

A-Engrossed
Senate Bill 311

Ordered by the Senate February 13
Including Senate Amendments dated February 13

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon Tort Claims Act Interim Task Force)

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.

Increases amounts recoverable in tort actions against public bodies. Provides different limits for tort actions against state and for tort actions against other public bodies. Provides for future increases in limits based on Consumer Price Index.

Provides for direct review by Supreme Court to determine whether application of limitations is constitutional under facts of specific case.

Creates Task Force on Oregon Tort Claims Act. Provides that task force becomes operative January 1, 2014. Sunsets task force March 1, 2015.

Declares emergency, effective July 1, 2009.

A BILL FOR AN ACT

1
2 Relating to Oregon Tort Claims Act; creating new provisions; amending ORS 30.260, 30.261, 30.275,
3 30.282, 30.285, 30.287, 144.600, 353.100, 742.502 and 742.504; repealing ORS 30.270; and declaring
4 an emergency.

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

6 **SECTION 1. Sections 2 to 6 of this 2009 Act are added to and made a part of ORS 30.260**
7 **to 30.300.**

8 **SECTION 2. Limitations on awards under Oregon Tort Claims Act generally. (1) Punitive**
9 **damages may not be awarded on any claim subject to ORS 30.260 to 30.300.**

10 **(2) Claims subject to ORS 30.260 to 30.300 are not subject to the limitation imposed by**
11 **ORS 31.710.**

12 **(3) A court may not apply the limitations imposed on recovery under sections 3, 4 and 5**
13 **of this 2009 Act until after the entry of a verdict or a stipulation by the parties to the**
14 **amount of the damages.**

15 **(4) The limitations imposed on recovery by a single claimant under sections 3 (2) and 4**
16 **(2) of this 2009 Act include the amount of any damages arising out of the same accident or**
17 **occurrence that are claimed by another person for loss of services provided by the claimant**
18 **or loss of support provided by the claimant.**

19 **(5) If two or more claimants recover on a claim that arises out of a single accident or**
20 **occurrence, and the recovery is subject to a limitation imposed by section 3 (3), 4 (3) or 5**
21 **(2)(b) of this 2009 Act, any party to the action in which the claim is made may apply to the**
22 **court to apportion to each claimant the proper share of the amount allowed by section 3 (3),**
23 **4 (3) or 5 (2)(b) of this 2009 Act. The share apportioned to each claimant shall be in 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 proportion that the ratio of the award or settlement made to the claimant bears to the ag-
2 gregate awards and settlements for all claims arising out of the accident or occurrence.

3 (6) Liability of any public body and one or more of its officers, employees or agents, or
4 two or more officers, employees or agents of a public body, on claims arising out of a single
5 accident or occurrence, may not exceed in the aggregate the amounts allowed by sections
6 3, 4 and 5 of this 2009 Act.

7 (7) Sections 3, 4 and 5 of this 2009 Act do not apply to a claim arising in connection with
8 a nuclear incident covered by an insurance or indemnity agreement under 42 U.S.C. 2210.

9 **SECTION 3. Limitations on liability of state for personal injury and death.** (1) The limi-
10 tations imposed by this section apply to claims that:

11 (a) Are subject to ORS 30.260 to 30.300;

12 (b) Are made against the state, or against an officer, employee or agent of the state
13 acting within the person's scope of employment or duties;

14 (c) Arise out of a single accident or occurrence; and

15 (d) Are not claims for damage to or destruction of property.

16 (2) The liability of the state, and the liability of the state's officers, employees and agents
17 acting within the scope of their employment or duties, to any single claimant for claims de-
18 scribed in subsection (1) of this section may not exceed:

19 (a) \$1.5 million, for causes of action arising on or after December 28, 2007, and before
20 July 1, 2010.

21 (b) \$1.6 million, for causes of action arising on or after July 1, 2010, and before July 1,
22 2011.

23 (c) \$1.7 million, for causes of action arising on or after July 1, 2011, and before July 1,
24 2012.

25 (d) \$1.8 million, for causes of action arising on or after July 1, 2012, and before July 1,
26 2013.

27 (e) \$1.9 million, for causes of action arising on or after July 1, 2013, and before July 1,
28 2014.

29 (f) \$2 million, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

30 (g) The adjusted limitation provided by subsection (4) of this section, for causes of action
31 arising on or after July 1, 2015.

32 (3) The liability of the state, and the liability of the state's officers, employees and agents
33 acting within the scope of their employment or duties, to all claimants for claims described
34 in subsection (1) of this section may not exceed:

35 (a) \$3 million, for causes of action arising on or after December 28, 2007, and before July
36 1, 2010.

37 (b) \$3.2 million, for causes of action arising on or after July 1, 2010, and before July 1,
38 2011.

39 (c) \$3.4 million, for causes of action arising on or after July 1, 2011, and before July 1,
40 2012.

41 (d) \$3.6 million, for causes of action arising on or after July 1, 2012, and before July 1,
42 2013.

43 (e) \$3.8 million, for causes of action arising on or after July 1, 2013, and before July 1,
44 2014.

45 (f) \$4 million, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

1 (g) The adjusted limitation provided by subsection (4) of this section, for causes of action
2 arising on or after July 1, 2015.

3 (4) Beginning in 2015, and every year thereafter, the State Court Administrator shall
4 determine the percentage increase or decrease in the cost of living for the previous calendar
5 year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban
6 Consumers for All Items as published by the Bureau of Labor Statistics of the United States
7 Department of Labor. On or before July 1 of the year in which the State Court Administrator
8 makes the determination required by this subsection, the State Court Administrator shall
9 adjust the limitations imposed under subsections (2) and (3) of this section for the following
10 calendar year by multiplying the limitation amounts applicable to the calendar year in which
11 the adjustment is made by the percentage amount determined under this subsection. The
12 adjustment may not exceed three percent for any year. The State Court Administrator shall
13 round the adjusted limitation amount to the nearest \$100, but the unrounded amount shall
14 be used to calculate the adjustments to the limitations in subsequent calendar years. The
15 adjusted limitation becomes effective on July 1 of the year in which the adjustment is made,
16 and applies to all causes of action arising on or after July 1 of that year and before July 1
17 of the subsequent year.

18 SECTION 3a. Section 3 of this 2009 Act applies only to causes of action arising on or after
19 December 28, 2007. Any cause of action that arose before December 28, 2007, shall continue
20 to be governed by ORS 30.270, as that statute was in effect immediately before the effective
21 date of this 2009 Act.

22 SECTION 4. Limitations on liability of local public bodies for personal injury and death.

23 (1) The limitations imposed by this section apply to claims that:

24 (a) Are subject to ORS 30.260 to 30.300;

25 (b) Are made against a local public body, or against an officer, employee or agent of a
26 local public body acting within the person's scope of employment or duties;

27 (c) Arise out of a single accident or occurrence; and

28 (d) Are not claims for damage to or destruction of property.

29 (2) The liability of a local public body, and the liability of the public body's officers, em-
30 ployees and agents acting within the scope of their employment or duties, to any single
31 claimant for claims described in subsection (1) of this section may not exceed:

32 (a) \$500,000, for causes of action arising on or after July 1, 2009, and before July 1, 2010.

33 (b) \$533,300, for causes of action arising on or after July 1, 2010, and before July 1, 2011.

34 (c) \$566,700, for causes of action arising on or after July 1, 2011, and before July 1, 2012.

35 (d) \$600,000, for causes of action arising on or after July 1, 2012, and before July 1, 2013.

36 (e) \$633,300, for causes of action arising on or after July 1, 2013, and before July 1, 2014.

37 (f) \$666,700, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

38 (g) The adjusted limitation provided by subsection (4) of this section, for causes of action
39 arising on or after July 1, 2015.

40 (3) The liability of a local public body, and the liability of the public body's officers, em-
41 ployees and agents acting within the scope of their employment or duties, to all claimants
42 for claims described in subsection (1) of this section may not exceed:

43 (a) \$1 million, for causes of action arising on or after July 1, 2009, and before July 1, 2010.

44 (b) \$1,066,700, for causes of action arising on or after July 1, 2010, and before July 1, 2011.

45 (c) \$1,133,300, for causes of action arising on or after July 1, 2011, and before July 1, 2012.

1 (d) \$1,200,000, for causes of action arising on or after July 1, 2012, and before July 1, 2013.

2 (e) \$1,266,700, for causes of action arising on or after July 1, 2013, and before July 1, 2014.

3 (f) \$1,333,300, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

4 (g) The adjusted limitation provided by subsection (4) of this section, for causes of action
5 arising on or after July 1, 2015.

6 (4) Beginning in 2015, and every year thereafter, the State Court Administrator shall
7 determine the percentage increase or decrease in the cost of living for the previous calendar
8 year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban
9 Consumers for All Items as published by the Bureau of Labor Statistics of the United States
10 Department of Labor. On or before July 1 of the year in which the State Court Administrator
11 makes the determination required by this subsection, the State Court Administrator shall
12 adjust the limitations imposed under subsections (2) and (3) of this section for the following
13 calendar year by multiplying the limitation amounts applicable to the calendar year in which
14 the adjustment is made by the percentage amount determined under this subsection. The
15 adjustment may not exceed three percent for any year. The State Court Administrator shall
16 round the adjusted limitation amount to the nearest \$100, but the unrounded amount shall
17 be used to calculate the adjustments to the limitations in subsequent calendar years. The
18 adjusted limitation becomes effective on July 1 of the year in which the adjustment is made,
19 and applies to all causes of action arising on or after July 1 of that year and before July 1
20 of the subsequent year.

