

**A-Engrossed**  
**Senate Bill 256**

Ordered by the Senate March 15  
Including Senate Amendments dated March 15

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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.

Establishes requirements, unless parties agree otherwise, for motor vehicle liability arbitration proceedings.

**A BILL FOR AN ACT**

1  
2 Relating to arbitration of motor vehicle liability disputes; creating new provisions; and amending  
3 ORS 742.504, 742.520 and 742.522.

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

5 **SECTION 1. Sections 2 and 3 of this 2007 Act are added to and made a part of ORS**  
6 **chapter 742.**

7 **SECTION 2. Unless the parties agree otherwise, arbitration proceedings under ORS**  
8 **742.504 shall be conducted as follows:**

9 (1) **Parties to an arbitration proceeding shall submit the dispute to arbitration by a panel**  
10 **of three arbitrators. The panel shall consist of one arbitrator chosen by each party and one**  
11 **arbitrator chosen by the two arbitrators previously chosen to sit on the panel.**

12 (2) **An arbitration proceeding shall be conducted under local court rules in the county**  
13 **where the arbitration is held.**

14 **SECTION 3. (1) Arbitration proceedings under ORS 742.520 shall be conducted under local**  
15 **court rules in the county where the arbitration is held.**

16 (2) **Findings and awards made in an arbitration proceeding under this section:**

17 (a) **Are binding on the parties to the arbitration proceeding;**

18 (b) **Are not binding on any other party; and**

19 (c) **May not be used for the purpose of collateral estoppel.**

20 **SECTION 4. Section 2 of this 2007 Act is repealed on January 2, 2012.**

21 **SECTION 5. 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

**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 insured is legally entitled to recover as general and special damages from the owner or operator  
2 of an uninsured vehicle because of bodily injury sustained by the insured caused by accident and  
3 arising out of the ownership, maintenance or use of the uninsured vehicle. Determination as to  
4 whether the insured, the insured's heirs or the insured's legal representative is legally entitled to  
5 recover such damages, and if so, the amount thereof, shall be made by agreement between the in-  
6 sured and the insurer, or, in the event of disagreement, may be determined by arbitration as pro-  
7 vided in subsection (10) of this section.

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

12 (2) As used in this policy:

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

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

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

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

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

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

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

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

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

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

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

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

1 member of the same household.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (C) A phantom vehicle.

45 (D) A stolen vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (e) When seeking consent under paragraph (a) or (d) of this subsection, the insured shall allow  
45 the insurer a reasonable time in which to collect and evaluate information related to consent to the

1 proposed offer of settlement. The insured shall provide promptly to the insurer any information that  
2 is reasonably requested by the insurer and that is within the custody and control of the insured.  
3 Consent will be presumed to be given if the insurer does not respond within a reasonable time. For  
4 purposes of this paragraph, a “reasonable time” is no more than 30 days from the insurer’s receipt  
5 of a written request for consent, unless the insured and the insurer agree otherwise.

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

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

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

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

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

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

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

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

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

41 (e) The amount payable under the terms of this coverage may not be reduced by the amount of  
42 liability proceeds offered, described in subsection (4)(d)(B) or (D) of this section, that has not been  
43 paid to the injured person. If liability proceeds have been offered and not paid, the amount payable  
44 under the terms of the coverage shall include the amount of liability limits offered but not accepted  
45 due to the insurer’s refusal to consent. The insured shall cooperate so as to permit the insurer to

1 proceed by subrogation or assignment to prosecute the claim against the uninsured motorist.

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

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

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

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

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

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

23 (10) If any person making claim hereunder and the insurer do not agree that the person is le-  
24 gally entitled to recover damages from the owner or operator of an uninsured vehicle because of  
25 bodily injury to the insured, or do not agree as to the amount of payment that may be owing under  
26 this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time  
27 of the dispute to settle the matter by arbitration, the arbitration shall take place [*under the arbi-  
28 tration laws of the State of Oregon or, if the parties agree, according to any other procedure*] **as de-  
29 scribed in section 2 of this 2007 Act**. Any judgment upon the award rendered by the arbitrators  
30 may be entered in any court having jurisdiction thereof, provided, however, that the costs to the  
31 insured of the arbitration proceeding do not exceed \$100 and that all other costs of arbitration are  
32 borne by the insurer. "Costs" as used in this provision does not include attorney fees or expenses  
33 incurred in the production of evidence or witnesses or the making of transcripts of the arbitration  
34 proceedings. The person and the insurer each agree to consider themselves bound and to be bound  
35 by any award made by the arbitrators pursuant to this coverage in the event of such election. At  
36 the election of the insured, the arbitration shall be held:

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

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

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

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

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

45 (b) The person shall hold in trust for the benefit of the insurer all rights of recovery that the

1 person shall have against such other uninsured person or organization because of the damages that  
2 are the subject of claim made under this coverage, but only to the extent that the claim is made or  
3 paid herein;

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

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

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

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

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

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

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

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

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

32 (b) For purposes of this subsection:

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

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

40 **SECTION 6.** ORS 742.504, as amended by section 5 of this 2007 Act, is amended to read:

41 742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide  
42 uninsured motorist coverage that in each instance is no less favorable in any respect to the insured  
43 or the beneficiary than if the following provisions were set forth in the policy. However, nothing  
44 contained in this section requires the insurer to reproduce in the policy the particular language of  
45 any of the following provisions:

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

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

13 (2) As used in this policy:

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

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

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

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

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

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

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

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

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

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

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

44 (B) A nonowned vehicle operated by the named insured or spouse if a resident of the same  
45 household, provided that the actual use thereof is with the permission of the owner of the vehicle



1 and the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any  
2 member of the same household.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (C) A phantom vehicle.

