

# Senate Bill 255

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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**.

Modifies provisions under which motor vehicle liability insurer is responsible to second insurer for reimbursement of personal injury protection benefits.

## A BILL FOR AN ACT

1  
2 Relating to reimbursement of personal injury protection benefits; creating new provisions; and  
3 amending ORS 742.534, 742.536 and 742.538.

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

5 **SECTION 1.** ORS 742.534 is amended to read:

6 742.534. (1)(a) Except as provided in ORS 742.544, *[every]* **an** authorized motor vehicle liability  
7 insurer whose insured is or would be held legally liable for damages for injuries sustained in a motor  
8 vehicle accident by a person for whom personal injury protection benefits have been furnished by  
9 *[another such]* **a second motor vehicle liability** insurer, or for whom benefits have been furnished  
10 by an authorized health insurer, shall reimburse *[such other]* **the second** insurer for the benefits  
11 *[it]* **the second insurer** has *[so]* furnished if *[it]* **the second insurer**:

12 (A) Has requested *[such]* reimbursement[.];

13 (B) Has not given notice as provided in ORS 742.536 that *[it]* **the second insurer** elects re-  
14 covery by lien in accordance with *[that section]* **ORS 742.536**; and

15 (C) Is entitled to reimbursement under this *[section]* **subsection** by the terms of *[its]* **the second**  
16 **insurer's** policy.

17 (b) Reimbursement under this subsection, together with the amount paid to injured persons by  
18 the liability insurer, *[shall]* **may** not exceed the limits of the policy issued by the **liability** insurer.

19 (2) In calculating *[such]* **the reimbursement required under subsection (1) of this section**, the  
20 amount of benefits *[so]* furnished shall be diminished in proportion to the amount of negligence at-  
21 tributable to the person for whom benefits have been *[so]* furnished, and the reimbursement *[shall]*  
22 **may** not exceed the amount of damages legally recoverable by the person.

23 (3) Disputes between insurers as to *[such]* issues of liability and the amount of reimbursement  
24 required by this section shall be decided by arbitration.

25 (4) Findings and awards made in *[such]* an arbitration proceeding **held under subsection (3)**  
26 **of this section** are not admissible in any action at law or suit in equity.

27 (5) **If a second insurer has not requested reimbursement from a liability insurer under**  
28 **subsection (1) of this section, the second insurer:**

29 (a) **Must seek reimbursement under ORS 742.536 or 742.538; and**

30 (b) **Is responsible for the second insurer's proportionate share of expenses, costs and**

**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 attorney fees incurred by the injured person in obtaining a settlement or judgment in con-  
 2 nection with the recovery that the amount of benefits furnished bears to the amount of the  
 3 total recovery.

4 (6) Notwithstanding the limits of the policy issued by the liability insurer, if a second  
 5 insurer requests reimbursement under subsection (1) of this section and the liability insurer  
 6 fails to reimburse the second insurer, the liability insurer is liable to the second insurer or  
 7 an authorized health insurer for the amount of the personal injury protection benefits fur-  
 8 nished by the second insurer, unless the limits of the policy have been exhausted by the  
 9 payment of damages to or on behalf of other injured persons.

10 **SECTION 2.** ORS 742.536 is amended to read:

11 742.536. (1) When an authorized motor vehicle liability insurer has furnished personal injury  
 12 protection benefits, or an authorized health insurer has furnished benefits, for a person injured in  
 13 a motor vehicle accident, if *[such]* **the** injured person makes a claim, or institutes legal action, for  
 14 damages for *[such]* **the** injuries against any person, *[such]* **the** injured person shall give notice of  
 15 *[such]* **the** claim or legal action to the insurer by personal service or by registered or certified mail.  
 16 Service of a copy of the summons and complaint or copy of other process served in connection with  
 17 *[such a]* **the** legal action shall be sufficient notice to the insurer, in which case a return showing  
 18 service of *[such]* **the** notice shall be filed with the clerk of the court but shall not be a part of the  
 19 record except to give notice.

20 (2) The insurer may elect to seek reimbursement as provided in this section for benefits it has  
 21 *[so]* furnished, out of any recovery under *[such]* **the** claim or legal action, if the insurer has not  
 22 **requested reimbursement under ORS 742.534** or been a party to an interinsurer reimbursement  
 23 proceeding with respect to *[such]* **the** benefits under ORS 742.534 and is entitled by the terms of its  
 24 policy to the benefit of this section. The insurer shall give written notice of *[such]* **the** election  
 25 within 30 days from the receipt of notice or knowledge of *[such]* **the** claim or legal action to the  
 26 person making a claim or instituting legal action and to the person against whom a claim is made  
 27 or legal action instituted, by personal service or by registered or certified mail. In the case of a  
 28 legal action, a return showing service of *[such]* **the** notice of election shall be filed with the clerk  
 29 of the court but *[shall]* **is** not *[be]* a part of the record except to give notice to the claimant and the  
 30 defendant of the lien of the insurer.