21 SECTION 4a. Section 4 of this 2009 Act applies only to causes of action arising on or after
22 July 1, 2009. Any cause of action that arose before July 1, 2009, shall continue to be governed
23 by ORS 30.270, as that statute was in effect immediately before the effective date of this 2009
24 Act.

25 SECTION 5. Limitations on liability of public bodies for property damage or destruction.

26 (1) The limitations imposed by this section apply to claims that:

27 (a) Are subject to ORS 30.260 to 30.300;

28 (b) Are made against a public body, or against a public body's officers, employees and
29 agents acting within the scope of their employment or duties;

30 (c) Arise out of a single accident or occurrence; and

31 (d) Are claims for damage to or destruction of property, including consequential dam-
32 ages.

33 (2) The liability of a public body, and the liability of the public body's officers, employees
34 and agents acting within the scope of their employment or duties, for claims described in
35 subsection (1) of this section may not exceed:

36 (a) \$100,000, or the adjusted limitation provided by subsection (3) of this section, to any
37 single claimant.

38 (b) \$500,000, or the adjusted limitation provided by subsection (3) of this section, to all
39 claimants.

40 (3) Beginning in 2010, and every year thereafter, the State Court Administrator shall
41 determine the percentage increase or decrease in the cost of living for the previous calendar
42 year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban
43 Consumers for All Items as published by the Bureau of Labor Statistics of the United States
44 Department of Labor. On or before July 1 of the year in which the State Court Administrator
45 makes the determination required by this subsection, the State Court Administrator shall

1 adjust the limitations imposed under subsection (2) of this section for the following calendar
2 year by multiplying the limitation amounts applicable to the calendar year in which the ad-
3 justment is made by the percentage amount determined under this subsection. The adjust-
4 ment may not exceed three percent for any year. The State Court Administrator shall round
5 the adjusted limitation amount to the nearest \$100, but the unrounded amount shall be used
6 to calculate the adjustments to the limitations in subsequent calendar years. The adjusted
7 limitation becomes effective on July 1 of the year in which the adjustment is made, and ap-
8 plies to all causes of action arising on or after July 1 of that year and before July 1 of the
9 subsequent year.

10 **SECTION 5a.** Section 5 of this 2009 Act applies only to causes of action arising on or after
11 July 1, 2009. Any cause of action that arose before July 1, 2009, shall continue to be governed
12 by ORS 30.270, as that statute was in effect immediately before the effective date of this 2009
13 Act.

14 **SECTION 6. Direct appeal of constitutionality of limitations.** (1) At the request of any
15 party to an action under ORS 30.260 to 30.300, the court shall enter a limited judgment that
16 is limited to the issue of the application of the limitations imposed by section 3, 4 or 5 of this
17 2009 Act. A limited judgment may be entered under this section only after:

18 (a) The parties have stipulated to the total damages in the action; or

19 (b) The finder of fact has decided the total damages in the action.

20 (2) If a limited judgment is entered under this section, the court may not enter a general
21 judgment until an appellate judgment on any appeal of the limited judgment has been en-
22 tered.

23 (3) A limited judgment entered under this section may be appealed only by filing a notice
24 of appeal directly with the Supreme Court within the time and in the manner specified in
25 ORS chapter 19 for civil appeals to the Court of Appeals. Any party filing a notice of appeal
26 under this subsection must note in the notice of appeal that the case is subject to this sub-
27 section.

28 (4) An appeal filed under this section may not raise any issue relating to the case other
29 than the application of a limitation imposed under section 3, 4 or 5 of this 2009 Act.

30 (5) If a limited judgment is not requested under this section, a party may seek judicial
31 review of the imposition of any of the limitations under section 3, 4 or 5 of this 2009 Act in
32 an appeal from the general judgment in the action.

33 **SECTION 7. Task Force on Oregon Tort Claims Act.** (1) There is created the Task Force
34 on the Oregon Tort Claims Act, consisting of four members appointed as follows:

35 (a) The President of the Senate shall appoint two members from among members of the
36 Senate.

37 (b) The Speaker of the House of Representatives shall appoint two members from among
38 members of the House of Representatives.

39 (2) The task force shall:

40 (a) Study the impact of sections 2 to 6 of this 2009 Act and the operation of other laws
41 governing the tort liability of public bodies; and

42 (b) Prepare a report for submission to the Legislative Assembly that contains the task
43 force's findings and recommendations relating to the tort liability of public bodies.

44 (3) A majority of the members of the task force constitutes a quorum for the transaction
45 of business.

1 (4) Official action by the task force requires the approval of a majority of the members
2 of the task force.

3 (5) The task force shall elect one of its members to serve as chairperson.

4 (6) If there is a vacancy for any cause, the appointing authority shall make an appoint-
5 ment to become immediately effective.

6 (7) The task force shall meet at times and places specified by the call of the chairperson
7 or of a majority of the members of the task force.

8 (8) The task force may adopt rules necessary for the operation of the task force.

9 (9) The task force may pre-session file legislation in the manner provided in ORS 171.130
10 for interim committees. All legislation recommended by official action of the task force must
11 indicate that it is introduced at the request of the task force.

12 (10) The task force shall report to the Legislative Assembly in the manner provided in
13 ORS 192.245 at any time within 30 days after its final meeting or at such later time as the
14 President and Speaker may designate.

15 (11) The Legislative Administrator may employ persons necessary for the performance
16 of the functions of the task force. The Legislative Administrator shall fix the duties and
17 amounts of compensation of these employees. The task force shall use the services of per-
18 manent legislative staff to the greatest extent practicable.

19 (12) All agencies of state government, as defined in ORS 174.111, are directed to assist
20 the task force in the performance of its duties and, to the extent permitted by laws relating
21 to confidentiality, to furnish such information and advice as the members of the task force
22 consider necessary to perform their duties.

23 **SECTION 8.** (1) Section 7 of this 2009 Act becomes operative on January 1, 2014.

24 (2) Section 7 of this 2009 Act is repealed on March 1, 2015.

25 **SECTION 9.** ORS 30.260 is amended to read:

26 30.260. As used in ORS 30.260 to 30.300, unless the context requires otherwise:

27 (1) "Department" means the Oregon Department of Administrative Services.

28 (2) "Director" means the Director of the Oregon Department of Administrative Services.

29 (3) "Governing body" means the group or officer in which the controlling authority of any public
30 body is vested.

31 [(4) "Public body" means:]

32 [(a) The state and any department, agency, board or commission of the state;]

33 [(b) Any city, county, school district or other political subdivision or municipal or public corpo-
34 ration and any instrumentality thereof;]

35 [(c) Any intergovernmental agency, department, council, joint board of control created under ORS
36 190.125 or other like entity which is created under ORS 190.003 to 190.130, and which does not act
37 under the direction and control of any single member government;]

38 [(d) Any nonprofit corporation that is organized and existing under ORS chapter 65 and that has
39 only political subdivisions or municipal, quasi-municipal or public corporations in this state as mem-
40 bers;]

41 [(e) A private child-caring agency, as defined in ORS 418.205, that meets the criteria specified in
42 ORS 278.322 (1)(a) and that receives more than 50 percent of its funding from the state for the purpose
43 of providing residential treatment to children who have been placed in the care and custody of the state
44 or that provides residential treatment to children more than half of whom have been placed in the care
45 and custody of the state; or]

1 *[(f) A private, nonprofit organization that provides public transportation services if more than 50*
2 *percent of the organization's funding for the purpose of providing public transportation services is re-*
3 *ceived from governmental bodies.]*

4 **(4) "Public body" means:**

5 **(a) A public body as defined in ORS 174.109;**

6 **(b) Any nonprofit corporation that is organized and existing under ORS chapter 65 and**
7 **that has only political subdivisions or municipal, quasi-municipal or public corporations in**
8 **this state as members;**

9 **(c) A private child-caring agency, as defined in ORS 418.205, that meets the criteria**
10 **specified in ORS 278.322 (1)(a) and that receives more than 50 percent of its funding from the**
11 **state for the purpose of providing residential treatment to children who have been placed in**
12 **the care and custody of the state or that provides residential treatment to children more**
13 **than half of whom have been placed in the care and custody of the state; or**

14 **(d) A private, nonprofit organization that provides public transportation services if more**
15 **than 50 percent of the organization's funding for the purpose of providing public transpor-**
16 **tation services is received from governmental bodies.**

17 (5) "State" means *[the state or any branch, department, agency, board or commission of the*
18 *state]:*

19 **(a) State government as defined in ORS 174.111; and**

20 **(b) Oregon Health and Science University.**

21 (6) "Local public body" means any public body other than the state.