- 1 (D) A stolen vehicle.
- 2 (k) "Uninsured vehicle" does not include:
- 3 (A) An insured vehicle, unless the vehicle is a stolen vehicle;
- 4 (B) A vehicle that is owned or operated by a self-insurer within the meaning of any motor ve-
- 5 hicle financial responsibility law, motor carrier law or any similar law;
- 6 (C) A vehicle that is owned by the United States of America, Canada, a state, a political sub-
- 7 division of any such government or an agency of any such government;
- 8 (D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for
- 9 use as a residence or premises and not as a vehicle;
- 10 (E) A farm-type tractor or equipment designed for use principally off public roads, except while
- 11 actually upon public roads; or
- 12 (F) A vehicle owned by or furnished for the regular or frequent use of the insured or any
- 13 member of the household of the insured.
- 14 (L) "Vehicle" means every device in, upon or by which any person or property is or may be
- 15 transported or drawn upon a public highway, but does not include devices moved by human power
- 16 or used exclusively upon stationary rails or tracks.
- 17 (3) This coverage applies only to accidents that occur on and after the effective date of the
- 18 policy, during the policy period and within the United States of America, its territories or pos-
- 19 sessions, or Canada.
- 20 (4)(a) This coverage does not apply to bodily injury of an insured with respect to which the in-
- 21 sured or the legal representative of the insured shall, without the written consent of the insurer,
- 22 make any settlement with or prosecute to judgment any action against any person or organization
- 23 who may be legally liable therefor.
- 24 (b) This coverage does not apply to bodily injury to an insured while occupying a vehicle, other
- 25 than an insured vehicle, owned by, or furnished for the regular use of, the named insured or any
- 26 relative resident in the same household, or through being struck by the vehicle.
- 27 (c) This coverage does not apply so as to inure directly or indirectly to the benefit of any
- 28 workers' compensation carrier, any person or organization qualifying as a self-insurer under any
- 29 workers' compensation or disability benefits law or any similar law or the State Accident Insurance
- 30 Fund Corporation.
- 31 (d) This coverage does not apply with respect to underinsured motorist benefits unless:
- 32 (A) The limits of liability under any bodily injury liability insurance applicable at the time of
- 33 the accident regarding the injured person have been exhausted by payment of judgments or settle-
- 34 ments to the injured person or other injured persons;
- 35 (B) The described limits have been offered in settlement, the insurer has refused consent under
- 36 paragraph (a) of this subsection and the insured protects the insurer's right of subrogation to the
- 37 claim against the tortfeasor;
- 38 (C) The insured gives credit to the insurer for the unrealized portion of the described liability
- 39 limits as if the full limits had been received if less than the described limits have been offered in
- 40 settlement, and the insurer has consented under paragraph (a) of this subsection; or
- 41 (D) The insured gives credit to the insurer for the unrealized portion of the described liability
- 42 limits as if the full limits had been received if less than the described limits have been offered in
- 43 settlement and, if the insurer has refused consent under paragraph (a) of this subsection, the insured
- 44 protects the insurer's right of subrogation to the claim against the tortfeasor.
- 45 (e) When seeking consent under paragraph (a) or (d) of this subsection, the insured shall allow

1 the insurer a reasonable time in which to collect and evaluate information related to consent to the  
2 proposed offer of settlement. The insured shall provide promptly to the insurer any information that  
3 is reasonably requested by the insurer and that is within the custody and control of the insured.  
4 Consent will be presumed to be given if the insurer does not respond within a reasonable time. For  
5 purposes of this paragraph, a “reasonable time” is no more than 30 days from the insurer’s receipt  
6 of a written request for consent, unless the insured and the insurer agree otherwise.

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

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

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

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

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

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

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

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

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

42 (e) The amount payable under the terms of this coverage may not be reduced by the amount of  
43 liability proceeds offered, described in subsection (4)(d)(B) or (D) of this section, that has not been  
44 paid to the injured person. If liability proceeds have been offered and not paid, the amount payable  
45 under the terms of the coverage shall include the amount of liability limits offered but not accepted

1 due to the insurer's refusal to consent. The insured shall cooperate so as to permit the insurer to  
2 proceed by subrogation or assignment to prosecute the claim against the uninsured motorist.

