

# Senate Bill 311

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 **as introduced**.

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, 31.710, 144.600, 353.100, 742.502 and 742.504; repealing ORS 30.270; and  
4 declaring 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 subject to the limitation imposed by ORS**  
11 **31.710.**

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

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

23 **(5) Liability of any public body and one or more of its officers, employees or agents, or**  
24 **two or more officers, employees or agents of a public body, on claims arising out of a single**  
25 **accident or occurrence, may not exceed in the aggregate the amounts allowed by sections**  
26 **3, 4 and 5 of this 2009 Act.**

27 **(6) Sections 3, 4 and 5 of this 2009 Act do not apply to a claim arising in connection with**

**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 a nuclear incident covered by an insurance or indemnity agreement under 42 U.S.C. 2210.

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

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

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

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

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

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

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

14 (b) \$1.6 million, for causes of action arising on or after July 1, 2010, and before July 1,  
15 2011.

16 (c) \$1.7 million, for causes of action arising on or after July 1, 2011, and before July 1,  
17 2012.

18 (d) \$1.8 million, for causes of action arising on or after July 1, 2012, and before July 1,  
19 2013.

20 (e) \$1.9 million, for causes of action arising on or after July 1, 2013, and before July 1,  
21 2014.

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

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

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

28 (a) \$3 million, for causes of action arising on or after December 28, 2007, and before July  
29 1, 2010.

30 (b) \$3.2 million, for causes of action arising on or after July 1, 2010, and before July 1,  
31 2011.

32 (c) \$3.4 million, for causes of action arising on or after July 1, 2011, and before July 1,  
33 2012.

34 (d) \$3.6 million, for causes of action arising on or after July 1, 2012, and before July 1,  
35 2013.

36 (e) \$3.8 million, for causes of action arising on or after July 1, 2013, and before July 1,  
37 2014.

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

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

41 (4) Beginning in 2015, and every year thereafter, the State Court Administrator shall  
42 determine the percentage increase or decrease in the cost of living for the previous calendar  
43 year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban  
44 Consumers for All Items as published by the Bureau of Labor Statistics of the United States  
45 Department of Labor. On or before July 1 of the year in which the State Court Administrator

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) 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 all claimants  
 31 for claims described in subsection (1) of this section may not exceed:

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

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

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

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

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

37 (f) \$1,333,300, 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 (4) Beginning in 2015, 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 subsections (2) and (3) of this section for the following  
 2 calendar year by multiplying the limitation amounts applicable to the calendar year in which  
 3 the adjustment is made by the percentage amount determined under this subsection. The  
 4 adjustment may not exceed three percent for any year. The State Court Administrator shall  
 5 round the adjusted limitation amount to the nearest \$100, but the unrounded amount shall  
 6 be used to calculate the adjustments to the limitations in subsequent calendar years. The  
 7 adjusted limitation becomes effective on July 1 of the year in which the adjustment is made,  
 8 and applies to all causes of action arising on or after July 1 of that year and before July 1  
 9 of the subsequent year.

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

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

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

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

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

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

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

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

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

25 (3) Beginning in 2010, and every year thereafter, the State Court Administrator shall  
 26 determine the percentage increase or decrease in the cost of living for the previous calendar  
 27 year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban  
 28 Consumers for All Items as published by the Bureau of Labor Statistics of the United States  
 29 Department of Labor. On or before July 1 of the year in which the State Court Administrator  
 30 makes the determination required by this subsection, the State Court Administrator shall  
 31 adjust the limitations imposed under subsection (2) of this section for the following calendar  
 32 year by multiplying the limitation amounts applicable to the calendar year in which the ad-  
 33 justment is made by the percentage amount determined under this subsection. The adjust-  
 34 ment may not exceed three percent for any year. The State Court Administrator shall round  
 35 the adjusted limitation amount to the nearest \$100, but the unrounded amount shall be used  
 36 to calculate the adjustments to the limitations in subsequent calendar years. The adjusted  
 37 limitation becomes effective on July 1 of the year in which the adjustment is made, and ap-  
 38 plies to all causes of action arising on or after July 1 of that year and before July 1 of the  
 39 subsequent year.

