

SENATE AMENDMENTS TO SENATE BILL 256

By COMMITTEE ON BUSINESS, TRANSPORTATION AND WORKFORCE DEVELOPMENT

March 15

1 On page 1 of the printed bill, delete lines 5 through 30 and delete pages 2 through 8 and insert:

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

4 **“SECTION 2. Unless the parties agree otherwise, arbitration proceedings under ORS**
5 **742.504 shall be conducted as follows:**

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

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

11 **“SECTION 3. (1) Arbitration proceedings under ORS 742.520 shall be conducted under lo-**
12 **cal court rules in the county where the arbitration is held.**

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

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

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

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

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 Section 2 of this 2007 Act is repealed on January 2, 2012.**

18 **“SECTION 5. ORS 742.504 is amended to read:**

19 **“742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide**
20 **uninsured motorist coverage that in each instance is no less favorable in any respect to the insured**
21 **or the beneficiary than if the following provisions were set forth in the policy. However, nothing**
22 **contained in this section requires the insurer to reproduce in the policy the particular language of**
23 **any of the following provisions:**

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

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

1 “(2) As used in this policy:

2 “(a) ‘Bodily injury’ means bodily injury, sickness or disease, including death resulting therefrom.

3 “(b) ‘Hit-and-run vehicle’ means a vehicle that causes bodily injury to an insured arising out of

4 physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the

5 time of the accident, provided:

6 “(A) The identity of either the operator or the owner of the hit-and-run vehicle cannot be as-

7 certained;

8 “(B) The insured or someone on behalf of the insured reported the accident within 72 hours to

9 a police, peace or judicial officer, to the Department of Transportation or to the equivalent depart-

10 ment in the state where the accident occurred, and filed with the insurer within 30 days thereafter

11 a statement under oath that the insured or the legal representative of the insured has a cause or

12 causes of action arising out of the accident for damages against a person or persons whose identities

13 are unascertainable, and setting forth the facts in support thereof; and

14 “(C) At the insurer’s request, the insured or the legal representative of the insured makes

15 available for inspection the vehicle the insured was occupying at the time of the accident.

16 “(c) ‘Insured,’ when unqualified and when applied to uninsured motorist coverage, means:

17 “(A) The named insured as stated in the policy and any person designated as named insured in

18 the schedule and, while residents of the same household, the spouse of any named insured and rel-

19 atives of either, provided that neither the relative nor the spouse is the owner of a vehicle not de-

20 scribed in the policy and that, if the named insured as stated in the policy is other than an

21 individual or husband and wife who are residents of the same household, the named insured shall

22 be only a person so designated in the schedule;

23 “(B) Any child residing in the household of the named insured if the insured has performed the

24 duties of a parent to the child by rearing the child as the insured’s own although the child is not

25 related to the insured by blood, marriage or adoption; and

26 “(C) Any other person while occupying an insured vehicle, provided the actual use thereof is

27 with the permission of the named insured.

28 “(d) ‘Insured vehicle,’ except as provided in paragraph (e) of this provision, means:

29 “(A) The vehicle described in the policy or a newly acquired or substitute vehicle, as each of

30 those terms is defined in the public liability coverage of the policy, insured under the public liability

31 provisions of the policy; or

32 “(B) A nonowned vehicle operated by the named insured or spouse if a resident of the same

33 household, provided that the actual use thereof is with the permission of the owner of the vehicle

34 and the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any

35 member of the same household.

36 “(e) ‘Insured vehicle’ does not include a trailer of any type unless the trailer is a described ve-

37 hicle in the policy.

38 “(f) ‘Occupying’ means in or upon or entering into or alighting from.

39 “(g) ‘Phantom vehicle’ means a vehicle that causes bodily injury to an insured arising out of a

40 motor vehicle accident that is caused by a vehicle that has no physical contact with the insured or

41 the vehicle the insured is occupying at the time of the accident, provided:

42 “(A) The identity of either the operator or the owner of the phantom vehicle cannot be ascer-

43 tained;

44 “(B) The facts of the accident can be corroborated by competent evidence other than the testi-

45 mony of the insured or any person having an uninsured motorist claim resulting from the accident;

1 and

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

8 “(h) ‘State’ includes the District of Columbia, a territory or possession of the United States and
9 a province of Canada.

10 “(i) ‘Stolen vehicle’ means an insured vehicle that causes bodily injury to the insured arising
11 out of a motor vehicle accident if:

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

13 “(B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability
14 insurance;

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

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

20 “(j) ‘Uninsured vehicle,’ except as provided in paragraph (k) of this provision, means:

21 “(A) A vehicle with respect to the ownership, maintenance or use of which there is no collect-
22 ible motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for
23 bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any
24 person or organization legally responsible for the use of the vehicle, or with respect to which there
25 is collectible bodily injury liability insurance applicable at the time of the accident but the insur-
26 ance company writing the insurance denies coverage or the company writing the insurance becomes
27 voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes in-
28 solvent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and
29 the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident,
30 the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at
31 the time of the accident.

