

May 22, 2013

Testimony of State Farm Insurance Companies, to the Senate Committee for General Government, Consumer and Small Business Protection, regarding **HB 2821A**.

Chairman Shields and Members of the Committee:

Today you are asked to consider **HB 2821A**, a bill that will *require* all Oregonians to pay more for insurance coverage when insuring a personal automobile. State Farm's testimony is intended to ensure your Committee understands the cost associated with providing more coverage, and to make certain you appreciate **this cost burden will be disproportional and will be paid for in large part by Oregon's poorest and most vulnerable citizens.**

HB 2821A affects benefits for both Personal Injury Protection (PIP) and Uninsured Motorist (UM/UIM) coverages, which must be purchased and included with every motor-vehicle liability insurance policy sold in Oregon.

PIP coverage is sometimes called "no-fault" – because it's available in an accident situation to an insured driver and the passengers in his/her vehicle, regardless of fault. PIP pays for medical expenses, loss of income, household services, child care, and even funeral benefits. Oregon is one of just several states that *require* PIP coverage be carried. (Only 13 states require that insurers offer some form of PIP, and most allow an insured to opt out of purchasing the coverage). In Oregon, the minimum benefits for PIP coverage are set out by statute, (ORS 742.524).

Uninsured Motorist coverage pays damages to an insured, in instances where the insured's negligence is equal to or less than that of an at-fault driver, who is *either* uninsured (UM), meaning the other driver has no insurance, or underinsured (UIM), meaning the other driver is insured but has limits of liability coverage that are inadequate.

**HB 2821A will do three things:**

1. Double the benefit period for PIP medical expenses, from one year to two years.
2. Change the subrogation/reimbursement rights of PIP insurers.
3. Change the way in which underinsured (UIM) benefits are calculated.

**Doubling the PIP Medical Benefit Period**

Today, PIP benefits are available to insureds for one year after an accident. PIP medical is primary coverage, and pays "before" an insured's own health insurance or Medicare/Medicaid coverage becomes applicable. HB 2821A would change the PIP medical benefit period from one year - to two years. This change would only affect a small percentage of claims, as most minor and moderate injury claims resolve within one-year of injury – and most major injury claims exhaust the insured's PIP medical

coverage limits before that time. Extending the PIP medical benefit period will, however, impact some claims. State Farm's actuaries estimate the average "per policy" cost of this increased coverage benefit will be **\$5 per year**.

### **Changing Insurers Subrogation Rights**

PIP benefits are immediately available to persons injured in car accidents, without regard to liability. But when another person/driver is at-fault, the PIP carrier is able to seek reimbursement of amounts paid as PIP benefits, from that at-fault person/driver. A PIP carrier's right of subrogation is already subordinate to the insured/beneficiary first recovering all of his/her economic damages. So, if an insured has medical bills or wage loss or other economic damages that were not covered as PIP benefits, (e.g. projected future medical expenses, projected future wage loss, etc.) -- the insured is already entitled to recover those "not paid by PIP" economic losses from the at-fault person's liability insurance limits, *before* the PIP insurer is reimbursed.

However, the PIP insurer is reimbursed before the insured/beneficiary recovers *non-economic* damages. Non-economic damages are awarded for reasons like pain-and-suffering, loss of consortium, interference with parent-child relationship, loss of enjoyment of life, etc. HB 2821A would change the subrogation "position" of PIP insurers -- allowing PIP carrier reimbursement only after an insured first recovers all economic *and* non-economic damages.

A PIP insurer's subrogation or reimbursement rights are statutory. (ORS 742.534 et seq.; ORS 742.544). The Legislature intended that PIP insurers be reimbursed *after* an insured/beneficiary recovers all of his/her *economic* damages, and *before* that insured/beneficiary recovers any of his/her *non-economic* damages. This helps keep PIP coverage affordable, as subrogation/reimbursement recoveries reduce insurers' net claim costs in providing this coverage and resulting rate needs). State Farm's actuaries estimate the average "per policy" cost of this change in subrogation position will be **\$10 per year**.

### **Changing the Form of UM Coverage, from "Difference-In-Limits" to "Excess"**

As originally introduced, HB 2821 did two things -- it changed the PIP medical benefit period from one to two years, and it changed PIP insurers' subrogation/reimbursement position as outlined above. However, during the April 4<sup>th</sup> work session before the House's Consumer Protection and Government Efficiency Committee, Oregon Trial Lawyers were allowed to offer an amendment that also changes UIM coverage from the current statutorily prescribed modified "difference-in-limits" form of coverage -- to an "excess" form of coverage.

In Oregon today, when you purchase a private-passenger motor vehicle liability insurance policy, you *must* buy three types of coverages within that policy -- Liability coverage (pays other persons when your negligence causes them bodily injury or property damage); PIP coverage (discussed above); and Uninsured Motorist coverage that is available for you and your family, and persons occupying your car, if you sustain bodily injury in an accident with an uninsured (UM) or underinsured motorist (UIM).

Oregon law (ORS 742.502) *requires* insurers to sell the "difference-in-limits" form of Uninsured Motorist coverage. For example, an insured with 50/100\* Uninsured Motorist coverage limits, (\*\$50,000 per person/\$100,000 per accident), would have up to \$50,000 available from this coverage -- and is able to make an uninsured motorist bodily injury claim for both economic and non-economic damages against his/her own insurer -- if the at-fault driver had no insurance (a UM claim). If that at-fault driver was insured, but only carried 25/50 liability coverage limits -- the insured could then make an underinsured

motorist claim (a UIM claim) for the difference between the limits of his own uninsured motorist coverage (\$50,000 per person) and the at-fault driver’s liability limits (\$25,000 per person) - with that difference being \$25,000 in this example.

