

House Bill 3086

Sponsored by COMMITTEE ON CONSUMER PROTECTION

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**.

Revises motor vehicle liability insurance laws.

A BILL FOR AN ACT

1
2 Relating to motor vehicle liability insurance; creating new provisions; and amending ORS 742.450,
3 742.502 and 742.504.

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

5 **SECTION 1.** ORS 742.450 is amended to read:

6 742.450. (1) Every motor vehicle liability insurance policy issued for delivery in this state shall
7 state the name and address of the named insured, the coverage afforded by the policy, the premium
8 charged therefor, the policy period and the limits of liability.

9 (2) Every motor vehicle liability insurance policy issued for delivery in this state shall contain
10 an agreement or indorsement stating that, as respects bodily injury and death or property damage,
11 or both, the insurance provides either:

12 (a) The coverage described in ORS 806.070 and 806.080; or

13 (b) The coverage described in ORS 806.270.

14 (3) The agreement or indorsement required by subsection (2) of this section shall also state that
15 the insurance provided is subject to all the provisions of the Oregon Vehicle Code relating to fi-
16 nancial responsibility requirements as defined in ORS 801.280 or future responsibility filings as de-
17 fined in ORS 801.290, as appropriate.

18 (4) Every motor vehicle liability insurance policy issued for delivery in this state shall provide
19 liability coverage to at least the limits specified in ORS 806.070.

20 (5) Every motor vehicle liability insurance policy issued for delivery in this state shall provide
21 liability coverage, up to the limits of coverage under the policy for a vehicle owned by the named
22 insured, for the operation by the named insured of a motor vehicle provided to the named insured,
23 without regard to whether the named insured is charged for the use of the motor vehicle, if:

24 (a) The motor vehicle is provided to the named insured by a person engaged in the business of
25 repairing or servicing motor vehicles; and

26 (b) The motor vehicle is provided to the named insured as a temporary replacement vehicle
27 while the named insured's vehicle is being repaired or serviced.

28 (6) A motor vehicle liability insurance policy issued for delivery in this state may exclude by
29 name from coverage required by subsection (2)(a) of this section any person other than the named
30 insured, for any of the reasons stated in subsection (7) of this section. When an insurer excludes a
31 person as provided by this subsection, the insurer shall obtain a statement or indorsement, signed
32 by each of the named insureds, that the policy will not provide any coverage required by subsection

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 (2)(a) of this section when the motor vehicle is driven by any named excluded person.

2 (7) A person may be excluded from coverage under a motor vehicle liability insurance policy as
 3 provided in subsection (6) of this section:

4 (a) Because of the driving record of the person. The Director of the Department of Consumer
 5 and Business Services by rule may establish restrictions on the use of the driving record in addition
 6 to other restrictions established by law.

7 (b) Because of any reason or set of criteria established by the director by rule.

8 **(8) Every motor vehicle liability insurance policy issued for delivery in this state shall**
 9 **contain a provision that provides liability coverage for each family member of the insured**
 10 **residing in the same household as the insured in an amount equal to the amount of liability**
 11 **coverage purchased by the insured.**

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

13 742.502. (1) Every motor vehicle liability policy insuring against loss suffered by any natural
 14 person resulting from liability imposed by law for bodily injury or death arising out of the owner-
 15 ship, maintenance or use of a motor vehicle shall provide in the policy or by indorsement on the
 16 policy uninsured motorist coverage when the policy is either:

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

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

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

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

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

43 (3) The insurer issuing such policy may offer one or more options of uninsured motorist coverage
 44 larger than the amounts prescribed to meet the requirements of ORS 806.070 and in excess of the
 45 limits provided under the policy for motor vehicle bodily injury liability insurance. Offers of

1 uninsured motorist coverage shall include underinsurance coverage for bodily injury or death caused
 2 by accident and arising out of the ownership, maintenance or use of a motor vehicle with motor
 3 vehicle liability insurance that provides recovery in an amount that is less than the insured's
 4 uninsured motorist coverage. Underinsurance benefits shall be equal to uninsured motorist coverage
 5 benefits less the amount recovered from other motor vehicle liability insurance policies.

