

HOUSE AMENDMENTS TO HOUSE BILL 2821

By COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

April 8

- 1 On page 1 of the printed bill, line 2, after “ORS” insert “742.500, 742.502, 742.504.”
2 After line 4, insert:
3 “**SECTION 1.** ORS 742.500 is amended to read:
4 “742.500. As used in ORS 742.500 to 742.506:
5 “(1) **‘Bodily injury’ has the meaning given that term in ORS 742.504 (2)(a).**
6 “(2) **‘Insured’ has the meaning given that term in ORS 742.504 (2)(c).**
7 “(3) **‘Motor vehicle’ means every self-propelled device in, upon or by which any person**
8 **or property is or may be transported or drawn upon a public highway, but does not include:**
9 “(a) **Devices used exclusively upon stationary rails or tracks;**
10 “(b) **Motor trucks as defined in ORS 801.355 that have a registration weight, as defined**
11 **in ORS 803.430 of more than 8,000 pounds, when the insured has employees who operate such**
12 **trucks and such employees are covered by any workers’ compensation law, disability benefits**
13 **law or any similar law; or**
14 “(c) **Farm-type tractors or self-propelled equipment designed for use principally off public**
15 **highways.**
16 “(4) **‘Sums that the insured, the heirs or the legal representative of the insured is legally**
17 **entitled to recover as damages’ has the meaning given that term in ORS 742.504 (2)(j).**
18 “[1] (5) **‘Uninsured motorist coverage’ means coverage within the terms and conditions speci-**
19 **fied in ORS 742.504 insuring the insured, the heirs or legal representative of the insured for all sums**
20 **[which] that the insured [or they shall be], the heirs or the legal representative of the insured**
21 **is legally entitled to recover as damages for bodily injury or death caused by accident and arising**
22 **out of the ownership, maintenance or use of an uninsured [motor] vehicle in amounts or limits not**
23 **less than the amounts or limits prescribed for bodily injury or death under ORS 806.070.**
24 “(6) **‘Uninsured vehicle’ has the meaning given that term in ORS 742.504 (2)(k).**
25 “[2] *‘Motor vehicle’ means every self-propelled device in, upon or by which any person or property*
26 *is or may be transported or drawn upon a public highway, but does not include:]*
27 “[a] *Devices used exclusively upon stationary rails or tracks;*
28 “[b] *Motor trucks as defined in ORS 801.355 that have a registration weight, as defined by ORS*
29 *803.430 of more than 8,000 pounds, when the insured has employees who operate such trucks and such*
30 *employees are covered by any workers’ compensation law, disability benefits law or any similar law;*
31 *or]*
32 “[c] *Farm-type tractors or self-propelled equipment designed for use principally off public high-*
33 *ways.]*
34 “**SECTION 2.** ORS 742.502 is amended to read:
35 “742.502. (1) Every motor vehicle liability policy insuring against loss suffered by any natural

1 person resulting from liability imposed by law for bodily injury or death arising out of the owner-
2 ship, maintenance or use of a motor vehicle shall provide in the policy or by indorsement on the
3 policy uninsured motorist coverage when the policy is either:

4 “(a) Issued for delivery in this state; or

5 “(b) Issued or delivered by an insurer doing business in this state with respect to any motor
6 vehicle then principally used or principally garaged in this state.

7 “(2)(a) A motor vehicle bodily injury liability policy shall have the same limits for uninsured
8 motorist coverage as for bodily injury liability coverage unless a named insured in writing elects
9 lower limits. The insured may not elect limits lower than the amounts prescribed to meet the re-
10 quirements of ORS 806.070 for bodily injury or death. Uninsured motorist coverage shall include
11 underinsurance coverage for bodily injury or death caused by accident and arising out of the own-
12 ership, maintenance or use of a motor vehicle with motor vehicle liability insurance that provides
13 recovery in an amount that is less than the *[insured’s uninsured motorist coverage]* **sums that the**
14 **insured, the heirs or the legal representative of the insured is legally entitled to recover as**
15 **damages for bodily injury or death caused by accident and arising out of the ownership,**
16 **maintenance or use of an uninsured vehicle.** Underinsurance coverage shall be equal to
17 *[uninsured motorist coverage]* **the sums that the insured, the heirs or the legal representative**
18 **of the insured is legally entitled to recover as damages for bodily injury or death caused by**
19 **accident and arising out of the ownership, maintenance or use of an uninsured vehicle,** less
20 the amount recovered from other motor vehicle liability insurance policies, **up to the limits of the**
21 **uninsured motorist coverage.**

