

**PROPOSED AMENDMENTS TO
HOUSE BILL 2821**

1 On page 1 of the printed bill, line 2, after “ORS” insert “742.500, 742.502,
2 742.504.”.

3 After line 4, insert:

4 **“SECTION 1.** ORS 742.500 is amended to read:

5 **“742.500.** As used in ORS 742.500 to 742.506:

6 **“(1) ‘Bodily injury’ has the meaning given that term in ORS 742.504**
7 **(2)(a).**

8 **“(2) ‘Insured’ has the meaning given that term in ORS 742.504 (2)(c).**

9 **“(3) ‘Motor vehicle’ means every self-propelled device in, upon or**
10 **by which any person or property is or may be transported or drawn**
11 **upon a public highway, but does not include:**

12 **“(a) Devices used exclusively upon stationary rails or tracks;**

13 **“(b) Motor trucks as defined in ORS 801.355 that have a registration**
14 **weight, as defined in ORS 803.430 of more than 8,000 pounds, when the**
15 **insured has employees who operate such trucks and such employees**
16 **are covered by any workers’ compensation law, disability benefits law**
17 **or any similar law; or**

18 **“(c) Farm-type tractors or self-propelled equipment designed for use**
19 **principally off public highways.**

20 **“(4) ‘Sums that the insured, the heirs or the legal representative**
21 **of the insured is legally entitled to recover as damages’ has the**
22 **meaning given that term in ORS 742.504 (2)(j).**

1 “[~~(1)~~] **(5)** ‘Uninsured motorist coverage’ means coverage within the terms
2 and conditions specified in ORS 742.504 insuring the insured, the heirs or
3 legal representative of the insured for all sums [*which*] **that** the insured [*or*
4 *they shall be*], **the heirs or the legal representative of the insured** is le-
5 gally entitled to recover as damages for bodily injury or death caused by
6 accident and arising out of the ownership, maintenance or use of an
7 uninsured [*motor*] vehicle in amounts or limits not less than the amounts or
8 limits prescribed for bodily injury or death under ORS 806.070.

9 “**(6) ‘Uninsured vehicle’ has the meaning given that term in ORS**
10 **742.504 (2)(k).**

11 “[~~(2)~~ ‘Motor vehicle’ means every self-propelled device in, upon or by which
12 any person or property is or may be transported or drawn upon a public
13 highway, but does not include:]

14 “[*(a) Devices used exclusively upon stationary rails or tracks;*]

15 “[*(b) Motor trucks as defined in ORS 801.355 that have a registration*
16 *weight, as defined by ORS 803.430 of more than 8,000 pounds, when the in-*
17 *sured has employees who operate such trucks and such employees are covered*
18 *by any workers’ compensation law, disability benefits law or any similar law;*
19 *or]*

20 “[*(c) Farm-type tractors or self-propelled equipment designed for use prin-*
21 *cipally off public highways.]*

22 “**SECTION 2.** ORS 742.502 is amended to read:

23 “742.502. (1) Every motor vehicle liability policy insuring against loss
24 suffered by any natural person resulting from liability imposed by law for
25 bodily injury or death arising out of the ownership, maintenance or use of
26 a motor vehicle shall provide in the policy or by indorsement on the policy
27 uninsured motorist coverage when the policy is either:

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

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

1 this state.

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

21 “(b) If a named insured elects lower limits, the named insured shall sign
22 a statement electing lower limits within 60 days of the time the named in-
23 sured makes the election. The statement shall acknowledge that a named
24 insured was offered uninsured motorist coverage with the limits equal to
25 those for bodily injury liability. The statement shall contain a brief sum-
26 mary, which may not be construed as part of the insurance contract, of what
27 uninsured [*and underinsured*] motorist [*coverages*] **coverage and the**
28 **underinsured coverage** provide and shall state the price for coverage with
29 limits equal to the named insured’s bodily injury liability limits and the
30 price for coverage with the lower limits requested by the named insured. The

1 statement shall remain in force until rescinded in writing by a named in-
2 sured or until the motor vehicle bodily injury liability limits are changed.
3 The form of statement used to comply with this paragraph shall be approved
4 by the Department of Consumer and Business Services.