40 **SECTION 6. Direct appeal of constitutionality of limitations.** (1) If a trial court applies  
 41 any of the limitations imposed by section 3, 4 or 5 of this 2009 Act, the plaintiff in the action  
 42 may seek a ruling by the Supreme Court on whether the application of the limitation is  
 43 constitutional under the facts in the case by filing a notice of appeal directly with the Su-  
 44 preme Court within the time and in the manner specified in ORS chapter 19 for civil appeals  
 45 to the Court of Appeals.

1 (2) A notice of appeal filed under this section may not raise any issue relating to the case  
2 other than the constitutionality of applying a limitation imposed under section 3, 4 or 5 of  
3 this 2009 Act. The filing of a notice of appeal under this section does not prevent the filing  
4 of a notice of appeal with the Court of Appeals with respect to any other issue in the case,  
5 or affect the requirement for filing a notice of appeal with the Court of Appeals to preserve  
6 any issue other than the constitutionality of applying a limitation imposed under section 3,  
7 4 or 5 of this 2009 Act.

8 (3) A plaintiff filing a notice of appeal with the Supreme Court under this section must  
9 note in the notice of appeal that the case is subject to this section.

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

12 (a) The President of the Senate shall appoint two members from among members of the  
13 Senate.

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

16 (2) The task force shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 30.260. As used in ORS 30.260 to 30.300, unless the context requires otherwise:

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

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

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

8 (4) "Public body" means:

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

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

12 [(c) *Any intergovernmental agency, department, council, joint board of control created under ORS*  
13 *190.125 or other like entity which is created under ORS 190.003 to 190.130, and which does not act*  
14 *under the direction and control of any single member government;*]

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

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

19 [(e)] **(b)** A private child-caring agency, as defined in ORS 418.205, that meets the criteria speci-  
20 fied in ORS 278.322 (1)(a) and that receives more than 50 percent of its funding from the state for  
21 the purpose of providing residential treatment to children who have been placed in the care and  
22 custody of the state or that provides residential treatment to children more than half of whom have  
23 been placed in the care and custody of the state; or

24 [(f)] **(c)** A private, nonprofit organization that provides public transportation services if more  
25 than 50 percent of the organization's funding for the purpose of providing public transportation  
26 services is received from governmental bodies.

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

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

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

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

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

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

36 **SECTION 10.** ORS 31.710 is amended to read:

37 31.710. (1) Except for claims subject to [*ORS 30.260 to 30.300 and*] ORS chapter 656, in any civil  
38 action seeking damages arising out of bodily injury, including emotional injury or distress, death or  
39 property damage of any one person including claims for loss of care, comfort, companionship and  
40 society and loss of consortium, the amount awarded for noneconomic damages shall not exceed  
41 \$500,000.

42 (2) As used in this section:

43 (a) "Economic damages" means objectively verifiable monetary losses including but not limited  
44 to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services  
45 and other health care services, burial and memorial expenses, loss of income and past and future

1 impairment of earning capacity, reasonable and necessary expenses incurred for substitute domestic  
2 services, recurring loss to an estate, damage to reputation that is economically verifiable, reason-  
3 able and necessarily incurred costs due to loss of use of property and reasonable costs incurred for  
4 repair or for replacement of damaged property, whichever is less.

5 (b) "Noneconomic damages" means subjective, nonmonetary losses, including but not limited to  
6 pain, mental suffering, emotional distress, humiliation, injury to reputation, loss of care, comfort,  
7 companionship and society, loss of consortium, inconvenience and interference with normal and  
8 usual activities apart from gainful employment.

9 (3) This section does not apply to punitive damages.