32 “(B) A hit-and-run vehicle.

33 “(C) A phantom vehicle.

34 “(D) A stolen vehicle.

35 “(k) ‘Uninsured vehicle’ does not include:

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

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

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

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

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

45 “(F) A vehicle owned by or furnished for the regular or frequent use of the insured or any

1 member of the household of the insured.

2 “(L) ‘Vehicle’ means every device in, upon or by which any person or property is or may be
3 transported or drawn upon a public highway, but does not include devices moved by human power
4 or used exclusively upon stationary rails or tracks.

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

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

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

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

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

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

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

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

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

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

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

1 to furnish the forms within 15 days after receiving notice of claim.

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

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

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

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

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

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

26 “(B) The amount paid and the present value of all amounts payable on account of the bodily
27 injury under any workers’ compensation law, disability benefits law or any similar law.

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

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

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

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

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

42 “(B) While occupying a vehicle not owned by a named insured under this coverage, the insur-
43 ance under this coverage shall apply only as excess insurance over any primary insurance available
44 to the occupant that is similar to this coverage, and this excess insurance shall then apply only in
45 the amount by which the applicable limit of liability of this excess coverage exceeds the sum of the

1 applicable limits of liability of all primary insurance available to the occupant.

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

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

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

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

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

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

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

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

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

39 “(c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one
40 or more of whom is uninsured, the insured shall have the election to receive from the insurer any
41 payment to which the insured would be entitled under this coverage by reason of the act or acts
42 of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with
43 legal action against any or all persons claimed to be liable to the insured for the injuries. If the
44 insured elects to receive payment from the insurer under this coverage, then the insured shall hold
45 in trust for the benefit of the insurer all rights of recovery the insured shall have against any other

1 person, firm or organization because of the damages that are the subject of claim made under this
2 coverage, but only to the extent of the actual payment made by the insurer;

3 “(d) The person shall do whatever is proper to secure and shall do nothing after loss to preju-
4 dice such rights;

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

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

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

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

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

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

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

22 “(b) For purposes of this subsection:

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

28 “(B) ‘Final judgment’ means a judgment that has become final by lapse of time for appeal or by
29 entry in an appellate court of an appellate judgment.

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

31 “742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide
32 uninsured motorist coverage that in each instance is no less favorable in any respect to the insured
33 or the beneficiary than if the following provisions were set forth in the policy. However, nothing
34 contained in this section requires the insurer to reproduce in the policy the particular language of
35 any of the following provisions:

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

44 “(b) No judgment against any person or organization alleged to be legally responsible for bodily
45 injury, except for proceedings instituted against the insurer as provided in this policy, shall be

1 conclusive, as between the insured and the insurer, on the issues of liability of the person or or-
2 ganization or of the amount of damages to which the insured is legally entitled.

3 “(2) As used in this policy:

4 “(a) ‘Bodily injury’ means bodily injury, sickness or disease, including death resulting therefrom.

5 “(b) ‘Hit-and-run vehicle’ means a vehicle that causes bodily injury to an insured arising out of
6 physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the
7 time of the accident, provided:

8 “(A) The identity of either the operator or the owner of the hit-and-run vehicle cannot be as-
9 certained;

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

16 “(C) At the insurer’s request, the insured or the legal representative of the insured makes
17 available for inspection the vehicle the insured was occupying at the time of the accident.

18 “(c) ‘Insured,’ when unqualified and when applied to uninsured motorist coverage, means:

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

25 “(B) Any child residing in the household of the named insured if the insured has performed the
26 duties of a parent to the child by rearing the child as the insured’s own although the child is not
27 related to the insured by blood, marriage or adoption; and

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

30 “(d) ‘Insured vehicle,’ except as provided in paragraph (e) of this provision, means:

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

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

38 “(e) ‘Insured vehicle’ does not include a trailer of any type unless the trailer is a described ve-
39 hicle in the policy.

40 “(f) ‘Occupying’ means in or upon or entering into or alighting from.

41 “(g) ‘Phantom vehicle’ means a vehicle that causes bodily injury to an insured arising out of a
42 motor vehicle accident that is caused by a vehicle that has no physical contact with the insured or
43 the vehicle the insured is occupying at the time of the accident, provided:

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

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

4 “(C) 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.

10 “(h) ‘State’ includes the District of Columbia, a territory or possession of the United States and
11 a province of Canada.

12 “(i) ‘Stolen vehicle’ means an insured vehicle that causes bodily injury to the insured arising
13 out of a motor vehicle accident if:

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

15 “(B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability
16 insurance;

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

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

22 “(j) ‘Uninsured vehicle,’ except as provided in paragraph (k) of this provision, means:

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

34 “(B) A hit-and-run vehicle.

35 “(C) A phantom vehicle.

36 “(D) A stolen vehicle.

37 “(k) ‘Uninsured vehicle’ does not include:

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

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

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

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

45 “(E) A farm-type tractor or equipment designed for use principally off public roads, except while

1 actually upon public roads; or

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

4 “(L) ‘Vehicle’ means every device in, upon or by which any person or property is or may be
5 transported or drawn upon a public highway, but does not include devices moved by human power
6 or used exclusively upon stationary rails or tracks.