As amended HB 2821A would change the form of Uninsured Motorist coverage, to what’s called an “excess” form of coverage. That means *regardless* of what might be recoverable from the “underinsured” at-fault driver’s policy (whether that is \$15,000 – or \$150,000 – or \$1,500,000) – if his/her damages so warrant, the insured could still present a claim for his/her full policy limit (\$50,000 in this example).

Because the “excess” form of UIM coverage means the policy’s full limits are exposed in every accident situation, *changing Oregon law to require the purchase of this form of UIM coverage will require consumers to pay more.* And that expense will be greater for persons who today, can only afford to purchase the lowest required limits of uninsured motorist coverage (25/50), given the exponentially higher number of accidents that involve moderate/temporary injury – in comparison to accidents with serious/permanent injury. These actual cost differences can be seen in State Farm’s average six-month rate information from the state of Georgia, where insurers are required to offer both the “difference-in-limits” and “excess” forms of UIM coverage.

Georgia Uninsured/Underinsured Bodily Injury Coverage Premiums – 6 months		
Limits (000)	Reduced by At-Fault Liability Limits (Difference-In-Limits)	Added on to At-Fault Liability Limits (Excess)
25/50	\$16.60	\$40.10
50/100	\$24.40	\$46.52
100/300	\$39.01	\$54.14
250/500	\$49.47	\$54.54
500/500	\$56.11	\$60.55
500/1000	\$61.25	\$62.96
1000/1000	\$65.24	\$66.57

State Farm’s actuaries estimate the average “per policy” cost of adopting this form of UIM coverage, will be **\$40 per year**. This is an estimated average for State Farm’s policyholder group in Oregon. *The actual cost for persons who can only afford minimum limits coverage (i.e. 25/50) will be even greater.*

The Oregon Trial Lawyer proponents of this legislation, testified before the House’s Consumer Protection and Government Efficiency Committee on April 4<sup>th</sup>, and stated that consumers today are paying premiums for coverage limits that are not being provided, when they said:

- “the problem with the current law is it keeps people from getting what they paid for”; and “they (insureds) are unable to obtain the full benefit of their own insurance policy”<sup>1</sup>
- Question from Chairman Holvey: “so the premium I’m paying for my policy stays with the insurance company?” Answer: “that’s right. It’s a windfall to the insurance company”.<sup>2</sup>

<sup>1</sup> Rob Dalton’s testimony re: HB 2821, advocating adoption of amendment

<sup>2</sup> Neil Jackson, 4/4/13 testimony re: HB 2821, advocating adoption of amendment

Those statements were simply not true. Insurers provide UIM benefits in accordance with Oregon law (ORS 742.502). Oregon consumers pay premiums that reflect the cost of providing the "difference-in-limits" form of UIM coverage. This same form of coverage is used in 19 states. Insurers, including State Farm, categorically reject these misleading Oregon Trial Lawyer statements or inferences that insurers are withholding UIM benefits, or not affording coverage limits that have been paid for by our insureds.

#### Summary

HB 2821A, will *compel* ALL Oregonians to purchase more insurance coverage. Insurers like State Farm can predict with accuracy, the average cost of providing these more costly benefits. Our actuaries have estimated the **"average Oregon policyholder" will see an annual increase of \$55 per year, per insured vehicle**, based upon the three changes to current law, that will occur if HB 2821A passes.

But average cost increases are just that --- averages. Many consumers who struggle today, just to afford *required* minimum insurance coverage limits - (i.e. Liability limits of 25/50/20, basic PIP, Uninsured Motorist limits of 25/50) - will actually pay much more than these average cost increases, particularly persons with less than perfect driving records, and those who fall into actuarially valid categories (youthful, older, single, male, etc.) that are associated with statistically higher claim activity.

With the advent of America's Affordable Health Care Act, Oregon consumers will be required purchase health insurance (or pay penalties) starting in 2014. That would also be the effective date for purchasing the more expensive, increased coverage required by HB 2821A.

State Farm would respectfully ask the Committee to consider these questions:

- Does it make sense, to require consumers to pay more to extend the PIP medical benefit period, when insureds will be required to have "backup" health insurance available, should accident related care go beyond one year?
- Does it make sense to subordinate insurers' PIP subrogation rights to their insureds' recovery of *non-economic* damages? (which are coincidentally used as the basis to calculate trial lawyers' contingency fees).
- Should Oregon's Trial Lawyers and persons wanting more UIM coverage, ask *all* Oregon insurance consumers to pay for higher uninsured motorist coverage limits -- or should concerned persons simply buy higher UIM limits (which are readily available at modest cost)?

As a mutual insurer, State Farm is privileged to insure some 690,000 vehicles in Oregon, (or roughly one-in-five insured vehicles). *Our goal is to ensure that insurance products remain affordable*, and are available to deal with life's contingencies. We feel obliged to speak out on behalf of our customers and all insurance consumers whenever the legislative ambitions of any special interest group jeopardize the affordability of important insurance products.

**HB 2821A is regressive legislation** that disproportionately impacts Oregon's less affluent citizens, who will have no choice but to pay more for a new standard of required minimum auto insurance coverage, should this bill become law. *State Farm would respectfully ask this Committee to fully appreciate and acknowledge the financial consequences of the three elements of this bill – as it considers the fairness and impact of this legislative proposal.*

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