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

10 “(3) The insurer issuing the policy may offer one or more options of
11 uninsured motorist coverage larger than the amounts prescribed to meet the
12 requirements of ORS 806.070 and in excess of the limits provided under the
13 policy for motor vehicle bodily injury liability insurance. Offers of uninsured
14 motorist coverage shall include underinsurance coverage for bodily injury
15 or death caused by accident and arising out of the ownership, maintenance
16 or use of a motor vehicle with motor vehicle liability insurance that provides
17 recovery in an amount that is less than the *[insured’s uninsured motorist*
18 *coverage]* **sums that the insured, the heirs or the legal representative**
19 **of the insured is legally entitled to recover as damages for bodily in-**
20 **jury or death caused by accident and arising out of the ownership,**
21 **maintenance or use of an uninsured vehicle.** Underinsurance coverage
22 shall be equal to *[uninsured motorist coverage]* **the sums that the insured,**
23 **the heirs or the legal representative of the insured is legally entitled**
24 **to recover as damages for bodily injury or death caused by accident**
25 **and arising out of the ownership, maintenance or use of an uninsured**
26 **vehicle,** less the amount recovered from other motor vehicle liability insur-
27 ance policies, **up to the limits of the uninsured motorist coverage.**

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

29 “(5) Uninsured motorist coverage and underinsurance coverage shall pro-
30 vide coverage for bodily injury or death when[:]

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

4 “[(b)] the amount of liability insurance recovered is less than the [*limits*
5 *for uninsured motorist coverage of the insured]* **sums that the insured, the**
6 **heirs or the legal representative of the insured is legally entitled to**
7 **recover as damages for bodily injury or death caused by accident and**
8 **arising out of the ownership, maintenance or use of an uninsured ve-**
9 **hicle.**

10 “(6) Uninsured motorist coverage and underinsurance coverage shall pro-
11 vide coverage for bodily injury or death if the amount recovered from a
12 self-insurer is less than the [*limits for uninsured motorist coverage of the in-*
13 *sured]* **sums that the insured, the heirs or the legal representative of**
14 **the insured is legally entitled to recover as damages for bodily injury**
15 **or death caused by accident and arising out of the ownership, main-**
16 **tenance or use of an uninsured vehicle.**

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

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

2 “742.504. Every policy required to provide the coverage specified in ORS
3 742.502 shall provide uninsured motorist coverage that in each instance is
4 no less favorable in any respect to the insured or the beneficiary than if the
5 following provisions were set forth in the policy. However, nothing contained
6 in this section requires the insurer to reproduce in the policy the particular
7 language of any of the following provisions:

8 “(1)(a) Notwithstanding ORS 30.260 to 30.300, the insurer will pay all
9 sums that the insured, the heirs or the legal representative of the insured is
10 legally entitled to recover as [*general and special*] damages from the owner
11 or operator of an uninsured vehicle because of bodily injury sustained by the
12 insured caused by accident and arising out of the ownership, maintenance
13 or use of the uninsured vehicle. Determination as to whether the insured, the
14 insured’s heirs or the insured’s legal representative is legally entitled to re-
15 cover such damages, and if so, the amount thereof, shall be made by agree-
16 ment between the insured and the insurer, or, in the event of disagreement,
17 may be determined by arbitration as provided in subsection (10) of this sec-
18 tion.

19 “(b) No judgment against any person or organization alleged to be legally
20 responsible for bodily injury, except for proceedings instituted against the
21 insurer as provided in this policy, shall be conclusive, as between the insured
22 and the insurer, on the issues of liability of the person or organization or
23 of the amount of damages to which the insured is legally entitled.

24 “(2) As used in this policy:

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

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

30 “(A) The identity of either the operator or the owner of the hit-and-run

1 vehicle cannot be ascertained;

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

10 “(C) At the insurer’s request, the insured or the legal representative of
11 the insured makes available for inspection the vehicle the insured was oc-
12 cupying at the time of the accident.