22 “(b) If a named insured elects lower limits, the named insured shall sign a statement electing
23 lower limits within 60 days of the time the named insured makes the election. The statement shall
24 acknowledge that a named insured was offered uninsured motorist coverage with the limits equal
25 to those for bodily injury liability. The statement shall contain a brief summary, which may not be
26 construed as part of the insurance contract, of what uninsured *[and underinsured]* motorist *[cover-*
27 *ages]* **coverage and the underinsured coverage** provide and shall state the price for coverage with
28 limits equal to the named insured’s bodily injury liability limits and the price for coverage with the
29 lower limits requested by the named insured. The statement shall remain in force until rescinded in
30 writing by a named insured or until the motor vehicle bodily injury liability limits are changed. The
31 form of statement used to comply with this paragraph shall be approved by the Department of
32 Consumer and Business Services.

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

37 “(3) The insurer issuing the policy may offer one or more options of uninsured motorist coverage
38 larger than the amounts prescribed to meet the requirements of ORS 806.070 and in excess of the
39 limits provided under the policy for motor vehicle bodily injury liability insurance. Offers of
40 uninsured motorist coverage shall include underinsurance coverage for bodily injury or death caused
41 by accident and arising out of the ownership, maintenance or use of a motor vehicle with motor
42 vehicle liability insurance that provides recovery in an amount that is less than the *[insured’s*
43 *uninsured motorist coverage]* **sums that the insured, the heirs or the legal representative of the**
44 **insured is legally entitled to recover as damages for bodily injury or death caused by accident**
45 **and arising out of the ownership, maintenance or use of an uninsured vehicle.** Underinsurance

1 coverage shall be equal to [*uninsured motorist coverage*] **the sums that the insured, the heirs or**
2 **the legal representative of the insured is legally entitled to recover as damages for bodily**
3 **injury or death caused by accident and arising out of the ownership, maintenance or use of**
4 **an uninsured vehicle**, less the amount recovered from other motor vehicle liability insurance poli-
5 cies, **up to the limits of the uninsured motorist coverage.**

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

7 “(5) Uninsured motorist coverage and underinsurance coverage shall provide coverage for bodily
8 injury or death when[:]

9 “[*(a) The limits for uninsured motorist coverage of the insured equal the limits of the liability*
10 *policy of the person whose fault caused the bodily injury or death; and*]

11 “[*(b)*] the amount of liability insurance recovered is less than the [*limits for uninsured motorist*
12 *coverage of the insured*] **sums that the insured, the heirs or the legal representative of the in-**
13 **sured is legally entitled to recover as damages for bodily injury or death caused by accident**
14 **and arising out of the ownership, maintenance or use of an uninsured vehicle.**

15 “(6) Uninsured motorist coverage and underinsurance coverage shall provide coverage for bodily
16 injury or death if the amount recovered from a self-insurer is less than the [*limits for uninsured*
17 *motorist coverage of the insured*] **sums that the insured, the heirs or the legal representative**
18 **of the insured is legally entitled to recover as damages for bodily injury or death caused by**
19 **accident and arising out of the ownership, maintenance or use of an uninsured vehicle.**