22 (7) "Nuclear incident" has the meaning given that term in 42 U.S.C. 2014(q).

23 (8) "Tort" means the breach of a legal duty that is imposed by law, other than a duty arising
24 from contract or quasi-contract, the breach of which results in injury to a specific person or persons
25 for which the law provides a civil right of action for damages or for a protective remedy.

26 **NOTE:** Section 10 was deleted by amendment. Subsequent sections were not renumbered.

27 **SECTION 11.** ORS 30.285 is amended to read:

28 30.285. (1) The governing body of any public body shall defend, save harmless and indemnify any
29 of its officers, employees and agents, whether elective or appointive, against any tort claim or de-
30 mand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the
31 performance of duty.

32 (2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office
33 or willful or wanton neglect of duty.

34 (3) If any civil action, suit or proceeding is brought against any state officer, employee or agent
35 which on its face falls within the provisions of subsection (1) of this section, or which the state of-
36 ficer, employee or agent asserts to be based in fact upon an alleged act or omission in the per-
37 formance of duty, the state officer, employee or agent may, after consulting with the Oregon
38 Department of Administrative Services file a written request for counsel with the Attorney General.
39 The Attorney General shall thereupon appear and defend the officer, employee or agent unless after
40 investigation the Attorney General finds that the claim or demand does not arise out of an alleged
41 act or omission occurring in the performance of duty, or that the act or omission complained of
42 amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney
43 General shall reject defense of the claim.

44 (4) Any officer, employee or agent of the state against whom a claim within the scope of this
45 section is made shall cooperate fully with the Attorney General and the department in the defense

1 of such claim. If the Attorney General after consulting with the department determines that such
2 officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the
3 claim, the Attorney General may at any time reject the defense of the claim.

4 (5) If the Attorney General rejects defense of a claim under subsection (3) of this section or this
5 subsection, no public funds shall be paid in settlement of said claim or in payment of any judgment
6 against such officer, employee or agent. Such action by the Attorney General shall not prejudice the
7 right of the officer, employee or agent to assert and establish an appropriate proceedings that the
8 claim or demand in fact arose out of an alleged act or omission occurring in the performance of
9 duty, or that the act or omission complained of did not amount to malfeasance in office or willful
10 or wanton neglect of duty, in which case the officer, employee or agent shall be indemnified against
11 liability and reasonable costs of defending the claim, cost of such indemnification to be a charge
12 against the Insurance Fund established by ORS 278.425.

13 (6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of
14 liability of any public officer, agent or employee under ORS [30.270] **30.260 to 30.300**, or obviate the
15 necessity of compliance with ORS 30.275 by any claimant, nor to affect the liability of the state itself
16 or of any other public officer, agent or employee on any claim arising out of the same accident or
17 occurrence.

18 (7) As used in this section, "state officer, employee or agent" includes district attorneys and
19 deputy district attorneys, special prosecutors and law clerks of the office of district attorney who
20 act in a prosecutorial capacity, but does not include any other employee of the office of district at-
21 torney or any employee of the justice or circuit courts whose salary is paid wholly or in part by the
22 county.

23 **SECTION 12.** ORS 30.287 is amended to read:

24 30.287. (1) If any civil action, suit or proceeding is brought against any officer, employee or
25 agent of a local public body [*other than the state*] which on its face falls within the provisions of
26 ORS 30.285 (1), or which the officer, employee or agent asserts to be based in fact upon an alleged
27 act or omission in the performance of duty, the officer, employee or agent may file a written request
28 for counsel with the governing body of the public body. The governing body shall thereupon engage
29 counsel to appear and defend the officer, employee or agent unless after investigation it is deter-
30 mined that the claim or demand does not arise out of an alleged act or omission occurring in the
31 performance of duty, or that the act or omission complained of amounted to malfeasance in office
32 or willful or wanton neglect of duty, in which case the governing body shall reject defense of the
33 claim.

34 (2) Any officer, employee or agent of a local public body against whom a claim within the scope
35 of this section is made shall cooperate fully with the governing body and counsel in the defense of
36 such claim. If the counsel determines and certifies to the governing body that such officer, employee
37 or agent has not so cooperated or has otherwise acted in prejudice of the defense of the claim, the
38 governing body may at any time reject the defense of the claim.

39 (3) If the governing body rejects defense of a claim under subsection (1) of this section, no public
40 funds shall be paid in settlement of the claim or in payment of any judgment against such officer,
41 employee or agent. Such action by the governing body shall not prejudice the right of the officer,
42 employee or agent to assert and establish in an appropriate proceedings that the claim or demand
43 in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act
44 or omission complained of did not amount to malfeasance in office or willful or wanton neglect of
45 duty, in which case the officer, employee or agent shall be indemnified by the public body against

1 liability and reasonable costs of defending the claim.

2 (4) Nothing in subsection (1), (2) or (3) of this section shall be deemed to increase the limits of
3 liability of any public officer, agent or employee under ORS [30.270] **30.260 to 30.300**, or relieve any
4 claimant of the necessity of compliance with ORS 30.275, nor to affect the liability of the local public
5 body itself or of any other public officer, agent or employee on any claim arising out of the same
6 accident or occurrence.

7 (5) The provisions of this section may be superseded to the extent that the claim against the
8 public officer, employee or agent may be defended by any insurer, or may be subject under ORS
9 30.282 to agreement with the Oregon Department of Administrative Services, in which case the
10 provisions of the policy of insurance or other agreement are applicable.

11 **SECTION 13.** ORS 144.600 is amended to read:

12 144.600. The Legislative Assembly hereby approves and the Governor is authorized to enter into
13 a compact on behalf of this state with any other state or states legally joining therein in the form
14 substantially as follows:

15
16
17
18 ARTICLE I
19 PURPOSE
20

21 (a) The compacting states to this interstate compact recognize that each state is responsible for
22 the supervision of adult offenders in the community who are authorized pursuant to the bylaws and
23 rules of this compact to travel across state lines both to and from each compacting state in such a
24 manner as to track the location of offenders, transfer supervision authority in an orderly and effi-
25 cient manner and, when necessary, return offenders to the originating jurisdictions. The compacting
26 states also recognize that the United States Congress, by enacting 4 U.S.C. 112, has authorized and
27 encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

28 (b) It is the purpose of this compact and the Interstate Commission created under this compact,
29 through means of joint and cooperative action among the compacting states: To provide the frame-
30 work for the promotion of public safety and protect the rights of victims through the control and
31 regulation of the interstate movement of offenders in the community; to provide for the effective
32 tracking, supervision and rehabilitation of these offenders by the sending and receiving states; and
33 to equitably distribute the costs, benefits and obligations of the compact among the compacting
34 states.

35 (c) In addition, this compact is intended to: Create an Interstate Commission that will establish
36 uniform procedures to manage the movement between states of offenders placed under community
37 supervision and released to the community under the jurisdiction of courts, paroling authorities or
38 corrections or other criminal justice agencies that will promulgate rules to achieve the purpose of
39 this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where
40 offenders are authorized to travel or to relocate across state lines; establish a system of uniform
41 data collection, access to information on active cases by authorized criminal justice officials and
42 regular reporting of compact activities to the heads of State Councils, the state executive, judicial
43 and legislative branches and the criminal justice administrators; monitor compliance with rules
44 governing interstate movement of offenders and initiate interventions to address and correct non-
45 compliance; and coordinate training and education on the regulation of interstate movement of

1 offenders for officials involved in such activity.

2 (d) The compacting states recognize that there is no right of any offender to live in another
3 state and that duly accredited officers of a sending state may at all times enter a receiving state
4 and there apprehend and retake any offender under supervision, subject to the provisions of this
5 compact and the bylaws and rules promulgated under this compact. It is the policy of the compact-
6 ing states that the activities conducted by the Interstate Commission are intended to formulate
7 public policy and are therefore public business.

8
9 ARTICLE II
10 DEFINITIONS
11

12 As used in this compact, unless the context clearly requires a different construction:

13 (a) "Adult" means a person who is 18 years of age or older or a person under 18 years of age
14 who is legally classified, either by statute or court order, as an adult.

15 (b) "Bylaws" means those bylaws established by the Interstate Commission for its governance
16 or for directing or controlling the Interstate Commission's actions or conduct.

17 (c) "Compact Administrator" means the individual in each compacting state appointed pursuant
18 to the terms of this compact responsible for the administration and management of the state's
19 supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the
20 Interstate Commission and policies adopted by the State Council under this compact.

21 (d) "Compacting state" means any state which has enacted the enabling legislation for this
22 compact.

23 (e) "Commissioner" means the voting representative of each compacting state appointed pursu-
24 ant to Article III of this compact.

25 (f) "Interstate Commission" means the Interstate Commission for Adult Offender Supervision
26 created by Article III of this compact.

27 (g) "Member" means the commissioner of a compacting state or the commissioner's designee,
28 who shall be an individual officially connected with the commissioner.

29 (h) "Noncompacting state" means any state that has not enacted the enabling legislation for this
30 compact.

31 (i) "Offender" means an adult placed under or subject to supervision as the result of the com-
32 mission of a criminal offense and released to the community under the jurisdiction of courts,
33 paroling authorities or corrections or other criminal justice agencies.