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

15 “(A) The named insured as stated in the policy and any person designated
16 as named insured in the schedule and, while residents of the same household,
17 the spouse of any named insured and relatives of either, provided that nei-
18 ther the relative nor the spouse is the owner of a vehicle not described in
19 the policy and that, if the named insured as stated in the policy is other than
20 an individual or husband and wife who are residents of the same household,
21 the named insured shall be only a person so designated in the schedule;

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

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

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

30 “(A) The vehicle described in the policy or a newly acquired or substitute

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

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

8 “(e) ‘Insured vehicle’ does not include a trailer of any type unless the
9 trailer is a described vehicle in the policy.

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

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

15 “(A) The identity of either the operator or the owner of the phantom ve-
16 hicle cannot be ascertained;

17 “(B) The facts of the accident can be corroborated by competent evidence
18 other than the testimony of the insured or any person having an uninsured
19 motorist claim resulting from the accident; and

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

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

30 “(i) ‘Stolen vehicle’ means an insured vehicle that causes bodily injury

1 to the insured arising out of a motor vehicle accident if:

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

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

5 “(C) The insured or someone on behalf of the insured reported the acci-
6 dent within 72 hours to a police, peace or judicial officer or to the equivalent
7 department in the state where the accident occurred; and

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

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

15 “(A) A claimant could have recovered in a civil action from the owner
16 or operator at the time of the injury after determination of fault or com-
17 parative fault and resolution of any applicable defenses;

18 “(B) Are calculated without regard to the tort claims limitations of ORS
19 30.260 to 30.300; and

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

22 “(k) ‘Uninsured vehicle,’ except as provided in paragraph (L) of this pro-
23 vision, means:

24 “(A) A vehicle with respect to the ownership, maintenance or use of
25 which there is no collectible motor vehicle bodily injury liability insurance,
26 in at least the amounts or limits prescribed for bodily injury or death under
27 ORS 806.070 applicable at the time of the accident with respect to any person
28 or organization legally responsible for the use of the vehicle, or with respect
29 to which there is collectible bodily injury liability insurance applicable at
30 the time of the accident but the insurance company writing the insurance

1 denies coverage or the company writing the insurance becomes voluntarily
2 or involuntarily declared bankrupt or for which a receiver is appointed or
3 becomes insolvent. It shall be a disputable presumption that a vehicle is
4 uninsured in the event the insured and the insurer, after reasonable efforts,
5 fail to discover within 90 days from the date of the accident, the existence
6 of a valid and collectible motor vehicle bodily injury liability insurance ap-
7 plicable at the time of the accident.

8 “(B) A hit-and-run vehicle.

9 “(C) A phantom vehicle.

10 “(D) A stolen vehicle.

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

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

13 “(ii) That provides recovery to an insured in an amount that is less than
14 the [*limits for uninsured motorist coverage of the insured*] **sums that the**
15 **insured, the heirs or the legal representative of the insured is legally**
16 **entitled to recover as damages for bodily injury or death caused by**
17 **accident and arising out of the ownership, maintenance or use of an**
18 **uninsured vehicle.**

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
22 that is owned or operated by a self-insurer within the meaning of any motor
23 vehicle financial responsibility law, motor carrier law or any similar law;

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

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

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

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

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

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

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

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

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

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

26 “(A) The limits of liability under any bodily injury liability insurance
27 applicable at the time of the accident regarding the injured person have been
28 exhausted by payment of judgments or settlements to the injured person or
29 other injured persons;

30 “(B) The described limits have been offered in settlement, the insurer has

1 refused consent under paragraph (a) of this subsection and the insured pro-
2 tects the insurer's right of subrogation to the claim against the tortfeasor;

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

7 “(D) The insured gives credit to the insurer for the unrealized portion of
8 the described liability limits as if the full limits had been received if less
9 than the described limits have been offered in settlement and, if the insurer
10 has refused consent under paragraph (a) of this subsection, the insured pro-
11 tects the insurer's right of subrogation to the claim against the tortfeasor.

