

# House Bill 2385

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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**.

Requires self-insurer for purposes of financial responsibility requirements to provide coverage for permissive drivers. Permits recovery of amount under insured's uninsured motorist coverage if insured recovers from self-insurer less than amount of insured's uninsured motorist coverage under applicable motor vehicle liability insurance policy.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to self-insurers for purposes of financial responsibility requirements; creating new pro-  
3 visions; amending ORS 30.135, 742.502, 742.504 and 806.130; and declaring an emergency.

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

5 **SECTION 1.** ORS 806.130 is amended to read:

6 806.130. (1) To qualify as a self-insurer for purposes of financial responsibility requirements un-  
7 der ORS 806.060, a person must do all of the following:

8 [(1)] (a) Apply to the Department of Transportation and be issued by the department a certif-  
9 icate of self-insurance under ORS 806.140.

10 [(2)] (b) Either:

11 [(a)] (A) Establish to the satisfaction of the department that the person [*is possessed*] **possesses**  
12 and will continue to [*be possessed of*] **possess** the ability to pay and discharge judgments described  
13 under ORS 806.040 that might be obtained against the applicant; or

14 [(b)] (B) Be [*duly*] qualified under the laws of the State of Oregon or under an ordinance of a  
15 city of this state to act as a self-insurer and be acting as [*such*] **a self-insurer**.

16 [(3)] (c) Agree to **provide the same coverage and to** pay the same amounts with respect to  
17 an accident occurring while the certificate is in force that an insurer would be obligated to **provide**  
18 **and to** pay under a motor vehicle liability insurance policy, including **providing the coverage re-**  
19 **quired under ORS 806.080 (1)(b) and** uninsured motorist coverage and liability coverage to at least  
20 the limits specified in ORS 806.070.

21 [(4)] (d) Have more than 25 motor vehicles including commercial buses registered in the person's  
22 name.

23 **(2)(a) If an accident occurs while a certificate of self-insurance issued under ORS 806.140**  
24 **is in force, the liability protection provided and the amounts paid under subsection (1)(c) of**  
25 **this section are secondary to any motor vehicle liability insurance coverage available to a**  
26 **customer of the self-insurer or an operator of the self-insured vehicle unless otherwise**  
27 **agreed to by the self-insurer. A self-insurer is required to provide the minimum payments**  
28 **established under ORS 806.070 only when the motor vehicle liability insurance policy of a**  
29 **customer of the self-insurer or an operator of the self-insured vehicle does not provide the**

**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 **minimum required payments established in ORS 806.070.**

2 **(b) A self-insurer may recover from a customer of the self-insurer or an operator of the**  
 3 **self-insured vehicle the amounts paid under subsection (1)(c) of this section.**

4 **(3) Nothing in this section affects the limits on liability for a self-insurer provided in ORS**  
 5 **30.135.**

6 **SECTION 2.** ORS 742.502 is amended to read:

7 742.502. (1) Every motor vehicle liability policy insuring against loss suffered by any natural  
 8 person resulting from liability imposed by law for bodily injury or death arising out of the owner-  
 9 ship, maintenance or use of a motor vehicle shall provide in the policy or by indorsement on the  
 10 policy uninsured motorist coverage when the policy is either:

11 (a) Issued for delivery in this state; or

12 (b) Issued or delivered by an insurer doing business in this state with respect to any motor ve-  
 13 hicle then principally used or principally garaged in this state.

14 (2)(a) A motor vehicle bodily injury liability policy shall have the same limits for uninsured  
 15 motorist coverage as for bodily injury liability coverage unless a named insured in writing elects  
 16 lower limits. The insured may not elect limits lower than the amounts prescribed to meet the re-  
 17 quirements of ORS 806.070 for bodily injury or death. Uninsured motorist coverage shall include  
 18 underinsurance coverage for bodily injury or death caused by accident and arising out of the own-  
 19 ership, maintenance or use of a motor vehicle with motor vehicle liability insurance that provides  
 20 recovery in an amount that is less than the insured's uninsured motorist coverage. Underinsurance  
 21 [benefits] **coverage** shall be equal to uninsured motorist coverage [benefits] less the amount recov-  
 22 ered from other motor vehicle liability insurance policies.