10 (4) The jury shall not be advised of the limitation set forth in this section.

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

12 30.285. (1) The governing body of any public body shall defend, save harmless and indemnify any  
13 of its officers, employees and agents, whether elective or appointive, against any tort claim or de-  
14 mand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the  
15 performance of duty.

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

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

28 (4) Any officer, employee or agent of the state against whom a claim within the scope of this  
29 section is made shall cooperate fully with the Attorney General and the department in the defense  
30 of such claim. If the Attorney General after consulting with the department determines that such  
31 officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the  
32 claim, the Attorney General may at any time reject the defense of the claim.

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

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

1 occurrence.

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

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

8 30.287. (1) If any civil action, suit or proceeding is brought against any officer, employee or  
 9 agent of a local public body [*other than the state*] which on its face falls within the provisions of  
 10 ORS 30.285 (1), or which the officer, employee or agent asserts to be based in fact upon an alleged  
 11 act or omission in the performance of duty, the officer, employee or agent may file a written request  
 12 for counsel with the governing body of the public body. The governing body shall thereupon engage  
 13 counsel to appear and defend the officer, employee or agent unless after investigation it is deter-  
 14 mined that the claim or demand does not arise out of an alleged act or omission occurring in the  
 15 performance of duty, or that the act or omission complained of amounted to malfeasance in office  
 16 or willful or wanton neglect of duty, in which case the governing body shall reject defense of the  
 17 claim.

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

23 (3) If the governing body rejects defense of a claim under subsection (1) of this section, no public  
 24 funds shall be paid in settlement of the claim or in payment of any judgment against such officer,  
 25 employee or agent. Such action by the governing body shall not prejudice the right of the officer,  
 26 employee or agent to assert and establish in an appropriate proceedings that the claim or demand  
 27 in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act  
 28 or omission complained of did not amount to malfeasance in office or willful or wanton neglect of  
 29 duty, in which case the officer, employee or agent shall be indemnified by the public body against  
 30 liability and reasonable costs of defending the claim.

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

36 (5) The provisions of this section may be superseded to the extent that the claim against the  
 37 public officer, employee or agent may be defended by any insurer, or may be subject under ORS  
 38 30.282 to agreement with the Oregon Department of Administrative Services, in which case the  
 39 provisions of the policy of insurance or other agreement are applicable.

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

41 144.600. The Legislative Assembly hereby approves and the Governor is authorized to enter into  
 42 a compact on behalf of this state with any other state or states legally joining therein in the form  
 43 substantially as follows:  
 44 \_\_\_\_\_  
 45



ARTICLE I

PURPOSE

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

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

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

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

ARTICLE II

DEFINITIONS

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

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

(b) “Bylaws” means those bylaws established by the Interstate Commission for its governance or for directing or controlling the Interstate Commission’s actions or conduct.

(c) “Compact Administrator” means the individual in each compacting state appointed pursuant

1 to the terms of this compact responsible for the administration and management of the state's  
 2 supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the  
 3 Interstate Commission and policies adopted by the State Council under this compact.

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

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

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

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

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

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

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

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

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

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

### 26 ARTICLE III

#### 27 THE INTERSTATE COMMISSION 28 FOR ADULT OFFENDER SUPERVISION 29

30  
 31 (a) The compacting states hereby create the Interstate Commission for Adult Offender Super-  
 32 vision. The Interstate Commission shall be a body corporate and joint agency of the compacting  
 33 states. The Interstate Commission shall have all the responsibilities, powers and duties set forth in  
 34 this compact, including the power to sue and be sued and such additional powers as may be con-  
 35 ferred upon it by subsequent action of the respective legislatures of the compacting states in ac-  
 36 cordance with the terms of this compact.

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

44 (c) Each compacting state represented at any meeting of the Interstate Commission is entitled  
 45 to one vote. A majority of the compacting states shall constitute a quorum for the transaction of

1 business, unless a larger quorum is required by the bylaws of the Interstate Commission.