34 (j) "Person" means any individual, corporation, business enterprise or other legal entity, either
35 public or private.

36 (k) "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII
37 of this compact and substantially affecting interested parties in addition to the Interstate Commis-
38 sion, that have the force and effect of law in the compacting states.

39 (L) "State" means a state of the United States, the District of Columbia or any territorial pos-
40 session of the United States.

41 (m) "State Council" means the resident members of the State Council for Interstate Adult
42 Offender Supervision created by each state under Article IV of this compact.

43
44 ARTICLE III
45 THE INTERSTATE COMMISSION

FOR ADULT OFFENDER SUPERVISION

1
2
3 (a) The compacting states hereby create the Interstate Commission for Adult Offender Super-
4 vision. The Interstate Commission shall be a body corporate and joint agency of the compacting
5 states. The Interstate Commission shall have all the responsibilities, powers and duties set forth in
6 this compact, including the power to sue and be sued and such additional powers as may be con-
7 ferred upon it by subsequent action of the respective legislatures of the compacting states in ac-
8 cordance with the terms of this compact.

9 (b) The Interstate Commission shall consist of commissioners selected and appointed by each
10 state. In addition to the commissioners who are the voting representatives of each state, the Inter-
11 state Commission shall include individuals who are not commissioners but who are members of in-
12 terested organizations. Such noncommissioner members must include a member of the national
13 organizations of governors, legislators, state chief justices, attorneys general and crime victims. All
14 noncommissioner members of the Interstate Commission shall be nonvoting members. The Interstate
15 Commission may provide in its bylaws for such additional nonvoting members as it deems necessary.

16 (c) Each compacting state represented at any meeting of the Interstate Commission is entitled
17 to one vote. A majority of the compacting states shall constitute a quorum for the transaction of
18 business, unless a larger quorum is required by the bylaws of the Interstate Commission.

19 (d) The Interstate Commission shall meet at least once each calendar year. The chairperson may
20 call additional meetings and, upon the request of 27 or more compacting states, shall call additional
21 meetings. Public notice shall be given of all meetings and meetings shall be open to the public, ex-
22 cept as provided in Article VII of this compact.

23 (e) The Interstate Commission shall establish an executive committee that shall include com-
24 mission officers, members and others as shall be determined by the bylaws. The executive committee
25 shall have the power to act on behalf of the Interstate Commission during periods when the Inter-
26 state Commission is not in session, with the exception of rulemaking or amendment to the compact.
27 The executive committee oversees the day-to-day activities managed by the executive director and
28 Interstate Commission staff, administers enforcement and compliance with the provisions of the
29 compact, its bylaws and rules and as directed by the Interstate Commission and performs other du-
30 ties as directed by the Interstate Commission or as set forth in the bylaws and rules.

31
32 ARTICLE IV
33 THE COMPACT ADMINISTRATOR AND STATE COUNCIL
34

35 (a) The Director of the Department of Corrections, or the director's designee, shall serve as the
36 Compact Administrator for the State of Oregon and as Oregon's commissioner to the Interstate
37 Commission.

38 (b) The Oregon State Council for Interstate Adult Offender Supervision is established, consisting
39 of seven members. The Director of the Department of Corrections, or the director's designee, is a
40 member of the State Council and serves as chairperson of the State Council. Of the remaining
41 members of the State Council:

42 (1) The Governor shall appoint three members, one of whom must represent a crime victims'
43 organization; and

44 (2) The Chief Justice of the Supreme Court, the President of the Senate and the Speaker of the
45 House of Representatives shall each appoint one member.

1 (c) The term of office of a member is four years.

2 (d) The State Council shall meet at least once each calendar year.

3 (e) The State Council may advise the Compact Administrator on participation in the Interstate
4 Commission activities and administration of the compact.

5 (f) Members of the State Council are entitled to expenses as provided in ORS 292.495. Any leg-
6 islative members are entitled to payment of compensation and expense reimbursement under ORS
7 171.072, payable from funds appropriated to the Legislative Assembly.

8 (g) The State Council is subject to the provisions of ORS 291.201 to 291.222 and 291.232 to
9 291.260.

10 (h) The Department of Corrections shall provide staff support for the State Council.

11
12 ARTICLE V
13 POWERS AND DUTIES
14 OF THE INTERSTATE COMMISSION
15

16 The Interstate Commission shall have the following powers:

17 (a) To adopt a seal and suitable bylaws governing the management and operation of the Inter-
18 state Commission.

19 (b) To promulgate rules which shall have the force and effect of statutory law and shall be
20 binding in the compacting states to the extent and in the manner provided in this compact.

21 (c) To oversee, supervise and coordinate the interstate movement of offenders subject to the
22 terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.

23 (d) To enforce compliance with the compact and the rules and bylaws of the Interstate Com-
24 mission, using all necessary and proper means, including, but not limited to, the use of judicial
25 process.

26 (e) To establish and maintain offices.

27 (f) To purchase and maintain insurance and bonds.

28 (g) To borrow, accept or contract for the services of personnel, including, but not limited to,
29 members and their staffs.

30 (h) To establish and appoint committees and hire staff that it deems necessary to carry out its
31 functions, including, but not limited to, an executive committee as required by Article III of this
32 compact, which shall have the power to act on behalf of the Interstate Commission in carrying out
33 its powers and duties under this compact.

34 (i) To elect or appoint officers, attorneys, employees, agents or consultants, and to fix their
35 compensation, define their duties and determine their qualifications, and to establish the Interstate
36 Commission's personnel policies and programs relating to, among other things, conflicts of interest,
37 rates of compensation and qualifications of personnel.

38 (j) To accept any and all donations and grants of money, equipment, supplies, materials and
39 services, and to receive, utilize and dispose of same.

40 (k) To lease, purchase, accept contributions or donations of any property, or otherwise to own,
41 hold, improve or use any property, whether real, personal or mixed.

42 (L) To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any
43 property, whether real, personal or mixed.

44 (m) To establish a budget and make expenditures and levy dues as provided in Article X of this
45 compact.

1 (n) To sue and be sued.

2 (o) To provide for dispute resolution among compacting states.

3 (p) To perform such functions as may be necessary or appropriate to achieve the purposes of this
4 compact.

5 (q) To report annually to the legislatures, governors, judiciary and State Councils of the com-
6 pacting states concerning the activities of the Interstate Commission during the preceding year.
7 Such reports shall also include any recommendations that may have been adopted by the Interstate
8 Commission.

9 (r) To coordinate education, training and public awareness regarding the interstate movement
10 of offenders for officials involved in such activity.

11 (s) To establish uniform standards for the reporting, collecting and exchanging of data.

12

13

ARTICLE VI

14

ORGANIZATION AND OPERATION

15

OF THE INTERSTATE COMMISSION

16

17 (a) The Interstate Commission shall, by a majority of the members, within 12 months of the first
18 Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appro-
19 priate to carry out the purposes of the compact, including, but not limited to:

20 (1) Establishing the fiscal year of the Interstate Commission.

21 (2) Establishing an Executive Committee and such other committees as may be necessary.

22 (3) Providing reasonable standards and procedures:

23 (i) For the establishment of committees; and

24 (ii) Governing any general or specific delegation of any authority or function of the Interstate
25 Commission.

26 (4) Providing reasonable procedures for calling and conducting meetings of the Interstate Com-
27 mission, and ensuring reasonable notice of each meeting.

28 (5) Establishing the titles and responsibilities of the officers of the Interstate Commission.

29 (6) Providing reasonable standards and procedures for the establishment of the personnel poli-
30 cies and programs of the Interstate Commission. Notwithstanding any civil service laws or other
31 similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and
32 programs of the Interstate Commission.

33 (7) Providing a mechanism for winding up the operations of the Interstate Commission and the
34 equitable return of any surplus funds that may exist upon the termination of the compact after the
35 payment or reserving of all of the Interstate Commission's debts and obligations.

36 (8) Providing transition rules for start-up administration of the compact.

37 (9) Establishing standards and procedures for compliance and technical assistance in carrying
38 out the compact.

39 (b)(1) The Interstate Commission shall, by a majority of the members, elect from among its
40 members a chairperson and a vice chairperson, each of whom shall have such authorities and duties
41 as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the
42 vice chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected
43 shall serve without compensation or remuneration from the Interstate Commission, provided that,
44 subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and
45 necessary costs and expenses incurred by them in the performance of their duties and responsibil-

ities as officers of the Interstate Commission.

(2) The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission and shall hire and supervise other staff as may be authorized by the Interstate Commission, but shall not be a member of the Interstate Commission.

(c) The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

(d)(1) The liability of any member, officer, executive director, employee or agent of the Interstate Commission acting within the scope of the person's employment or duties for acts, errors or omissions occurring within Oregon may not exceed the limits set forth in ORS [30.270] **30.260 to 30.300**. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.

(2) Subject to approval by the Attorney General under ORS chapter 180, the Interstate Commission shall defend the commissioner of a compacting state, the commissioner's representatives or employees or the Interstate Commission's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(3) The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the appointed representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such persons.

