



OREGON MUTUAL INSURANCE GROUP

OREGON MUTUAL INSURANCE COMPANY
WESTERN PROTECTORS INSURANCE COMPANY

410 N Baker Street, PO Box 808, McMinnville, OR 97128
503-472-2141 • FAX 503-565-3841
800-888-2141 • www.ormutual.com

Opposition to Senate Bill 411

Dear Chair Fagan, Vice Chair Buehler Members of the Consumer Protection and General Government Effectiveness Committee:

I am Steve Patterson, Secretary Treasurer, Vice President and General Counsel for Oregon Mutual Insurance Company. Oregon Mutual is an Oregon Domestic Insurer providing Personal and Commercial Insurance products in five states with our home office in McMinnville where we recently celebrated our 120th birthday.

I appreciate this opportunity to testify before your committee and submit this written testimony to in some instances respond to what you heard in the testimony presented. The issue here is not about fixing some archaic legislative mistake or providing people what they have paid for as alleged in proponent testimony presented in the Senate and heard at the informational hearing that was held last week. This is about a public policy decision to change uninsured/underinsured motorist coverage in Oregon. Oregon, like a large majority of states, has a tort-based system of automobile liability insurance. This simply means the "at fault" party should pay for the damages and/or injuries they cause because of their acts or failures to act. Under this system, the law requires all drivers to carry minimum limits of "financial responsibility" to answer for damages and or injuries they cause. Being under insured can expose personal assets to losses due to accidental loss or injury. Oregon, also like a majority of states, does not currently require or allow stacking of UM/UIM. In fact, Washington State, often cited by proponents, doesn't require drivers to carry uninsured/underinsured motorist coverage, only that insurers make this coverage available for those who want it.

SB 411 mixes the concept of this tort-based system with a couple of first party no-fault concepts in ways that harm consumers because the unintended consequence of trying to maximize insurance payments for injuries that are caused by the fault of another will make insurance less affordable, particularly for those with lower insurance limits. It is important to understand there are two coverages changed by this bill and they do not mix together well for a conversation about their effects so I will keep them separate. However the major changes made by **SB 411** are:

1. **UM/UIM** The bill changes the current Oregon system of providing "gap" uninsured underinsured coverage that pays the difference between the responsible party's liability policy and the injured party's chosen uninsured or underinsured limit to a stacking of uninsured or underinsured limit over top of the responsible party liability limit.
2. Changes **PIP** coverage to double the period of time for PIP medical expenses from one year to two years.
3. Diminishes subrogation/reimbursement rights for **PIP** providers.

The **UM/UIM** provision in **SB 411** is an insurance rate cost-driver. Uninsured motorist coverage is a first-party gap insurance purchased by people so that when they suffer a loss with an uninsured or underinsured driver the injured party's own uninsured/underinsured coverage steps into the place of the uninsured/underinsured driver and provides coverage up to limits that the insured party has chosen for themselves.

The rate paid and the expectation of the insured party's contract is that they will have coverage for the **gap** between the liability limits of the responsible party up to the limits they have chosen for themselves. Having made this decision for themselves, **SB 411** attempts to create a lottery system in which the money

available depends on the limits carried by the responsible party by changing the UM/UIM coverage from a first party gap coverage to a supplemental third party liability coverage.

In addition to the payments that will be made under this coverage, administering the coverage will become more expensive and litigious. Changing the limits of the underinsured coverage from the difference between the insurance limits the responsible party has and the gap coverage the insured has chosen for themselves to “stacked” coverage will raise costs and therefore prices to consumers. In light of the testimony on Washington law and its virtues by proponents I asked our actuarial department to provide me a generic base rate comparison for a driver in Oregon and Washington for the Uninsured/Underinsured coverage. (Chart 1 attached). I believe the unfortunate future of the changes proposed by **SB 411** are illustrated in the chart. The Washington base rate for this coverage is more than twice as expensive as the Oregon Base rate for the minimum limits and that general difference persists at all levels of coverage. Two primary reasons for this can be identified. Washington has a higher percentage of uninsured motorists and they have stacking. (See IRC Map of 2012 estimates, published 2014)

Under **SB 411** even if the responsible party has higher liability limits than the injured party’s gap coverage limits for UM/UIM, which by definition under the current policy language would not be an uninsured/underinsured claim currently, simply by alleging damages that exceed the liability of the responsible party’s liability limit will create an underinsured claim. This will not only will drive up the cost of uninsured and underinsured motorist coverage by turning the first party coverage into a coinsurance liability coverage, it will have an adverse effect on liability rates as well as the claims beyond liability limits, particularly lower limits, will increase.