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

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

14  
 15 ARTICLE IV  
 16 THE COMPACT ADMINISTRATOR AND STATE COUNCIL  
 17

18 (a) The Director of the Department of Corrections, or the director’s designee, shall serve as the  
 19 Compact Administrator for the State of Oregon and as Oregon’s commissioner to the Interstate  
 20 Commission.

21 (b) The Oregon State Council for Interstate Adult Offender Supervision is established, consisting  
 22 of seven members. The Director of the Department of Corrections, or the director’s designee, is a  
 23 member of the State Council and serves as chairperson of the State Council. Of the remaining  
 24 members of the State Council:

25 (1) The Governor shall appoint three members, one of whom must represent a crime victims’  
 26 organization; and

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

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

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

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

33 (f) Members of the State Council are entitled to expenses as provided in ORS 292.495. Any leg-  
 34 islative members are entitled to payment of compensation and expense reimbursement under ORS  
 35 171.072, payable from funds appropriated to the Legislative Assembly.

36 (g) The State Council is subject to the provisions of ORS 291.201 to 291.222 and 291.232 to  
 37 291.260.

38 (h) The Department of Corrections shall provide staff support for the State Council.  
 39

40 ARTICLE V  
 41 POWERS AND DUTIES  
 42 OF THE INTERSTATE COMMISSION  
 43

44 The Interstate Commission shall have the following powers:

45 (a) To adopt a seal and suitable bylaws governing the management and operation of the Inter-

1 state Commission.

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

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

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

9 (e) To establish and maintain offices.

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

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

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

17 (i) To elect or appoint officers, attorneys, employees, agents or consultants, and to fix their  
18 compensation, define their duties and determine their qualifications, and to establish the Interstate  
19 Commission’s personnel policies and programs relating to, among other things, conflicts of interest,  
20 rates of compensation and qualifications of personnel.

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

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

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

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

29 (n) To sue and be sued.

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

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

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

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

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

40

41

ARTICLE VI

42

ORGANIZATION AND OPERATION

43

OF THE INTERSTATE COMMISSION

44

45 (a) The Interstate Commission shall, by a majority of the members, within 12 months of the first

1 Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appro-  
2 priate to carry out the purposes of the compact, including, but not limited to:

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

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

5 (3) Providing reasonable standards and procedures:

6 (i) For the establishment of committees; and

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

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

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

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

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

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

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

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

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

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

37 (d)(1) The liability of any member, officer, executive director, employee or agent of the Interstate  
38 Commission acting within the scope of the person's employment or duties for acts, errors or omis-  
39 sions occurring within Oregon may not exceed the limits set forth in ORS [30.270] **30.260 to**  
40 **30.300**. Nothing in this subsection shall be construed to protect any such person from suit or liability  
41 for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct  
42 of any such person.

43 (2) Subject to approval by the Attorney General under ORS chapter 180, the Interstate Com-  
44 mission shall defend the commissioner of a compacting state, the commissioner's representatives or  
45 employees or the Interstate Commission's representatives or employees in any civil action seeking

1 to impose liability arising out of any actual or alleged act, error or omission that occurred within  
2 the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had  
3 a reasonable basis for believing occurred within the scope of Interstate Commission employment,  
4 duties or responsibilities, provided that the actual or alleged act, error or omission did not result  
5 from intentional wrongdoing on the part of such person.

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

14  
15 ARTICLE VII  
16 ACTIVITIES OF  
17 THE INTERSTATE COMMISSION  
18

19 (a) The Interstate Commission shall meet and take such actions as are consistent with the pro-  
20 visions of this compact.