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

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

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

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

13 (6) As used in this section and except as otherwise provided in this subsection, "amount recov-
 14 ered from other motor vehicle liability insurance policies" means the proceeds of liability insurance
 15 **or the proceeds received from a public body under ORS 30.270** recovered by or on behalf of the
 16 injured party. Proceeds recovered on behalf of the injured party include proceeds received by the
 17 injured party's insurer as reimbursement for personal injury protection benefits provided to the in-
 18 jured person, proceeds received by the medical providers of the injured person and proceeds re-
 19 ceived as attorney fees on the claim of the injured person. Where applicable liability insurance
 20 policy limits are exhausted upon payment, settlement or judgment by division among two or more
 21 injured persons, "amount recovered from other motor vehicle liability insurance policies" means the
 22 proceeds that are recovered by or on behalf of the injured person but does not include any proceeds
 23 of that liability policy received by other injured persons.

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

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

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

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

42 (2) As used in this policy:

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

44 (b) "Hit-and-run vehicle" means a vehicle that causes bodily injury to an insured arising out of
 45 physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the

1 time of the accident, provided:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (C) The insured or someone on behalf of the insured reported the accident within 72 hours to
44 a police, peace or judicial officer, to the Department of Transportation or to the equivalent depart-
45 ment in the state where the accident occurred, and filed with the insurer within 30 days thereafter

1 a statement under oath that the insured or the legal representative of the insured has a cause or
 2 causes of action arising out of the accident for damages against a person or persons whose identities
 3 are unascertainable, and setting forth the facts in support thereof.

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

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

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

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

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

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

16 (j) **"Sums that the insured, the heirs or the legal representative of the insured is legally**
 17 **entitled to recover as general and special damages from the owner or operator of an**
 18 **uninsured vehicle" means the amount of damages that:**

19 (A) **A claimant could have recovered in a civil action from the owner or operator at the**
 20 **time of the injury after determination of fault or comparative fault and resolution of any**
 21 **applicable defenses;**

22 (B) **Are calculated without regard to the tort claims limitations of ORS 30.260 to 30.300;**
 23 **and**

24 (C) **Are no larger than benefits payable under the terms of the policy as provided in**
 25 **subsection (7) of this section.**

26 [(j)] (k) "Uninsured vehicle," except as provided in paragraph [(k)] (L) of this provision, means:

27 (A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible
 28 motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily
 29 injury or death under ORS 806.070 applicable at the time of the accident with respect to any person
 30 or organization legally responsible for the use of the vehicle, or with respect to which there is
 31 collectible bodily injury liability insurance applicable at the time of the accident but the insurance
 32 company writing the insurance denies coverage or the company writing the insurance becomes vol-
 33 untarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insol-
 34 vent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and
 35 the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident,
 36 the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at
 37 the time of the accident.

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

39 (C) A phantom vehicle.

40 (D) A stolen vehicle.

41 [(k)] (L) "Uninsured vehicle" does not include:

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

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

45 (C) A vehicle that is owned by the United States of America, Canada, a state, a political sub-

1 division of any such government or an agency of any such government;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (c) 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:

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

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

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

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

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

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

45 (A) While occupying a vehicle owned by a named insured under this coverage, the insurance

1 under this coverage is primary.

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

7 (b) If an insured is an insured under other primary or excess insurance available to the insured
 8 that is similar to this coverage, then the insured’s damages are deemed not to exceed the higher of
 9 the applicable limits of liability of the additional primary or excess insurance available to the in-
 10 sured, and the insurer is not liable under this coverage for a greater proportion of the insured’s
 11 damages than the applicable limit of liability of this coverage bears to the sum of the applicable
 12 limits of liability of this insurance and other primary or excess insurance available to the insured.

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

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

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

33 (b) In the county and state where the insured’s cause of action against the uninsured motorist
 34 arose; or

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

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

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

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

44 (c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one
 45 or more of whom is uninsured, the insured shall have the election to receive from the insurer any

1 payment to which the insured would be entitled under this coverage by reason of the act or acts
2 of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with
3 legal action against any or all persons claimed to be liable to the insured for the injuries. If the
4 insured elects to receive payment from the insurer under this coverage, then the insured shall hold
5 in trust for the benefit of the insurer all rights of recovery the insured shall have against any other
6 person, firm or organization because of the damages that are the subject of claim made under this
7 coverage, but only to the extent of the actual payment made by the insurer;

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

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

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

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

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

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

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

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

27 (b) For purposes of this subsection:

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

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

35 **SECTION 4. The amendments to ORS 742.450, 742.502 and 742.504 by sections 1 to 3 of this**
36 **2007 Act apply to motor vehicle liability insurance policies issued or renewed on or after the**
37 **effective date of this 2007 Act.**

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