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

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

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

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

13 (b) If an insured is an insured under other primary or excess insurance available to the insured  
14 that is similar to this coverage, then the insured's damages are deemed not to exceed the higher of  
15 the applicable limits of liability of the additional primary or excess insurance available to the in-  
16 sured, and the insurer is not liable under this coverage for a greater proportion of the insured's  
17 damages than the applicable limit of liability of this coverage bears to the sum of the applicable  
18 limits of liability of this insurance and other primary or excess insurance available to the insured.

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

24 (10) If any person making claim hereunder and the insurer do not agree that the person is le-  
25 gally entitled to recover damages from the owner or operator of an uninsured vehicle because of  
26 bodily injury to the insured, or do not agree as to the amount of payment that may be owing under  
27 this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time  
28 of the dispute to settle the matter by arbitration, the arbitration shall take place [*as described in*  
29 *section 2 of this 2007 Act*] **under the arbitration laws of the State of Oregon or, if the parties**  
30 **agree, according to any other procedure.** Any judgment upon the award rendered by the  
31 arbitrators may be entered in any court having jurisdiction thereof, provided, however, that the  
32 costs to the insured of the arbitration proceeding do not exceed \$100 and that all other costs of  
33 arbitration are borne by the insurer. "Costs" as used in this provision does not include attorney fees  
34 or expenses incurred in the production of evidence or witnesses or the making of transcripts of the  
35 arbitration proceedings. The person and the insurer each agree to consider themselves bound and  
36 to be bound by any award made by the arbitrators pursuant to this coverage in the event of such  
37 election. At the election of the insured, the arbitration shall be held:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (b) For purposes of this subsection:

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

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

41 **SECTION 7. The amendments to ORS 742.504 by section 6 of this 2007 Act become oper-**  
42 **ative on January 2, 2012.**

43 **SECTION 8.** ORS 742.520 is amended to read:

44 742.520. (1) Every motor vehicle liability policy issued for delivery in this state that covers any  
45 private passenger motor vehicle shall provide personal injury protection benefits to the person in-

1   sured thereunder, members of that person’s family residing in the same household, children not re-  
2   lated to the insured by blood, marriage or adoption who are residing in the same household as the  
3   insured and being reared as the insured’s own, passengers occupying the insured motor vehicle and  
4   pedestrians struck by the insured motor vehicle.

5       (2) Personal injury protection benefits apply to a person’s injury or death resulting:

6       (a) In the case of the person insured under the policy and members of that person’s family re-  
7   siding in the same household, from the use, occupancy or maintenance of any motor vehicle, except  
8   the following vehicles:

9       (A) A motor vehicle, including a motorcycle or moped, that is owned or furnished or available  
10   for regular use by any of such persons and that is not described in the policy;

11       (B) A motorcycle or moped which is not owned by any of such persons, but this exclusion applies  
12   only when the injury or death results from such person’s operating or riding upon the motorcycle  
13   or moped; and

14       (C) A motor vehicle not included in subparagraph (A) or (B) of this paragraph and not a private  
15   passenger motor vehicle. However, this exclusion applies only when the injury or death results from  
16   such person’s operating or occupying the motor vehicle.

17       (b) In the case of a passenger occupying or a pedestrian struck by the insured motor vehicle,  
18   from the use, occupancy or maintenance of the vehicle.

19       (3) Personal injury protection benefits consist of payments for expenses, loss of income and loss  
20   of essential services as provided in ORS 742.524.

21       (4) An insurer shall pay all personal injury protection benefits promptly after proof of loss has  
22   been submitted to the insurer.

23       (5) The potential existence of a cause of action in tort does not relieve an insurer from the duty  
24   to pay personal injury protection benefits.

25       (6) Disputes between insurers and beneficiaries about the amount of personal injury protection  
26   benefits, or about the denial of personal injury protection benefits, shall be decided by arbitration  
27   if mutually agreed to at the time of the dispute. **Arbitration under this subsection shall take**  
28   **place as described in section 3 of this 2007 Act.**

29       (7) An insurer:

30       (a) May not enter into or renew any contract that provides, or has the effect of providing,  
31   managed care services to beneficiaries.

32       (b) May enter into or renew any contract that provides evaluation services for beneficiaries.

33       **SECTION 9.** ORS 742.522 is amended to read:

34       742.522. [(1) Arbitration under ORS 742.520 (6) is binding on the parties to the arbitration.]

35       [(2)] (1) Costs to the insured of the arbitration proceeding **under ORS 742.520 (6)** shall not ex-  
36   ceed \$100 and all other costs of arbitration shall be borne by the insurer.

37       (2) As used in this [subsection] **section**, “costs” does not include attorney fees or expenses in-  
38   curred in the production of evidence or witnesses or the making of transcripts of the arbitration  
39   proceedings.

40       **SECTION 10.** Sections 2 and 3 of this 2007 Act and the amendments to ORS 742.504,  
41   742.520 and 742.522 by sections 5, 8 and 9 of this 2007 Act apply to motor vehicle liability  
42   policies issued or renewed on or after the effective date of this 2007 Act.

43       **SECTION 11.** The amendments to ORS 742.504 by section 6 of this 2007 Act apply to motor  
44   vehicle liability policies issued or renewed on or after January 2, 2012.