20 “(7) As used in this section and except as otherwise provided in this subsection, ‘amount re-
21 covered from other motor vehicle liability insurance policies’ means the proceeds of liability insur-
22 ance or the proceeds received from a public body under ORS 30.260 to 30.300 recovered by or on
23 behalf of the injured party. Proceeds recovered on behalf of the injured party include proceeds re-
24 ceived by the injured party’s insurer as reimbursement for personal injury protection benefits pro-
25 vided to the injured person, proceeds received by the medical providers of the injured person and
26 proceeds received as attorney fees on the claim of the injured person. Where applicable liability
27 insurance policy limits are exhausted upon payment, settlement or judgment by division among two
28 or more injured persons, ‘amount recovered from other motor vehicle liability insurance policies’
29 means the proceeds that are recovered by or on behalf of the injured person but does not include
30 any proceeds of that liability policy received by other injured persons.

31 “**SECTION 3.** ORS 742.504 is amended to read:

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

37 “(1)(a) Notwithstanding ORS 30.260 to 30.300, the insurer will pay all sums that the insured, the
38 heirs or the legal representative of the insured is legally entitled to recover as [*general and*
39 *special*] damages from the owner or operator of an uninsured vehicle because of bodily injury sus-
40 tained by the insured caused by accident and arising out of the ownership, maintenance or use of
41 the uninsured vehicle. Determination as to whether the insured, the insured’s heirs or the insured’s
42 legal representative is legally entitled to recover such damages, and if so, the amount thereof, shall
43 be made by agreement between the insured and the insurer, or, in the event of disagreement, may
44 be determined by arbitration as provided in subsection (10) of this section.

45 “(b) No judgment against any person or organization alleged to be legally responsible for bodily

1 injury, except for proceedings instituted against the insurer as provided in this policy, shall be
2 conclusive, as between the insured and the insurer, on the issues of liability of the person or or-
3 ganization or of the amount of damages to which the insured is legally entitled.

4 “(2) As used in this policy:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 tained;

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

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

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

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

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

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

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

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

23 “(j) ‘Sums that the insured, the heirs or the legal representative of the insured is legally entitled
24 to recover as [*general and special*] damages’ [*from the owner or operator of an uninsured vehicle*’]
25 means the amount of damages that:

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

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

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

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

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

44 “(B) A hit-and-run vehicle.

45 “(C) A phantom vehicle.

1 “(D) A stolen vehicle.

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

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

4 “(ii) That provides recovery to an insured in an amount that is less than the *[limits for uninsured*

5 *motorist coverage of the insured]* **sums that the insured, the heirs or the legal representative**

6 **of the insured is legally entitled to recover as damages for bodily injury or death caused by**

7 **accident and arising out of the ownership, maintenance or use of an uninsured vehicle.**

8 “(L) ‘Uninsured vehicle’ does not include:

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

10 “(B) Except as provided in paragraph (k)(E) of this subsection, a vehicle that is owned or oper-

11 ated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor

12 carrier law or any similar law;

13 “(C) A vehicle that is owned by the United States of America, Canada, a state, a political sub-

14 division of any such government or an agency of any such government;

15 “(D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for

16 use as a residence or premises and not as a vehicle;

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

18 actually upon public roads; or

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

20 member of the household of the insured.

21 “(m) ‘Vehicle’ means every device in, upon or by which any person or property is or may be

22 transported or drawn upon a public highway, but does not include devices moved by human power

23 or used exclusively upon stationary rails or tracks.

24 “(3) This coverage applies only to accidents that occur on and after the effective date of the

25 policy, during the policy period and within the United States of America, its territories or pos-

26 sessions, or Canada.

27 “(4)(a) This coverage does not apply to bodily injury of an insured with respect to which the

28 insured or the legal representative of the insured shall, without the written consent of the insurer,

29 make any settlement with or prosecute to judgment any action against any person or organization

30 who may be legally liable therefor.

31 “(b) This coverage does not apply to bodily injury to an insured while occupying a vehicle, other

32 than an insured vehicle, owned by, or furnished for the regular use of, the named insured or any

33 relative resident in the same household, or through being struck by the vehicle.