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

10 “(4)(a) This coverage does not apply to bodily injury of an insured with respect to which the
11 insured or the legal representative of the insured shall, without the written consent of the insurer,
12 make any settlement with or prosecute to judgment any action against any person or organization
13 who may be legally liable therefor.

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

17 “(c) This coverage does not apply so as to inure directly or indirectly to the benefit of any
18 workers’ compensation carrier, any person or organization qualifying as a self-insurer under any
19 workers’ compensation or disability benefits law or any similar law or the State Accident Insurance
20 Fund Corporation.

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

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

25 “(B) The described limits have been offered in settlement, the insurer has refused consent under
26 paragraph (a) of this subsection and the insured protects the insurer’s right of subrogation to the
27 claim against the tortfeasor;

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

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

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

42 “(5)(a) As soon as practicable, the insured or other person making claim shall give to the insurer
43 written proof of claim, under oath if required, including full particulars of the nature and extent of
44 the injuries, treatment and other details entering into the determination of the amount payable
45 hereunder. The insured and every other person making claim hereunder shall submit to examinations

1 under oath by any person named by the insurer and subscribe the same, as often as may reasonably
2 be required. Proof of claim shall be made upon forms furnished by the insurer unless the insurer fails
3 to furnish the forms within 15 days after receiving notice of claim.

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

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

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

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

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

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

28 “(B) The amount paid and the present value of all amounts payable on account of the bodily
29 injury under any workers’ compensation law, disability benefits law or any similar law.

30 “(d) 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 the credit given
32 to the insurer pursuant to subsection (4)(d)(C) or (D) of this section.

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

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

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

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

44 “(B) While occupying a vehicle not owned by a named insured under this coverage, the insur-
45 ance under this coverage shall apply only as excess insurance over any primary insurance available

1 to the occupant that is similar to this coverage, and this excess insurance shall then apply only in
2 the amount by which the applicable limit of liability of this excess coverage exceeds the sum of the
3 applicable limits of liability of all primary insurance available to the occupant.

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

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

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

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

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

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

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

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

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

41 “(c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one
42 or more of whom is uninsured, the insured shall have the election to receive from the insurer any
43 payment to which the insured would be entitled under this coverage by reason of the act or acts
44 of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with
45 legal action against any or all persons claimed to be liable to the insured for the injuries. If the

1 insured elects to receive payment from the insurer under this coverage, then the insured shall hold
2 in trust for the benefit of the insurer all rights of recovery the insured shall have against any other
3 person, firm or organization because of the damages that are the subject of claim made under this
4 coverage, but only to the extent of the actual payment made by the insurer;

5 “(d) The person shall do whatever is proper to secure and shall do nothing after loss to preju-
6 dice such rights;

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

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

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

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

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

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

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

24 “(b) For purposes of this subsection:

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

30 “(B) ‘Final judgment’ means a judgment that has become final by lapse of time for appeal or by
31 entry in an appellate court of an appellate judgment.

32 “**SECTION 7. The amendments to ORS 742.504 by section 6 of this 2007 Act become op-**
33 **erative on January 2, 2012.**

34 “**SECTION 8.** ORS 742.520 is amended to read:

35 “742.520. (1) Every motor vehicle liability policy issued for delivery in this state that covers any
36 private passenger motor vehicle shall provide personal injury protection benefits to the person in-
37 sured thereunder, members of that person’s family residing in the same household, children not re-
38 lated to the insured by blood, marriage or adoption who are residing in the same household as the
39 insured and being reared as the insured’s own, passengers occupying the insured motor vehicle and
40 pedestrians struck by the insured motor vehicle.

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

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

45 “(A) A motor vehicle, including a motorcycle or moped, that is owned or furnished or available

1 for regular use by any of such persons and that is not described in the policy;

2 “(B) A motorcycle or moped which is not owned by any of such persons, but this exclusion ap-
3 plies only when the injury or death results from such person’s operating or riding upon the motor-
4 cycle or moped; and

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

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

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

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

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

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

20 “(7) An insurer:

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

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

24 “**SECTION 9.** ORS 742.522 is amended to read:

25 “742.522. [(1) Arbitration under ORS 742.520 (6) is binding on the parties to the arbitration.]

26 “[2] (1) Costs to the insured of the arbitration proceeding **under ORS 742.520 (6)** shall not
27 exceed \$100 and all other costs of arbitration shall be borne by the insurer.

28 “(2) As used in this [subsection] **section**, ‘costs’ does not include attorney fees or expenses in-
29 curred in the production of evidence or witnesses or the making of transcripts of the arbitration
30 proceedings.

31 “**SECTION 10.** Sections 2 and 3 of this 2007 Act and the amendments to ORS 742.504,
32 742.520 and 742.522 by sections 5, 8 and 9 of this 2007 Act apply to motor vehicle liability
33 policies issued or renewed on or after the effective date of this 2007 Act.

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