31 (3) If the insurer *[so serves such]* **serves** written notice of election and, where applicable,  
 32 *[such]* **the** return is *[so]* filed:

33 (a) The insurer has a lien against *[such]* **the** cause of action for benefits it has *[so]* furnished,  
 34 less the proportion, not to exceed 100 percent, of expenses, costs and attorney fees incurred by the  
 35 injured person in connection with the recovery that the amount of the lien before *[such]* **the** re-  
 36 duction bears to the amount of the recovery.

37 (b) The injured person shall include as damages in *[such]* **the** claim or legal action the benefits  
 38 *[so]* furnished by the insurer.

39 (c) In the case of a legal action, the action shall be taken in the name of the injured person.

40 (4) As used in this section, “makes a claim” or “claim” refers to a written demand **that is** made  
 41 and delivered for a specific amount of damages and *[which]* **that** meets other requirements reason-  
 42 ably established by the director’s rule.

43 **SECTION 3.** ORS 742.538 is amended to read:

44 742.538. (1) If a motor vehicle liability insurer has furnished personal injury protection benefits,  
 45 or *[a]* **an authorized** health insurer has furnished benefits, for a person injured in a motor vehicle

1 accident, and the interinsurer reimbursement benefit of ORS 742.534 is not available under the terms  
 2 of *[that section]* **ORS 742.534**, and the insurer has not elected recovery by lien as provided in ORS  
 3 742.536, *[and is entitled by the terms of its policy to the benefit of this section]* **the insurer may seek**  
 4 **reimbursement for the benefits the insurer has furnished as follows:**

5 *[(1) The insurer is entitled to the proceeds of any settlement or judgment that may result from the*  
 6 *exercise of any rights of recovery of the injured person against any person legally responsible for the*  
 7 *accident, to the extent of such benefits furnished by the insurer less the insurer's share of expenses,*  
 8 *costs and attorney fees incurred by the injured person in connection with such recovery.]*

9 *[(2) The injured person shall hold in trust for the benefit of the insurer all such rights of recovery*  
 10 *which the injured person has, but only to the extent of such benefits furnished.]*

11 *[(3) The injured person shall do whatever is proper to secure, and shall do nothing after loss to*  
 12 *prejudice, such rights.]*

13 **(a) If the injured person has obtained a settlement against any person alleged to be le-**  
 14 **gally liable for the accident or a judgment against any person found to be legally liable for**  
 15 **the accident, the insurer may recover the amount of benefits furnished by the insurer less**  
 16 **an amount that equals a proportionate share of the expenses, costs and attorney fees in-**  
 17 **curring by the injured person in connection with the recovery that the amount of benefits**  
 18 **furnished bears to the amount of the total recovery.**

19 **[(4) (b) If the injured person has not obtained a settlement or judgment against any**  
 20 **person who may be legally liable and does not intend to make a claim or institute legal action**  
 21 **for damages, the injured person must hold in trust for the benefit of the insurer all rights**  
 22 **of recovery that the injured person has and do whatever is proper to secure, and do nothing**  
 23 **after loss to prejudice, those rights.** If requested in writing by the insurer, the injured person  
 24 shall take, through any representative not in conflict in interest with the injured person designated  
 25 by the insurer, *[such] any* action as may be necessary or appropriate to recover *[such] the* benefits  
 26 furnished as damages from *[such] a* responsible person, *[such action to be]* **Any action** taken in the  
 27 name of the injured person, *[but]* **shall be taken** only to the extent of the benefits furnished by the  
 28 insurer. *[In the event of a recovery, the insurer shall also be reimbursed out of such recovery for the*  
 29 *injured person's share of expenses, costs and attorney fees incurred by the insurer in connection with*  
 30 *the recovery.]* **If the injured person agrees with the insurer, the action may include damages**  
 31 **that the injured person is legally entitled to recover from the person who is legally liable.**  
 32 **The injured person and the insurer shall share the expenses, costs and attorney fees incurred**  
 33 **in connection with the recovery in proportion to:**

34 **(A) The amount of the recovery if the injured person receives a recovery; or**

35 **(B) The amount of the recovery sought in the claim if the injured person does not receive**  
 36 **a recovery.**

37 *[(5) In calculating respective shares of expenses, costs and attorney fees under this section, the*  
 38 *basis of allocation shall be the respective proportions borne to the total recovery by:]*

39 *[(a) Such benefits furnished by the insurer; and]*

40 *[(b) The total recovery less (a).]*

41 *[(6) The injured person shall execute and deliver to the insurer such instruments and papers as*  
 42 *may be appropriate to secure the rights and obligations of the insurer and the injured person as es-*  
 43 *tablished by this section.]*

44 **[(7) (2) Any provisions in a motor vehicle liability insurance policy or health insurance policy**  
 45 **giving rights to the insurer relating to subrogation or the subject matter of this section shall be**

1 construed and applied in accordance with the provisions of this section.

2 **SECTION 4. The amendments to ORS 742.534, 742.536 and 742.538 by sections 1 to 3 of this**  
3 **2007 Act apply to motor vehicle liability insurance policies issued or renewed on or after the**  
4 **effective date of this 2007 Act.**

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