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

25 (c) Each member of the Interstate Commission shall have the right and power to cast a vote to  
26 which that compacting state is entitled and to participate in the business and affairs of the Inter-  
27 state Commission. A member shall vote in person on behalf of the compacting state and shall not  
28 delegate a vote to another compacting state. However, the Director of the Department of Cor-  
29 rections may designate another individual, in the absence of the director, to cast a vote on behalf  
30 of the director at a specified meeting. The bylaws may provide for members' participation in  
31 meetings by telephone or other means of telecommunication or electronic communication. Any vot-  
32 ing conducted by telephone or other means of telecommunication or electronic communication shall  
33 be subject to the same quorum requirements of meetings where members are present in person.

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

37 (e) The Interstate Commission's bylaws shall establish conditions and procedures under which  
38 the Interstate Commission shall make its information and official records available to the public for  
39 inspection or copying. The Interstate Commission may exempt from disclosure any information or  
40 official records to the extent the information or records would adversely affect personal privacy  
41 rights or proprietary interests. In promulgating such rules, the Interstate Commission may make  
42 available to law enforcement agencies records and information otherwise exempt from disclosure,  
43 and may enter into agreements with law enforcement agencies to receive or exchange information  
44 or records subject to nondisclosure and confidentiality provisions.

45 (f) Public notice shall be given of all meetings, and all meetings shall be open to the public,

1 except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission  
 2 shall promulgate rules consistent with the principles contained in the Government in the Sunshine  
 3 Act, 5 U.S.C. 552, as amended. The Interstate Commission and any of its committees may close a  
 4 meeting to the public when the Interstate Commission determines by two-thirds vote that an open  
 5 meeting would be likely to:

- 6 (1) Relate solely to the Interstate Commission’s internal personnel practices and procedures;
- 7 (2) Disclose matters specifically exempted from disclosure by statute;
- 8 (3) Disclose trade secrets or commercial or financial information that is privileged or confiden-  
 9 tial;
- 10 (4) Involve accusing any person of a crime or formally censuring any person;
- 11 (5) Disclose information of a personal nature when such disclosure would constitute a clearly  
 12 unwarranted invasion of personal privacy;
- 13 (6) Disclose investigatory records compiled for law enforcement purposes;
- 14 (7) Disclose information contained in or related to examination, operating or condition reports  
 15 prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated  
 16 entity for the purpose of regulation or supervision of such entity;
- 17 (8) Disclose information when such premature disclosure would significantly endanger the life  
 18 of a person or the stability of a regulated entity; or
- 19 (9) Specifically relate to the Interstate Commission’s issuance of a subpoena or its participation  
 20 in a civil action or proceeding.

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

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

32  
 33 **ARTICLE VIII**  
 34 **RULEMAKING FUNCTIONS**  
 35 **OF THE INTERSTATE COMMISSION**  
 36

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

40 (b) Rulemaking shall occur pursuant to the criteria set forth in this Article and the bylaws and  
 41 rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the  
 42 federal Administrative Procedure Act, 5 U.S.C. 551 et seq., and the Federal Advisory Committee Act,  
 43 5 U.S.C. Appendix 2, section 1 et seq., as amended. All rules and amendments shall become binding  
 44 as of the date specified in each rule or amendment.

45 (c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a

1 statute or resolution in the same manner used to adopt the compact, then such rule shall have no  
2 further force and effect in any compacting state.

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

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

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

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

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

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

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

21 (2) Offender registration and compliance;

22 (3) Violations and returns;

23 (4) Transfer procedures and forms;

24 (5) Eligibility for transfer;

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

26 (7) Data collection and reporting;

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

28 (9) Transition rules governing the operation of the compact and the Interstate Commission dur-  
29 ing all or part of the period between the effective date of the compact and the date on which the  
30 last eligible state adopts the compact; and

31 (10) Mediation, arbitration and dispute resolution.

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

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

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



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

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

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

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

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

19  
20 ARTICLE X

21 FINANCE

22  
23 (a) The Interstate Commission shall pay or provide for the payment of the reasonable expenses  
24 of its establishment, organization and ongoing activities.