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

35 workers’ compensation carrier, any person or organization qualifying as a self-insurer under any

36 workers’ compensation or disability benefits law or any similar law or the State Accident Insurance

37 Fund Corporation.

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

39 “(A) The limits of liability under any bodily injury liability insurance applicable at the time of

40 the accident regarding the injured person have been exhausted by payment of judgments or settle-

41 ments to the injured person or other injured persons;

42 “(B) The described limits have been offered in settlement, the insurer has refused consent under

43 paragraph (a) of this subsection and the insured protects the insurer’s right of subrogation to the

44 claim against the tortfeasor;

45 “(C) The insured gives credit to the insurer for the unrealized portion of the described liability

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

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

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

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

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

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

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

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

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

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

45 “[B)] the amount paid and the present value of all amounts payable on account of the bodily

1 injury under any workers' compensation law, disability benefits law or any similar law.

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

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

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

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

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

16 “(B) While occupying a vehicle not owned by a named insured under this coverage, the insur-
17 ance under this coverage shall apply only as excess insurance over any primary insurance available
18 to the occupant that is similar to this coverage, and this excess insurance **coverage** shall then apply
19 only [*in*] **to** the amount by which the [*applicable limit of liability of this excess coverage exceeds the*
20 *sum of*] **sums that the insured, the heirs or the legal representative of the insured is legally**
21 **entitled to recover as damages for bodily injury or death caused by accident and arising out**
22 **of the ownership, maintenance or use of an uninsured vehicle exceed** the applicable limits of
23 liability of all primary insurance available to the occupant.

24 “(b) If an insured is an insured under other primary or excess insurance available to the insured
25 that is similar to this coverage, then [*the insured's damages are deemed not to exceed the higher of*
26 *the applicable limits of liability of this insurance or the additional primary or excess insurance avail-*
27 *able to the insured, and*] the insurer is not liable under this coverage for a greater proportion of the
28 insured's damages than the applicable limit of liability of this coverage bears to the sum of the ap-
29 plicable limits of liability of this insurance and other primary or excess insurance available to the
30 insured.

31 “(c) With respect to bodily injury to an insured while occupying any motor vehicle used as a
32 public or livery conveyance, the insurance under this coverage shall apply only as excess insurance
33 over any other insurance available to the insured that is similar to this coverage, and this **excess**
34 **insurance coverage** shall then apply only [*in*] **to** the amount by which the applicable limit of li-
35 ability of this coverage exceeds the sum of the applicable limits of liability of all other insurance.

36 “(10) If any person making claim hereunder and the insurer do not agree that the person is le-
37 gally entitled to recover damages from the owner or operator of an uninsured vehicle because of
38 bodily injury to the insured, or do not agree as to the amount of payment that may be owing under
39 this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time
40 of the dispute to settle the matter by arbitration, the arbitration shall take place as described in
41 ORS 742.505. Any judgment upon the award rendered by the arbitrators may be entered in any court
42 having jurisdiction thereof, provided, however, that the costs to the insured of the arbitration pro-
43 ceeding do not exceed \$100 and that all other costs of arbitration are borne by the insurer. ‘Costs’
44 as used in this provision does not include attorney fees or expenses incurred in the production of
45 evidence or witnesses or the making of transcripts of the arbitration proceedings. The person and

1 the insurer each agree to consider themselves bound and to be bound by any award made by the
2 arbitrators pursuant to this coverage in the event of such election. At the election of the insured,
3 the arbitration shall be held:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 “(b) For purposes of this subsection:

45 “(A) ‘Date of settlement’ means the date on which a written settlement agreement or release is

1 signed by an insured or, in the absence of these documents, the date on which the insured or the
2 attorney for the insured receives payment of any sum required by the settlement agreement. An
3 advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for pur-
4 poses of the time limitation in this subsection.

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

7 In line 5, delete “1” and insert “4”.

8 In line 18, delete “2” and insert “5”.

9 On page 2, line 27, delete “3” and insert “6” and after “ORS” insert “742.502, 742.504,” and de-
10 lete “1 and 2” and insert “2 to 5”.

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