ARTICLE VII
ACTIVITIES OF
THE INTERSTATE COMMISSION

(a) The Interstate Commission shall meet and take such actions as are consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required under the bylaws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person on behalf of the compacting state and shall not delegate a vote to another compacting state. However, the Director of the Department of Cor-

1 rections may designate another individual, in the absence of the director, to cast a vote on behalf
2 of the director at a specified meeting. The bylaws may provide for members' participation in
3 meetings by telephone or other means of telecommunication or electronic communication. Any vot-
4 ing conducted by telephone or other means of telecommunication or electronic communication shall
5 be subject to the same quorum requirements of meetings where members are present in person.

6 (d) The Interstate Commission shall meet at least once during each calendar year. The chair-
7 person of the Interstate Commission may call additional meetings at any time and, upon the request
8 of a majority of the members, shall call additional meetings.

9 (e) The Interstate Commission's bylaws shall establish conditions and procedures under which
10 the Interstate Commission shall make its information and official records available to the public for
11 inspection or copying. The Interstate Commission may exempt from disclosure any information or
12 official records to the extent the information or records would adversely affect personal privacy
13 rights or proprietary interests. In promulgating such rules, the Interstate Commission may make
14 available to law enforcement agencies records and information otherwise exempt from disclosure,
15 and may enter into agreements with law enforcement agencies to receive or exchange information
16 or records subject to nondisclosure and confidentiality provisions.

17 (f) Public notice shall be given of all meetings, and all meetings shall be open to the public,
18 except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission
19 shall promulgate rules consistent with the principles contained in the Government in the Sunshine
20 Act, 5 U.S.C. 552, as amended. The Interstate Commission and any of its committees may close a
21 meeting to the public when the Interstate Commission determines by two-thirds vote that an open
22 meeting would be likely to:

23 (1) Relate solely to the Interstate Commission's internal personnel practices and procedures;

24 (2) Disclose matters specifically exempted from disclosure by statute;

25 (3) Disclose trade secrets or commercial or financial information that is privileged or confiden-
26 tial;

27 (4) Involve accusing any person of a crime or formally censuring any person;

28 (5) Disclose information of a personal nature when such disclosure would constitute a clearly
29 unwarranted invasion of personal privacy;

30 (6) Disclose investigatory records compiled for law enforcement purposes;

31 (7) Disclose information contained in or related to examination, operating or condition reports
32 prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated
33 entity for the purpose of regulation or supervision of such entity;

34 (8) Disclose information when such premature disclosure would significantly endanger the life
35 of a person or the stability of a regulated entity; or

36 (9) Specifically relate to the Interstate Commission's issuance of a subpoena or its participation
37 in a civil action or proceeding.

38 (g) For every meeting closed pursuant to subsection (f) of this Article, the Interstate Commis-
39 sion's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be
40 closed to the public and shall make reference to each relevant provision authorizing closure of the
41 meeting. The Interstate Commission shall keep minutes that fully and clearly describe all matters
42 discussed in any meeting and shall provide a full and accurate summary of any action taken, and
43 the reasons therefor, including a description of each of the views expressed on any item and the
44 record of any roll call vote (reflected in the vote of each member on the question). All documents
45 considered in connection with any action shall be identified in such minutes.

1 (h) The Interstate Commission shall collect standardized data concerning the interstate move-
2 ment of offenders as directed through its bylaws and rules that specify the data to be collected, the
3 means of collection and data exchange and reporting requirements.

4
5 ARTICLE VIII
6 RULEMAKING FUNCTIONS
7 OF THE INTERSTATE COMMISSION
8

9 (a) The Interstate Commission shall promulgate rules in order to effectively and efficiently
10 achieve the purposes of the compact, including transition rules governing administration of the
11 compact during the period in which it is being considered and enacted by the states.

12 (b) Rulemaking shall occur pursuant to the criteria set forth in this Article and the bylaws and
13 rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the
14 federal Administrative Procedure Act, 5 U.S.C. 551 et seq., and the Federal Advisory Committee Act,
15 5 U.S.C. Appendix 2, section 1 et seq., as amended. All rules and amendments shall become binding
16 as of the date specified in each rule or amendment.

17 (c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a
18 statute or resolution in the same manner used to adopt the compact, then such rule shall have no
19 further force and effect in any compacting state.

20 (d) When promulgating a rule, the Interstate Commission shall:

21 (1) Publish the proposed rule, stating with particularity the text of the rule that is proposed and
22 the reason for the proposed rule;

23 (2) Allow persons to submit written data, facts, opinions and arguments, which information shall
24 be publicly available;

25 (3) Provide an opportunity for an informal hearing; and

26 (4) Promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.
27 Not later than 60 days after a rule is promulgated, any interested person may file a petition in the
28 United States District Court for the District of Columbia or in the federal district court where the
29 Interstate Commission's principal office is located for judicial review of the rule. If the court finds
30 that the Interstate Commission's action is not supported by substantial evidence in the rulemaking
31 record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, ev-
32 idence is substantial if it would be considered substantial evidence under the federal Administrative
33 Procedure Act, 5 U.S.C. 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C. Appendix 2,
34 section 1 et seq., as amended.

35 (e) Rules related to the following subjects must be addressed within 12 months after the first
36 meeting of the Interstate Commission:

37 (1) Notice to victims and opportunity to be heard;

38 (2) Offender registration and compliance;

39 (3) Violations and returns;

40 (4) Transfer procedures and forms;

41 (5) Eligibility for transfer;

42 (6) Collection of restitution and fees from offenders;

43 (7) Data collection and reporting;

44 (8) The level of supervision to be provided by the receiving state;

45 (9) Transition rules governing the operation of the compact and the Interstate Commission dur-

1 ing all or part of the period between the effective date of the compact and the date on which the
2 last eligible state adopts the compact; and

3 (10) Mediation, arbitration and dispute resolution.

4 (f) The existing rules governing the operation of the previous compact superseded by this com-
5 pact shall be null and void 12 months after the first meeting of the Interstate Commission created
6 under this compact.

7 (g) Upon determination by the Interstate Commission that an emergency exists, the Interstate
8 Commission may promulgate an emergency rule which shall become effective immediately upon
9 adoption, provided that the usual rulemaking procedures provided in this Article shall be
10 retroactively applied to said rule as soon as reasonably possible, but no later than 90 days after the
11 effective date of the rule.

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ARTICLE IX
OVERSIGHT, ENFORCEMENT AND
DISPUTE RESOLUTION
BY THE INTERSTATE COMMISSION

18 (a)(1) The Interstate Commission shall oversee the Interstate movement of adult offenders in the
19 compacting states and shall monitor such activities being administered in noncompacting states that
20 may significantly affect compacting states.

21 (2) The courts and executive agencies in each compacting state shall enforce this compact and
22 shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In
23 any judicial or administrative proceeding in a compacting state pertaining to the subject matter of
24 this compact that may affect the powers, responsibilities or actions of the Interstate Commission,
25 the Interstate Commission shall be entitled to receive all service of process in any such proceeding
26 and shall have standing to intervene in the proceeding for all purposes.

27 (b)(1) The compacting states shall report to the Interstate Commission on issues or activities of
28 concern to them and cooperate with and support the Interstate Commission in the discharge of its
29 duties and responsibilities.

30 (2) The Interstate Commission shall attempt to resolve any disputes or other issues that are
31 subject to the compact and that may arise among compacting states and noncompacting states. The
32 Interstate Commission shall enact a bylaw or promulgate a rule providing for both mediation and
33 binding dispute resolution for disputes among the compacting states.

34 (c) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the
35 provisions of this compact using any or all means set forth in Article XII (b) of this compact.

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ARTICLE X
FINANCE

40 (a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses
41 of its establishment, organization and ongoing activities.

42 (b) The Interstate Commission shall levy on and collect an annual assessment from each com-
43 pacting state to cover the cost of the internal operations and activities of the Interstate Commission
44 and its staff, which must be in a total amount sufficient to cover the Interstate Commission's annual
45 budget as approved each year. The aggregate annual assessment amount shall be allocated based

1 upon a formula to be determined by the Interstate Commission, taking into consideration the popu-
2 lation of the state and the volume of interstate movement of offenders in each compacting state. The
3 Interstate Commission shall promulgate a rule binding upon all compacting states that governs said
4 assessment.

5 (c) The Interstate Commission shall not incur any obligations of any kind prior to securing the
6 funds adequate to meet the same, nor shall the Interstate Commission pledge the credit of any of
7 the compacting states, except by and with the authority of the compacting state.

8 (d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements.
9 The receipts and disbursements of the Interstate Commission shall be subject to the audit and ac-
10 counting procedures established under its bylaws. However, all receipts and disbursements of funds
11 handled by the Interstate Commission shall be audited yearly by a certified or licensed public ac-
12 countant and the report of the audit shall be included in and become part of the annual report of
13 the Interstate Commission.

14 (e)(1) The Interstate Compact for Adult Offender Supervision Fund is established, separate and
15 distinct from the General Fund. All moneys in the fund are continuously appropriated to the De-
16 partment of Corrections to be used for the purposes of meeting financial obligations imposed on the
17 State of Oregon as a result of the state's participation in this compact.