25 (b) The Interstate Commission shall levy on and collect an annual assessment from each com-  
26 pacting state to cover the cost of the internal operations and activities of the Interstate Commission  
27 and its staff, which must be in a total amount sufficient to cover the Interstate Commission's annual  
28 budget as approved each year. The aggregate annual assessment amount shall be allocated based  
29 upon a formula to be determined by the Interstate Commission, taking into consideration the popu-  
30 lation of the state and the volume of interstate movement of offenders in each compacting state. The  
31 Interstate Commission shall promulgate a rule binding upon all compacting states that governs said  
32 assessment.

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

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

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

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

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5  
6 ARTICLE XI  
7 COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT  
8

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

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

11  
12  
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14  
15 (c) Amendments to the compact may be proposed by the Interstate Commission for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

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21 ARTICLE XII  
22 WITHDRAWAL, DEFAULT,  
23 TERMINATION AND  
24 JUDICIAL ENFORCEMENT  
25

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

27  
28 (2) The effective date of withdrawal is the effective date of the repeal of the statute that enacted the compact into law.

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

30  
31 (4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

32 (5) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

33 (b)(1) If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact or the bylaws or rules of the Interstate Commission, the Interstate Commission may impose any or all of the following penalties:

34  
35 (i) Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Inter-

1 state Commission;

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

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

8 (2) The grounds for default include, but are not limited to, failure of a compacting state to per-  
 9 form obligations or responsibilities imposed upon it by this compact or the Interstate Commission  
 10 bylaws or rules. The Interstate Commission shall immediately notify the defaulting state in writing  
 11 of the penalty imposed by the Interstate Commission on the defaulting state pending a cure of the  
 12 default. The Interstate Commission shall stipulate the conditions and the time period within which  
 13 the defaulting state must cure its default. If the defaulting state fails to cure the default within the  
 14 time period specified by the Interstate Commission, in addition to any other penalties imposed, the  
 15 defaulting state may be terminated from the compact upon an affirmative vote of a majority of the  
 16 compacting states and all rights, privileges and benefits conferred by this compact shall be termi-  
 17 nated from the effective date of suspension. Within 60 days of the effective date of termination of  
 18 a defaulting state, the Interstate Commission shall notify the governor, the chief justice or chief  
 19 judicial officer of the defaulting state, the majority and minority leaders of the defaulting state’s  
 20 legislature and the State Council of such termination.

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

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

28 (c) The Interstate Commission may, by majority vote of the members, initiate legal action in the  
 29 United States District Court for the District of Columbia or, at the discretion of the Interstate  
 30 Commission, in the federal district court where the Interstate Commission has its principal office to  
 31 enforce compliance with the provisions of the compact, its rules or bylaws against any compacting  
 32 state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded  
 33 all costs of such litigation, including reasonable attorney fees.

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

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

39  
 40 ARTICLE XIII  
 41 SEVERABILITY AND CONSTRUCTION

42  
 43 (a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or  
 44 provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

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

ARTICLE XIV  
 BINDING EFFECT OF COMPACT  
 AND OTHER LAWS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (7) As used in this section and except as otherwise provided in this subsection, "amount recov-  
34 ered from other motor vehicle liability insurance policies" means the proceeds of liability insurance  
35 or the proceeds received from a public body under ORS [30.270] **30.260 to 30.300** recovered by or  
36 on behalf of the injured party. Proceeds recovered on behalf of the injured party include proceeds  
37 received by the injured party's insurer as reimbursement for personal injury protection benefits  
38 provided to the injured person, proceeds received by the medical providers of the injured person and  
39 proceeds received as attorney fees on the claim of the injured person. Where applicable liability  
40 insurance policy limits are exhausted upon payment, settlement or judgment by division among two  
41 or more injured persons, "amount recovered from other motor vehicle liability insurance policies"  
42 means the proceeds that are recovered by or on behalf of the injured person but does not include  
43 any proceeds of that liability policy received by other injured persons.