23 (b) If a named insured elects lower limits, the named insured shall sign a statement electing  
 24 lower limits within 60 days of the time the named insured makes the election. The statement shall  
 25 acknowledge that a named insured was offered uninsured motorist coverage with the limits equal  
 26 to those for bodily injury liability. The statement shall contain a brief summary, which may not be  
 27 construed as part of the insurance contract, of what uninsured and underinsured motorist coverages  
 28 provide and shall state the price for coverage with limits equal to the named insured's bodily injury  
 29 liability limits and the price for coverage with the lower limits requested by the named insured. The  
 30 statement shall remain in force until rescinded in writing by a named insured or until the motor  
 31 vehicle bodily injury liability limits are changed. The form of statement used to comply with this  
 32 paragraph shall be approved by the Department of Consumer and Business Services.

33 (c) A statement electing lower limits need not be signed when vehicles are either added to or  
 34 subtracted from a policy or when the policy is amended, renewed, modified or replaced by the same  
 35 company or group of companies under common ownership or control unless the liability limits of the  
 36 policy are changed.

37 (3) The insurer issuing [such] **the** policy may offer one or more options of uninsured motorist  
 38 coverage larger than the amounts prescribed to meet the requirements of ORS 806.070 and in excess  
 39 of the limits provided under the policy for motor vehicle bodily injury liability insurance. Offers of  
 40 uninsured motorist coverage shall include underinsurance coverage for bodily injury or death caused  
 41 by accident and arising out of the ownership, maintenance or use of a motor vehicle with motor  
 42 vehicle liability insurance that provides recovery in an amount that is less than the insured's  
 43 uninsured motorist coverage. Underinsurance [benefits] **coverage** shall be equal to uninsured mo-  
 44 torist coverage [benefits] less the amount recovered from other motor vehicle liability insurance  
 45 policies.

1 (4) Underinsurance coverage is subject to ORS 742.504 and 742.542.

2 (5) Uninsured motorist coverage and underinsurance coverage shall provide coverage for bodily  
3 injury or death when:

4 (a) The limits for uninsured motorist coverage of the insured equal the limits of the liability  
5 policy of the person whose fault caused the bodily injury or death; and

6 (b) The amount of liability insurance recovered is less than the limits for uninsured motorist  
7 coverage of the insured.

8 **(6) Uninsured motorist coverage and underinsurance coverage shall provide coverage for**  
9 **bodily injury or death if the amount recovered from a self-insurer is less than the limits for**  
10 **uninsured motorist coverage of the insured.**

11 [(6)] (7) As used in this section and except as otherwise provided in this subsection, “amount  
12 recovered from other motor vehicle liability insurance policies” means the proceeds of liability in-  
13 surance recovered by or on behalf of the injured party. Proceeds recovered on behalf of the injured  
14 party include proceeds received by the injured party’s insurer as reimbursement for personal injury  
15 protection benefits provided to the injured person, proceeds received by the medical providers of the  
16 injured person and proceeds received as attorney fees on the claim of the injured person. Where  
17 applicable liability insurance policy limits are exhausted upon payment, settlement or judgment by  
18 division among two or more injured persons, “amount recovered from other motor vehicle liability  
19 insurance policies” means the proceeds that are recovered by or on behalf of the injured person but  
20 does not include any proceeds of that liability policy received by other injured persons.

21 **SECTION 3.** ORS 742.504 is amended to read:

22 742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide  
23 uninsured motorist coverage that in each instance is no less favorable in any respect to the insured  
24 or the beneficiary than if the following provisions were set forth in the policy. However, nothing  
25 contained in this section requires the insurer to reproduce in the policy the particular language of  
26 any of the following provisions:

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

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

39 (2) As used in this policy:

40 (a) “Bodily injury” means bodily injury, sickness or disease, including death resulting therefrom.

41 (b) “Hit-and-run vehicle” means a vehicle that causes bodily injury to an insured arising out of  
42 physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the  
43 time of the accident, provided:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (C) A phantom vehicle.

27 (D) A stolen vehicle.

28 **(E) A vehicle that is owned or operated by a self-insurer:**

29 **(i) That is not in compliance with ORS 806.130 (1)(c); or**

30 **(ii) That provides recovery to an insured in an amount that is less than the limits for**  
 31 **uninsured motorist coverage of the insured.**

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

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

34 (B) **Except as provided in paragraph (j)(E) of this subsection**, a vehicle that is owned or  
 35 operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, mo-  
 36 tor carrier law or any similar law;

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

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

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

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

45 (L) "Vehicle" means every device in, upon or by which any person or property is or may be

1 transported or drawn upon a public highway, but does not include devices moved by human power  
2 or used exclusively upon stationary rails or tracks.