12 “(e) When seeking consent under paragraph (a) or (d) of this subsection,
13 the insured shall allow the insurer a reasonable time in which to collect and
14 evaluate information related to consent to the proposed offer of settlement.
15 The insured shall provide promptly to the insurer any information that is
16 reasonably requested by the insurer and that is within the custody and con-
17 trol of the insured. Consent will be presumed to be given if the insurer does
18 not respond within a reasonable time. For purposes of this paragraph, a
19 ‘reasonable time’ is no more than 30 days from the insurer's receipt of a
20 written request for consent, unless the insured and the insurer agree other-
21 wise.

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

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

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

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

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

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

27 “[(A) All sums paid on account of the bodily injury by or on behalf of the
28 owner or operator of the uninsured vehicle and by or on behalf of any other
29 person or organization jointly or severally liable together with the owner or
30 operator for the bodily injury, including all sums paid under the bodily injury

1 *liability coverage of the policy; and]*

2 “[*B*] the amount paid and the present value of all amounts payable on
3 account of the bodily injury under any workers’ compensation law, disability
4 benefits law or any similar law.

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

9 “(e) The amount payable under the terms of this coverage may not be
10 reduced by the amount of liability proceeds offered, described in subsection
11 (4)(d)(B) or (D) of this section, that has not been paid to the injured person.
12 If liability proceeds have been offered and not paid, the amount payable un-
13 der the terms of the coverage shall include the amount of liability limits
14 offered but not accepted due to the insurer’s refusal to consent. The insured
15 shall cooperate so as to permit the insurer to proceed by subrogation or as-
16 signment to prosecute the claim against the uninsured motorist.

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

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

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

23 “(B) While occupying a vehicle not owned by a named insured under this
24 coverage, the insurance under this coverage shall apply only as excess in-
25 surance over any primary insurance available to the occupant that is similar
26 to this coverage, and this excess insurance **coverage** shall then apply only
27 [*in*] **to** the amount by which the [*applicable limit of liability of this excess*
28 *coverage exceeds the sum of*] **sums that the insured, the heirs or the legal**
29 **representative of the insured is legally entitled to recover as damages**
30 **for bodily injury or death caused by accident and arising out of the**

1 **ownership, maintenance or use of an uninsured vehicle exceed** the ap-
2 plicable limits of liability of all primary insurance available to the occupant.

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

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

19 “(10) If any person making claim hereunder and the insurer do not agree
20 that the person is legally entitled to recover damages from the owner or
21 operator of an uninsured vehicle because of bodily injury to the insured, or
22 do not agree as to the amount of payment that may be owing under this
23 coverage, then, in the event the insured and the insurer elect by mutual
24 agreement at the time of the dispute to settle the matter by arbitration, the
25 arbitration shall take place as described in ORS 742.505. Any judgment upon
26 the award rendered by the arbitrators may be entered in any court having
27 jurisdiction thereof, provided, however, that the costs to the insured of the
28 arbitration proceeding do not exceed \$100 and that all other costs of arbi-
29 tration are borne by the insurer. ‘Costs’ as used in this provision does not
30 include attorney fees or expenses incurred in the production of evidence or

1 witnesses or the making of transcripts of the arbitration proceedings. The
2 person and the insurer each agree to consider themselves bound and to be
3 bound by any award made by the arbitrators pursuant to this coverage in the
4 event of such election. At the election of the insured, the arbitration shall
5 be held:

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

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

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

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

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

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

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

1 are the subject of claim made under this coverage, but only to the extent of
2 the actual payment made by the insurer;

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

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

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

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

19 “(A) Agreement as to the amount due under the policy has been con-
20 cluded;

21 “(B) The insured or the insurer has formally instituted arbitration pro-
22 ceedings;

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

24 “(D) Suit for bodily injury has been filed against the uninsured motorist
25 and, within two years from the date of settlement or final judgment against
26 the uninsured motorist, the insured has formally instituted arbitration pro-
27 ceedings or filed an action against the insurer.

28 “(b) For purposes of this subsection:

29 “(A) ‘Date of settlement’ means the date on which a written settlement
30 agreement or release is signed by an insured or, in the absence of these

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

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

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

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

10 On page 2, line 27, delete “3” and insert “6” and after “ORS” insert
11 “742.502, 742.504,” and delete “1 and 2” and insert “2 to 5”.

12