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

45 742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide

1 uninsured motorist coverage that in each instance is no less favorable in any respect to the insured  
 2 or the beneficiary than if the following provisions were set forth in the policy. However, nothing  
 3 contained in this section requires the insurer to reproduce in the policy the particular language of  
 4 any of the following provisions:

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

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

17 (2) As used in this policy:

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

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

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

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

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

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

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

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

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

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

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

1 those terms is defined in the public liability coverage of the policy, insured under the public liability  
2 provisions of the policy; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible  
2 motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily  
3 injury or death under ORS 806.070 applicable at the time of the accident with respect to any person  
4 or organization legally responsible for the use of the vehicle, or with respect to which there is  
5 collectible bodily injury liability insurance applicable at the time of the accident but the insurance  
6 company writing the insurance denies coverage or the company writing the insurance becomes vol-  
7 untarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insol-  
8 vent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and  
9 the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident,  
10 the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at  
11 the time of the accident.

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

13 (C) A phantom vehicle.

14 (D) A stolen vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (c) This coverage does not apply so as to inure directly or indirectly to the benefit of any



1 workers' compensation carrier, any person or organization qualifying as a self-insurer under any  
2 workers' compensation or disability benefits law or any similar law or the State Accident Insurance  
3 Fund Corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) If an insured is an insured under other primary or excess insurance available to the insured  
 32 that is similar to this coverage, then the insured's damages are deemed not to exceed the higher of  
 33 the applicable limits of liability of this insurance or the additional primary or excess insurance  
 34 available to the insured, and the insurer is not liable under this coverage for a greater proportion  
 35 of the insured's damages than the applicable limit of liability of this coverage bears to the sum of  
 36 the applicable limits of liability of this insurance and other primary or excess insurance available  
 37 to the insured.

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

43 (10) If any person making claim hereunder and the insurer do not agree that the person is le-  
 44 gally entitled to recover damages from the owner or operator of an uninsured vehicle because of  
 45 bodily injury to the insured, or do not agree as to the amount of payment that may be owing under

1 this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time  
2 of the dispute to settle the matter by arbitration, the arbitration shall take place as described in  
3 section 2, chapter 328, Oregon Laws 2007. Any judgment upon the award rendered by the arbitrators  
4 may be entered in any court having jurisdiction thereof, provided, however, that the costs to the  
5 insured of the arbitration proceeding do not exceed \$100 and that all other costs of arbitration are  
6 borne by the insurer. "Costs" as used in this provision does not include attorney fees or expenses  
7 incurred in the production of evidence or witnesses or the making of transcripts of the arbitration  
8 proceedings. The person and the insurer each agree to consider themselves bound and to be bound  
9 by any award made by the arbitrators pursuant to this coverage in the event of such election. At  
10 the election of the insured, the arbitration shall be held:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (b) For purposes of this subsection:

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

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

14 **SECTION 16.** ORS 742.504, as amended by section 6, chapter 328, Oregon Laws 2007, is  
15 amended to read:

16 742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide  
17 uninsured motorist coverage that in each instance is no less favorable in any respect to the insured  
18 or the beneficiary than if the following provisions were set forth in the policy. However, nothing  
19 contained in this section requires the insurer to reproduce in the policy the particular language of  
20 any of the following provisions:

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

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

33 (2) As used in this policy:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability

1 insurance;

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

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

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

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

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

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

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

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

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

29 (C) A phantom vehicle.

30 (D) A stolen vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 be required. Proof of claim shall be made upon forms furnished by the insurer unless the insurer fails  
2 to furnish the forms within 15 days after receiving notice of claim.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) For purposes of this subsection:

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

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

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

32 30.261. A private, nonprofit organization described under ORS 30.260 [(4)(f)] (4)(c) is subject to  
 33 ORS 30.260 to 30.300 only for the purposes of providing public transportation services.