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

6 (4)(a) This coverage does not apply to bodily injury of an insured with respect to which the in-  
7 sured or the legal representative of the insured shall, without the written consent of the insurer,  
8 make any settlement with or prosecute to judgment any action against any person or organization  
9 who may be legally liable therefor.

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

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

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

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

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

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

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

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

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

45 (b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit

1 to physical examinations by physicians selected by the insurer and shall, upon each request from the  
 2 insurer, execute authorization to enable the insurer to obtain medical reports and copies of records.

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

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

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

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

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

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

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

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

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

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

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

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

44 (b) If an insured is an insured under other primary or excess insurance available to the insured  
 45 that is similar to this coverage, then the insured’s damages are deemed not to exceed the higher of

1 the applicable limits of liability of **this insurance or** the additional primary or excess insurance  
 2 available to the insured, and the insurer is not liable under this coverage for a greater proportion  
 3 of the insured's damages than the applicable limit of liability of this coverage bears to the sum of  
 4 the applicable limits of liability of this insurance and other primary or excess insurance available  
 5 to the insured.

6 (c) With respect to bodily injury to an insured while occupying any motor vehicle used as a  
 7 public or livery conveyance, the insurance under this coverage shall apply only as excess insurance  
 8 over any other insurance available to the insured that is similar to this coverage, and this insurance  
 9 shall then apply only in the amount by which the applicable limit of liability of this coverage ex-  
 10 ceeds the sum of the applicable limits of liability of all other insurance.

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

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

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

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

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

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

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

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



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

3 (e) If requested in writing by the insurer, the person shall take, through any representative not  
4 in conflict in interest with the person, designated by the insurer, such action as may be necessary  
5 or appropriate to recover payment as damages from such other uninsured person or organization,  
6 such action to be taken in the name of the person, but only to the extent of the payment made  
7 hereunder. In the event of a recovery, the insurer shall be reimbursed out of the recovery for ex-  
8 penses, costs and attorney fees incurred by the insurer in connection therewith; and

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

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

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

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

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

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

20 (b) For purposes of this subsection:

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

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

28 **SECTION 4.** ORS 30.135 is amended to read:

29 30.135. (1) Subject to the provisions of this section, a person that lends, rents, donates use of,  
30 makes available for test drive or otherwise provides a motor vehicle, as defined in ORS 801.360, to  
31 another person is not liable for any injury, death or damage that arises out of the use of that motor  
32 vehicle by the other person, **above what is required under ORS 742.502 and 742.504**, unless the  
33 person providing the motor vehicle is negligent in maintaining the motor vehicle or in providing the  
34 motor vehicle and the injury, death or damage results from that negligence.

35 (2) The limitation on liability provided by this section applies only if the person providing the  
36 motor vehicle is engaged in the business of selling, renting, leasing or repairing motor vehicles and  
37 the motor vehicle is provided to another person in the course of that business.

38 (3) The limitation on liability provided by this section applies only if there is a written agree-  
39 ment between the person providing the motor vehicle and the person receiving the motor vehicle,  
40 and the agreement specifically indicates that the person receiving the motor vehicle is liable for any  
41 injury, death or damage arising out of the use of the motor vehicle. The limitation on liability pro-  
42 vided by this section applies to injury, death or damage suffered during the period specified in the  
43 written agreement, or until the return of the motor vehicle, whichever is later.

44 (4) The limitation on liability provided by this section applies without regard to whether the  
45 motor vehicle is provided for consideration or is provided without charge.

1 (5) Nothing in this section affects the liability of a manufacturer, distributor, seller or lessor of  
2 a product under the provisions of ORS 30.900 to 30.920.

3 **SECTION 5. The amendments to ORS 742.502 and 742.504 by sections 2 and 3 of this 2007**  
4 **Act apply to motor vehicle liability policies issued or renewed on or after the effective date**  
5 **of this 2007 Act.**

6 **SECTION 6. This 2007 Act being necessary for the immediate preservation of the public**  
7 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
8 **on its passage.**

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