18 (2) An assessment levied or any other financial obligation imposed under this compact is effec-
19 tive against the State of Oregon only to the extent that moneys to pay the assessment or meet the
20 financial obligation have been appropriated and deposited in the fund established in paragraph (1)
21 of this subsection.

22
23 ARTICLE XI
24 COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT
25

26 (a) Any state, as defined in Article II of this compact, is eligible to become a compacting state.

27 (b) The compact shall become effective and binding upon legislative enactment of the compact
28 into law by no fewer than 35 of the states. The initial effective date shall be the later of July 1, 2001,
29 or upon enactment into law by the 35th jurisdiction. Thereafter, the compact shall become effective
30 and binding, as to any other compacting state, upon enactment of the compact into law by that state.
31 The governors of noncompacting states or their designees may be invited to participate in Interstate
32 Commission activities on a non-voting basis prior to adoption of the compact by all states.

33 (c) Amendments to the compact may be proposed by the Interstate Commission for enactment
34 by the compacting states. No amendment shall become effective and binding upon the Interstate
35 Commission and the compacting states unless and until it is enacted into law by unanimous consent
36 of the compacting states.

37
38 ARTICLE XII
39 WITHDRAWAL, DEFAULT,
40 TERMINATION AND
41 JUDICIAL ENFORCEMENT
42

43 (a)(1) Once effective, the compact shall continue in force and remain binding upon each and
44 every compacting state, provided that a compacting state may withdraw from the compact by spe-
45 cifically repealing the statute that enacted the compact into law.

1 (2) The effective date of withdrawal is the effective date of the repeal of the statute that enacted
2 the compact into law.

3 (3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission
4 in writing upon the introduction of legislation repealing this compact in the withdrawing state. The
5 Interstate Commission shall notify the other compacting states of the withdrawing state's intent to
6 withdraw within 60 days of its receipt thereof.

7 (4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred
8 through the effective date of withdrawal, including any obligations, the performance of which extend
9 beyond the effective date of withdrawal.

10 (5) Reinstatement following withdrawal of any compacting state shall occur upon the with-
11 drawing state reenacting the compact or upon such later date as determined by the Interstate
12 Commission.

13 (b)(1) If the Interstate Commission determines that any compacting state has at any time de-
14 faulted in the performance of any of its obligations or responsibilities under this compact or the
15 bylaws or rules of the Interstate Commission, the Interstate Commission may impose any or all of
16 the following penalties:

17 (i) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Inter-
18 state Commission;

19 (ii) Remedial training and technical assistance as directed by the Interstate Commission;

20 (iii) Suspension and termination of membership in the compact. Suspension shall be imposed only
21 after all other reasonable means of securing compliance under the bylaws and rules have been ex-
22 hausted. Immediate notice of suspension shall be given by the Interstate Commission to the gover-
23 nor, the chief justice or chief judicial officer of the defaulting state; the majority and minority
24 leaders of the defaulting state's legislature, and the state council.

25 (2) The grounds for default include, but are not limited to, failure of a compacting state to per-
26 form obligations or responsibilities imposed upon it by this compact or the Interstate Commission
27 bylaws or rules. The Interstate Commission shall immediately notify the defaulting state in writing
28 of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the
29 default. The Interstate Commission shall stipulate the conditions and the time period within which
30 the defaulting state must cure its default. If the defaulting state fails to cure the default within the
31 time period specified by the Interstate Commission, in addition to any other penalties imposed, the
32 defaulting state may be terminated from the compact upon an affirmative vote of a majority of the
33 compacting states and all rights, privileges and benefits conferred by this compact shall be termi-
34 nated from the effective date of suspension. Within 60 days of the effective date of termination of
35 a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief
36 judicial officer of the defaulting state, the majority and minority leaders of the defaulting state's
37 legislature and the State Council of such termination.

38 (3) The defaulting state is responsible for all assessments, obligations and liabilities incurred
39 through the effective date of termination, including any obligations, the performance of which extend
40 beyond the effective date of termination.

41 (4) The Interstate Commission shall not bear any costs relating to the defaulting state unless
42 otherwise mutually agreed upon between the Interstate Commission and the defaulting state. Rein-
43 statement following termination of any compacting state requires both a reenactment of the compact
44 by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

45 (c) The Interstate Commission may, by majority vote of the members, initiate legal action in the

1 United States District Court for the District of Columbia or, at the discretion of the Interstate
2 Commission, in the federal district court where the Interstate Commission has its principal office to
3 enforce compliance with the provisions of the compact, its rules or bylaws against any compacting
4 state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded
5 all costs of such litigation, including reasonable attorney fees.

6 (d)(1) The compact dissolves effective upon the date of the withdrawal or default of the com-
7 pacting state that reduces membership in the compact to one compacting state.

8 (2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no
9 further force or effect, and the business and affairs of the Interstate Commission shall be wound up
10 and any surplus funds shall be distributed in accordance with the bylaws.

11
12 ARTICLE XIII
13 SEVERABILITY AND CONSTRUCTION
14

15 (a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or
16 provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

17 (b) The provisions of this compact shall be liberally construed to effectuate its purposes.

18
19 ARTICLE XIV
20 BINDING EFFECT OF COMPACT
21 AND OTHER LAWS
22

23 (a)(1) Nothing in this compact prevents the enforcement of any other law of a compacting state
24 that is not inconsistent with this compact.

25 (2) The laws of the State of Oregon, other than the Oregon Constitution, that conflict with this
26 compact are superseded to the extent of the conflict.

27 (b)(1) All lawful actions of the Interstate Commission, including all rules and bylaws
28 promulgated by the Interstate Commission, are binding upon the State of Oregon unless contrary to
29 the Oregon Constitution.

30 (2) All agreements between the Interstate Commission and the compacting states are binding in
31 accordance with their terms.

32 (3) Upon the request of a party to a conflict over meaning or interpretation of Interstate Com-
33 mission actions, and upon a majority vote of the compacting states, the Interstate Commission may
34 issue advisory opinions regarding such meaning or interpretation.

35 (4) In the event any provision of this compact exceeds the constitutional limits imposed on the
36 legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be
37 conferred by such provision upon the Interstate Commission shall be ineffective and such obli-
38 gations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised
39 by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law
40 in effect at the time this compact becomes effective.

41 (c) The State of Oregon is bound by the bylaws and rules promulgated under this compact only
42 to the extent that the operation of the bylaws and rules does not impose an obligation exceeding
43 any limitation on state power or authority contained in the Oregon Constitution as interpreted by
44 the state courts of Oregon.

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SECTION 14. ORS 742.502 is amended to read:

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

- (a) Issued for delivery in this state; or
- (b) Issued or delivered by an insurer doing business in this state with respect to any motor vehicle then principally used or principally garaged in this state.

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

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

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

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

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

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

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

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

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

6 (7) As used in this section and except as otherwise provided in this subsection, “amount recov-
7 ered from other motor vehicle liability insurance policies” means the proceeds of liability insurance
8 or the proceeds received from a public body under ORS [30.270] **30.260 to 30.300** recovered by or
9 on behalf of the injured party. Proceeds recovered on behalf of the injured party include proceeds
10 received by the injured party’s insurer as reimbursement for personal injury protection benefits
11 provided to the injured person, proceeds received by the medical providers of the injured person and
12 proceeds received as attorney fees on the claim of the injured person. Where applicable liability
13 insurance policy limits are exhausted upon payment, settlement or judgment by division among two
14 or more injured persons, “amount recovered from other motor vehicle liability insurance policies”
15 means the proceeds that are recovered by or on behalf of the injured person but does not include
16 any proceeds of that liability policy received by other injured persons.

17 **SECTION 15.** ORS 742.504 is amended to read:

18 742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide
19 uninsured motorist coverage that in each instance is no less favorable in any respect to the insured
20 or the beneficiary than if the following provisions were set forth in the policy. However, nothing
21 contained in this section requires the insurer to reproduce in the policy the particular language of
22 any of the following provisions:

23 (1)(a) Notwithstanding ORS [30.270] **30.260 to 30.300**, the insurer will pay all sums that the in-
24 sured, the heirs or the legal representative of the insured is legally entitled to recover as general
25 and special damages from the owner or operator of an uninsured vehicle because of bodily injury
26 sustained by the insured caused by accident and arising out of the ownership, maintenance or use
27 of the uninsured vehicle. Determination as to whether the insured, the insured’s heirs or the in-
28 sured’s legal representative is legally entitled to recover such damages, and if so, the amount
29 thereof, shall be made by agreement between the insured and the insurer, or, in the event of disa-
30 greement, may be determined by arbitration as provided in subsection (10) of this section.

