two years from the date of the accident:

7 (A) Agreement as to the amount due under the policy has been concluded;

8 (B) The insured or the insurer has formally instituted arbitration proceedings;

9 (C) The insured has filed an action against the insurer; or

10 (D) Suit for bodily injury has been filed against the uninsured motorist and, within two years
11 from the date of settlement or final judgment against the uninsured motorist, the insured has
12 formally instituted arbitration proceedings or filed an action against the insurer.

13 (b) For purposes of this subsection:

14 (A) "Date of settlement" means the date on which a written settlement agreement or release is
15 signed by an insured or, in the absence of these documents, the date on which the insured or the
16 attorney for the insured receives payment of any sum required by the settlement agreement. An
17 advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for pur-
18 poses of the time limitation in this subsection.

19 (B) "Final judgment" means a judgment that has become final by lapse of time for appeal or by
20 entry in an appellate court of an appellate judgment.

21