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

35 30.275. (1) No action arising from any act or omission of a public body or an officer, employee  
 36 or agent of a public body within the scope of ORS 30.260 to 30.300 shall be maintained unless notice  
 37 of claim is given as required by this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (6) Actual notice of claim is any communication by which any individual to whom notice may  
19 be given as provided in subsection (5) of this section or any person responsible for administering tort  
20 claims on behalf of the public body acquires actual knowledge of the time, place and circumstances  
21 giving rise to the claim, where the communication is such that a reasonable person would conclude  
22 that a particular person intends to assert a claim against the public body or an officer, employee  
23 or agent of the public body. A person responsible for administering tort claims on behalf of a public  
24 body is a person who, acting within the scope of the person's responsibility, as an officer, employee  
25 or agent of a public body or as an employee or agent of an insurance carrier insuring the public  
26 body for risks within the scope of ORS 30.260 to 30.300, engages in investigation, negotiation, ad-  
27 justment or defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing or accepting  
28 forms for claimants to provide claim information, or in supervising any of those activities.

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

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

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

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

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

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

43 (9) Except as provided in ORS 12.120, 12.135 and 659A.875, but notwithstanding any other pro-  
44 vision of ORS chapter 12 or other statute providing a limitation on the commencement of an action,  
45 an action arising from any act or omission of a public body or an officer, employee or agent of a

1 public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the  
2 alleged loss or injury.

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

4 30.282. (1) The governing body of any local public body may procure insurance against:

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

7 (b) Property damage.

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

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

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

25 (5) Assessments paid to the department under subsection (4) of this section shall be paid into the  
26 Insurance Fund created under ORS 278.425, and claims paid and administrative costs incurred under  
27 subsection (4) of this section shall be paid out of the Insurance Fund, and moneys in the Insurance  
28 Fund are continuously appropriated for those purposes. When notice of any claim is furnished as  
29 provided in the agreement, the claim shall be handled and paid, if appropriate, in the same manner  
30 as a claim against a state agency, officer, employee or agent, without regard to the amount the local  
31 public body has been assessed.

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

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

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

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

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

40 (A) Known claims, paid and outstanding;

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

42 (C) Claims handling expenses;

43 (D) Unearned contributions; and

44 (E) A claims trend factor.

45 (e) The program must maintain an unallocated reserve account equal to 25 percent of annual

1 contributions, or \$250,000, whichever is greater. As used in this paragraph, “unallocated reserves”  
 2 means the amount of funds determined by a licensed independent actuary to be greater than what  
 3 is required to fund outstanding claim liabilities, including an estimate of claims incurred but not  
 4 reported.

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

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

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

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

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

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

19 353.100. (1) The provisions of ORS chapters 35, 190, 192, 244 and 295 and ORS [*30.260 to*  
 20 *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  
 21 and 307.112 apply to Oregon Health and Science University under the same terms as they apply to  
 22 public bodies other than the state.

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

25 [(2)] (3) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 240, 270,  
 26 273, 276, 279A, 279B, 279C, 283, 291, 292, 293, 294 and 297 and ORS 35.550 to 35.575, 180.060, 180.210  
 27 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,  
 28 200.035, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 282.010  
 29 to 282.150, 357.805 to 357.895 and 656.017 (2) do not apply to the university or any not-for-profit or-  
 30 ganization or other entity if the equity of the entity is owned exclusively by the university and if  
 31 the organization or entity is created by the university to advance any of the university’s statutory  
 32 missions.

33 [(3)] (4) The university, as a distinct governmental entity, or any organization or entity de-  
 34 scribed in subsection [(2)] (3) of this section is not subject to any provision of law enacted after  
 35 January 1, 1995, with respect to any governmental entity, unless the provision specifically provides  
 36 that it applies to the university or to the organization or entity.

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

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

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