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

35 (2) As used in this policy:

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

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

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

42 (B) The insured or someone on behalf of the insured reported the accident within 72 hours to
43 a police, peace or judicial officer, to the Department of Transportation or to the equivalent depart-
44 ment in the state where the accident occurred, and filed with the insurer within 30 days thereafter
45 a statement under oath that the insured or the legal representative of the insured has a cause or

1 causes of action arising out of the accident for damages against a person or persons whose identities
2 are unascertainable, and setting forth the facts in support thereof; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 or to the equivalent department in the state where the accident
6 occurred; and

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

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

12 (A) A claimant could have recovered in a civil action from the owner or operator at the time
13 of the injury after determination of fault or comparative fault and resolution of any applicable de-
14 fenses;

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

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

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

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

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

31 (C) A phantom vehicle.

32 (D) A stolen vehicle.

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

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

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

37 (L) "Uninsured vehicle" does not include:

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

39 (B) Except as provided in paragraph (k)(E) of this subsection, a vehicle that is owned or oper-
40 ated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor
41 carrier law or any similar law;

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

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

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

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

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

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

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

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

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

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

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

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

29 (C) 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 the insurer has consented under paragraph (a) of this subsection; or

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

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

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

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

5 (b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit
6 to physical examinations by physicians selected by the insurer and shall, upon each request from the
7 insurer, execute authorization to enable the insurer to obtain medical reports and copies 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 compa-
17 ny's liability for all damages because of bodily injury sustained by two or more persons as the result
18 of 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 in-
29 jury 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 of
34 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 insurance
45 under this coverage shall apply only as excess insurance over any primary insurance available to

1 the occupant that is similar to this coverage, and this excess insurance shall then apply only in the
2 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 this insurance or the additional primary or excess insurance
7 available to the insured, and the insurer is not liable under this coverage for a greater proportion
8 of the insured's damages than the applicable limit of liability of this coverage bears to the sum of
9 the applicable limits of liability of this insurance and other primary or excess insurance available
10 to the insured.

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

16 (10) If any person making claim hereunder and the insurer do not agree that the person is le-
17 gally entitled to recover damages from the owner or operator of an uninsured vehicle because of
18 bodily injury to the insured, or do not agree as to the amount of payment that may be owing under
19 this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time
20 of the dispute to settle the matter by arbitration, the arbitration shall take place as described in
21 section 2, chapter 328, Oregon Laws 2007. Any judgment upon the award rendered by the arbitrators
22 may be entered in any court having jurisdiction thereof, provided, however, that the costs to the
23 insured of the arbitration proceeding do not exceed \$100 and that all other costs of arbitration are
24 borne by the insurer. "Costs" as used in this provision does not include attorney fees or expenses
25 incurred in the production of evidence or witnesses or the making of transcripts of the arbitration
26 proceedings. The person and the insurer each agree to consider themselves bound and to be bound
27 by any award made by the arbitrators pursuant to this coverage in the event of such election. At
28 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 prejudice
6 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 16.** ORS 742.504, as amended by section 6, chapter 328, Oregon Laws 2007, is
33 amended to read:

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

39 (1)(a) Notwithstanding ORS [30.270] **30.260 to 30.300**, the insurer will pay all sums that the in-
40 sured, the heirs or the legal representative of the insured is legally entitled to recover as general
41 and special damages from the owner or operator of an uninsured vehicle because of bodily injury
42 sustained by the insured caused by accident and arising out of the ownership, maintenance or use
43 of the uninsured vehicle. Determination as to whether the insured, the insured's heirs or the in-
44 sured's legal representative is legally entitled to recover such damages, and if so, the amount
45 thereof, shall be made by agreement between the insured and the insurer, or, in the event of disa-

1 greement, may be determined by arbitration as provided in subsection (10) of this section.

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

6 (2) As used in this policy:

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

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

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

13 (B) 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; and

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

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

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

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

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

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

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

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

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

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

44 (g) "Phantom vehicle" means a vehicle that causes bodily injury to an insured arising out of a
45 motor vehicle accident that is caused by a vehicle that has no physical contact with the insured or

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

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

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

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

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

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

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

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

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

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

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

28 (A) A claimant could have recovered in a civil action from the owner or operator at the time
29 of the injury after determination of fault or comparative fault and resolution of any applicable de-
30 fenses;

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

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

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

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

- 1 (B) A hit-and-run vehicle.
- 2 (C) A phantom vehicle.
- 3 (D) A stolen vehicle.
- 4 (E) A vehicle that is owned or operated by a self-insurer:
- 5 (i) That is not in compliance with ORS 806.130 (1)(c); or
- 6 (ii) That provides recovery to an insured in an amount that is less than the limits for uninsured
- 7 motorist coverage of the insured.
- 8 (L) "Uninsured vehicle" does not include:
- 9 (A) An insured vehicle, unless the vehicle is a stolen vehicle;
- 10 (B) Except as provided in paragraph (k)(E) of this subsection, a vehicle that is owned or oper-
- 11 ated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor
- 12 carrier law or any similar law;
- 13 (C) A vehicle that is owned by the United States of America, Canada, a state, a political sub-
- 14 division of any such government or an agency of any such government;
- 15 (D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for
- 16 use as a residence or premises and not as a vehicle;
- 17 (E) A farm-type tractor or equipment designed for use principally off public roads, except while
- 18 actually upon public roads; or
- 19 (F) A vehicle owned by or furnished for the regular or frequent use of the insured or any
- 20 member of the household of the insured.
- 21 (m) "Vehicle" means every device in, upon or by which any person or property is or may be
- 22 transported or drawn upon a public highway, but does not include devices moved by human power
- 23 or used exclusively upon stationary rails or tracks.
- 24 (3) This coverage applies only to accidents that occur on and after the effective date of the
- 25 policy, during the policy period and within the United States of America, its territories or pos-
- 26 sessions, or Canada.
- 27 (4)(a) This coverage does not apply to bodily injury of an insured with respect to which the in-
- 28 sured or the legal representative of the insured shall, without the written consent of the insurer,
- 29 make any settlement with or prosecute to judgment any action against any person or organization
- 30 who may be legally liable therefor.
- 31 (b) This coverage does not apply to bodily injury to an insured while occupying a vehicle, other
- 32 than an insured vehicle, owned by, or furnished for the regular use of, the named insured or any
- 33 relative resident in the same household, or through being struck by the vehicle.
- 34 (c) This coverage does not apply so as to inure directly or indirectly to the benefit of any
- 35 workers' compensation carrier, any person or organization qualifying as a self-insurer under any
- 36 workers' compensation or disability benefits law or any similar law or the State Accident Insurance
- 37 Fund Corporation.
- 38 (d) This coverage does not apply with respect to underinsured motorist benefits unless:
- 39 (A) The limits of liability under any bodily injury liability insurance applicable at the time of
- 40 the accident regarding the injured person have been exhausted by payment of judgments or settle-
- 41 ments to the injured person or other injured persons;
- 42 (B) The described limits have been offered in settlement, the insurer has refused consent under
- 43 paragraph (a) of this subsection and the insured protects the insurer's right of subrogation to the
- 44 claim against the tortfeasor;
- 45 (C) The insured gives credit to the insurer for the unrealized portion of the described liability

1 limits as if the full limits had been received if less than the described limits have been offered in
2 settlement, and the insurer has consented under paragraph (a) of this subsection; or

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

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

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

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

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

29 (7)(a) The limit of liability stated in the declarations as applicable to "each person" is the limit
30 of the insurer's liability for all damages because of bodily injury sustained by one person as the
31 result of any one accident and, subject to the above provision respecting each person, the limit of
32 liability stated in the declarations as applicable to "each accident" is the total limit of the compa-
33 ny's liability for all damages because of bodily injury sustained by two or more persons as the result
34 of any one accident.

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

38 (c) 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:

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

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

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

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

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

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

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

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

20 (b) If an insured is an insured under other primary or excess insurance available to the insured
21 that is similar to this coverage, then the insured's damages are deemed not to exceed the higher of
22 the applicable limits of liability of this insurance or the additional primary or excess insurance
23 available to the insured, and the insurer is not liable under this coverage for a greater proportion
24 of the insured's damages than the applicable limit of liability of this coverage bears to the sum of
25 the applicable limits of liability of this insurance and other primary or excess insurance available
26 to the insured.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (b) For purposes of this subsection:

42 (A) "Date of settlement" means the date on which a written settlement agreement or release is
43 signed by an insured or, in the absence of these documents, the date on which the insured or the
44 attorney for the insured receives payment of any sum required by the settlement agreement. An
45 advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for pur-

1 poses of the time limitation in this subsection.

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

4 **SECTION 17.** ORS 30.261 is amended to read:

5 30.261. A private, nonprofit organization described under ORS 30.260 [(4)(f)] **(4)(d)** is subject to
6 ORS 30.260 to 30.300 only for the purposes of providing public transportation services.

7 **SECTION 18.** ORS 30.275 is amended to read:

8 30.275. (1) No action arising from any act or omission of a public body or an officer, employee
9 or agent of a public body within the scope of ORS 30.260 to 30.300 shall be maintained unless notice
10 of claim is given as required by this section.

11 (2) Notice of claim shall be given within the following applicable period of time, not including
12 the period, not exceeding 90 days, during which the person injured is unable to give the notice be-
13 cause of the injury or because of minority, incompetency or other incapacity:

14 (a) For wrongful death, within one year after the alleged loss or injury.

15 (b) For all other claims, within 180 days after the alleged loss or injury.

16 (3) Notice of claim required by this section is satisfied by:

17 (a) Formal notice of claim as provided in subsections (4) and (5) of this section;

18 (b) Actual notice of claim as provided in subsection (6) of this section;

19 (c) Commencement of an action on the claim by or on behalf of the claimant within the appli-
20 cable period of time provided in subsection (2) of this section; or

21 (d) Payment of all or any part of the claim by or on behalf of the public body at any time.

22 (4) Formal notice of claim is a written communication from a claimant or representative of a
23 claimant containing:

24 (a) A statement that a claim for damages is or will be asserted against the public body or an
25 officer, employee or agent of the public body;

26 (b) A description of the time, place and circumstances giving rise to the claim, so far as known
27 to the claimant; and

28 (c) The name of the claimant and the mailing address to which correspondence concerning the
29 claim may be sent.

30 (5) Formal notice of claim shall be given by mail or personal delivery:

31 (a) If the claim is against the state or an officer, employee or agent thereof, to the office of the
32 Director of the Oregon Department of Administrative Services.

33 (b) If the claim is against a local public body or an officer, employee or agent thereof, to the
34 public body at its principal administrative office, to any member of the governing body of the public
35 body, or to an attorney designated by the governing body as its general counsel.

36 (6) Actual notice of claim is any communication by which any individual to whom notice may
37 be given as provided in subsection (5) of this section or any person responsible for administering tort
38 claims on behalf of the public body acquires actual knowledge of the time, place and circumstances
39 giving rise to the claim, where the communication is such that a reasonable person would conclude
40 that a particular person intends to assert a claim against the public body or an officer, employee
41 or agent of the public body. A person responsible for administering tort claims on behalf of a public
42 body is a person who, acting within the scope of the person's responsibility, as an officer, employee
43 or agent of a public body or as an employee or agent of an insurance carrier insuring the public
44 body for risks within the scope of ORS 30.260 to 30.300, engages in investigation, negotiation, ad-
45 justment or defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing or accepting

1 forms for claimants to provide claim information, or in supervising any of those activities.

2 (7) In an action arising from any act or omission of a public body or an officer, employee or
3 agent of a public body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of
4 proving that notice of claim was given as required by this section.

5 (8) The requirement that a notice of claim be given under subsections (1) to (7) of this section
6 does not apply if:

7 (a)(A) The claimant was under the age of 18 years when the acts or omissions giving rise to a
8 claim occurred;

9 (B) The claim is against the Department of Human Services or the Oregon Youth Authority; and

10 (C) The claimant was in the custody of the Department of Human Services pursuant to an order
11 of a juvenile court under ORS 419B.150, 419B.185, 419B.337 or 419B.527, or was in the custody of
12 the Oregon Youth Authority under the provisions of ORS 419C.478, 420.011 or 420A.040, when the
13 acts or omissions giving rise to a claim occurred.

14 (b) The claim is against a private, nonprofit organization that provides public transportation
15 services described under ORS 30.260 [(4)(f)] (4)(d).

16 (9) Except as provided in ORS 12.120, 12.135 and 659A.875, but notwithstanding any other pro-
17 vision of ORS chapter 12 or other statute providing a limitation on the commencement of an action,
18 an action arising from any act or omission of a public body or an officer, employee or agent of a
19 public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the
20 alleged loss or injury.

21 **SECTION 19.** ORS 30.282 is amended to read:

22 30.282. (1) The governing body of any local public body may procure insurance against:

23 (a) Tort liability of the public body and its officers, employees and agents acting within the
24 scope of their employment or duties; or

25 (b) Property damage.

26 (2) In addition to, or in lieu of procuring insurance, the governing body may establish a self-
27 insurance program against the tort liability of the public body and its officers, employees and agents
28 or against property damage. If the public body has authority to levy taxes, it may include in its levy
29 an amount sufficient to establish and maintain a self-insurance program on an actuarially sound
30 basis.

31 (3) Notwithstanding any other provision of law, two or more local public bodies may jointly
32 provide by intergovernmental agreement for anything that subsections (1) and (2) of this section
33 authorize individually.

34 (4) As an alternative or in addition to establishment of a self-insurance program or purchase of
35 insurance or both, the governing body of any local public body and the Oregon Department of Ad-
36 ministrative Services may contract for payment by the public body to the department of assessments
37 determined by the department to be sufficient, on an actuarially sound basis, to cover the potential
38 liability of the public body and its officers, employees or agents acting within the scope of their
39 employment or duties under ORS 30.260 to 30.300, and costs of administration, or to cover any por-
40 tion of potential liability, and for payment by the department of valid claims against the public body
41 and its officers, employees and agents acting within the scope of their employment or duties. The
42 department may provide the public body evidence of insurance by issuance of a certificate or policy.

43 (5) Assessments paid to the department under subsection (4) of this section shall be paid into the
44 Insurance Fund created under ORS 278.425, and claims paid and administrative costs incurred under
45 subsection (4) of this section shall be paid out of the Insurance Fund, and moneys in the Insurance

1 Fund are continuously appropriated for those purposes. When notice of any claim is furnished as
2 provided in the agreement, the claim shall be handled and paid, if appropriate, in the same manner
3 as a claim against a state agency, officer, employee or agent, without regard to the amount the local
4 public body has been assessed.

5 (6) A self-insurance program established by three or more public bodies under subsections (2)
6 and (3) of this section is subject to the following requirements:

7 (a) The annual contributions to the program must amount in the aggregate to at least \$1 million.

8 (b) The program must provide documentation that defines program benefits and administration.

9 (c) Program contributions and reserves must be held in separate accounts and used for the ex-
10 clusive benefit of the program.

11 (d) The program must maintain adequate reserves. Reserve adequacy shall be calculated annu-
12 ally with proper actuarial calculations including the following:

13 (A) Known claims, paid and outstanding;

14 (B) Estimate of incurred but not reported claims;

15 (C) Claims handling expenses;

16 (D) Unearned contributions; and

17 (E) A claims trend factor.

18 (e) The program must maintain an unallocated reserve account equal to 25 percent of annual
19 contributions, or \$250,000, whichever is greater. As used in this paragraph, "unallocated reserves"
20 means the amount of funds determined by a licensed independent actuary to be greater than what
21 is required to fund outstanding claim liabilities, including an estimate of claims incurred but not
22 reported.

23 (f) The program must make an annual independently audited financial statement available to the
24 participants of the program.

25 (g) The program must maintain adequate excess or reinsurance against the risk of economic loss.

26 (h) The program, a third party administrator or an owner of a third party administrator may
27 not collect commissions or fees from an insurer.

28 (7) A program operated under subsection (6) of this section that fails to meet any of the listed
29 requirements for a period longer than 30 consecutive days shall be dissolved and any unallocated
30 reserves returned in proportional amounts based on the contributions of the public body to the
31 public bodies that established the program within 90 days of the failure.

32 (8) A **local** public body [as defined in ORS 30.260 (4)(b), (c) or (d)] may bring an action against
33 a program operated under subsection (6) of this section if the program fails to comply with the re-
34 quirements listed in subsection (6) of this section.

35 **SECTION 20.** ORS 353.100, as amended by section 33, chapter 100, Oregon Laws 2007, is
36 amended to read:

37 353.100. (1) The provisions of ORS chapters 35, 190, 192, 244 and 295 and ORS [30.260 to
38 30.460,] 200.005 to 200.025, 200.045 to 200.090, 236.605 to 236.640, 243.650 to 243.782, 297.040, 307.090
39 and 307.112 apply to Oregon Health and Science University under the same terms as they apply to
40 public bodies other than the state.

41 **(2) The provisions of ORS 30.260 to 30.460 apply to Oregon Health and Science University**
42 **under the same terms as they apply to the state.**

43 [(2)] (3) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 240, 270,
44 273, 276, 279A, 279B, 279C, 283, 291, 292, 293, 294 and 297 and ORS 35.550 to 35.575, 180.060, 180.210
45 to 180.235, 183.710 to 183.725, 183.745, 183.750, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105,

1 200.035, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 282.010
2 to 282.150, 357.805 to 357.895 and 656.017 (2) do not apply to the university or any not-for-profit or-
3 ganization or other entity if the equity of the entity is owned exclusively by the university and if
4 the organization or entity is created by the university to advance any of the university's statutory
5 missions.

6 [(3)] (4) The university, as a distinct governmental entity, or any organization or entity de-
7 scribed in subsection [(2)] (3) of this section is not subject to any provision of law enacted after
8 January 1, 1995, with respect to any governmental entity, unless the provision specifically provides
9 that it applies to the university or to the organization or entity.

10 **SECTION 21. ORS 30.270 is repealed.**

11 **SECTION 22. The section captions used in this 2009 Act are provided only for the con-**
12 **venience of the reader and do not become part of the statutory law of this state or express**
13 **any legislative intent in the enactment of this 2009 Act.**

14 **SECTION 23. This 2009 Act being necessary for the immediate preservation of the public**
15 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
16 **July 1, 2009.**

17 _____