And therein lies another unintended consequence of **SB 411**, insurance consumers who carry lower limits of liability and UIM will see the highest increases as a percentage of their limits because of the frequency with which lower limit policies will stack. (See Chart 2 attached) Because cost is the reason most often cited by consumers as to why they do not carry insurance or carry low limit insurance, **SB 411**’s impact of making all pay more so that some can collect more, will likely result in more lower limit policies and greater numbers of uninsured motorist. This will have a negative effect on affordability and if there are more uninsured motorist, the limits of the Uninsured policies will be paid with more frequency but will also stack with less frequency. Members, consumers have a choice in the protection they provide for themselves when they choose their liability and UM/UIM limits. Currently, base premium for this coverage would allow an Oregon driver to buy 100/300 Uninsured and Underinsured limits for less than the base premium for minimum limits for the same coverages in Washington.

If we want a No-Fault System let’s debate it so that regardless of fault, all Oregonians are responsible for buying first party insurance coverage to protect themselves against the risks created by themselves and others. As it is **SB 411** mixes first party no fault system with a third party tort system in a way that is lawyer and plaintiff friendly but not consumer friendly in that it will drive up the costs of UM and UIM coverages and will make all auto insurance more expensive. It will also impact lower limit insurance disproportionately making it less affordable for people who say they are least able to pay.

Oregon Mutual opposes **SB 411** because it will have unintended consequences adverse to consumers. If the legislature wants to provide this option for consumers, a system mandating insurer’s offer a stacking policy would be preferable as it would allow consumers to purchase a policy that stacks for the additional premium it would cost. Then again, that same option is already available to consumers who can, for additional premium, select higher UM/UIM limits for themselves.

SB 411 also changes the way **Personal Injury Protection (PIP)** coverage is handled. Once again, PIP is a first party coverage, mandatory on automobile insurance policies in Oregon. Under the current law this coverage provides payments to cover verifiable expenses of drivers and passengers in an insured vehicle

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or the insured party when occupying another vehicle. The coverage allows for payment to medical providers or to the insured for elements of a claim they have against the party responsible for the economic damages while the claim for those damages is being investigated, disputed or resolved.

Under current law, insurers can recover PIP payments from the responsible party through “subrogation”. The insurer, which has fronted payments for these damages under the PIP coverage, steps into the shoes of their insured to recover the medical payments made but only to the extent that total amount of benefits recovered from the responsible party exceeds the “economic damages” suffered by the injured party. Economic Damages is defined in ORS 31.710¹ and includes objectively verifiable monetary losses. Subrogation helps insurers hold the responsible party accountable for the damages caused while ensuring the policyholder’s claims are paid. The current system helps consumers by making sure loss payments for not-at-fault accidents are not costs built into the rates of the innocent insured. Current PIP law is an accepted and fair tool to help customers get funds to pay for necessary medical treatment before a determination of fault and helps insurers keep costs down for its customers. Policyholders also have options for choosing higher PIP limits.

SB 411 seeks to expand recovery for plaintiff’s and increase insurance costs by including non-economic damages,² which include subjective damages such as pain and suffering, into the calculation of damages in order to limit subrogation by insurers. In addition, **SB 411** would change the PIP coverage period from 1 year to 2 years following the loss which would increase the length of treatment on claims involving therapy, chiropractic and acupuncture and lead to more lawsuits, more demands on the courts and increased PIP coverage costs.

SB 411 changes established and effective subrogation rights of insurance carriers. The insured would, under these proposed changes, often be at odds with their own insurer by creating a financial incentive to claim that the responsible party’s liability limit did not fully compensate them and that they should be able to keep the subrogated amount. This dispute would be over the reasonableness of treatment and the value of the “special damages” such as pain and suffering. **SB 411** moves more disputes from the at-fault party to the injured party’s own insurance carrier where the insured would also be able to collect attorney fees, no doubt an attractive prospect for the bill’s proponents.

For these reasons Oregon Mutual Insurance³ **Opposes SB 411** and respectfully asks for a **NO vote** on the measure.

Respectfully,

Steven L. Patterson
Oregon Mutual Insurance Company

¹ “Economic damages” means objectively verifiable monetary losses including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services and other health care services, burial and memorial expenses, loss of income and past and future impairment of earning capacity, reasonable and necessary expenses incurred for substitute domestic services, recurring loss to an estate, damage to reputation that is economically verifiable, reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or for replacement of damaged property, whichever is less.

² “Noneconomic damages” means subjective, nonmonetary losses, including but not limited to pain, mental suffering, emotional distress, humiliation, injury to reputation, loss of care, comfort, companionship and society, loss of consortium, inconvenience and interference with normal and usual activities apart from gainful employment.

³ Oregon Mutual is an independent mutual insurance company serving the insurance needs of people in Oregon, Washington, California, Idaho and Nevada. Established in 1894 as a fire insurance company in McMinnville Oregon, Oregon Mutual is an Oregon domestic insurance company providing Personal and Commercial insurance products and is rated A- (Excellent) by A.M. Best. Oregon Mutual still resides in McMinnville with employees who live in and throughout the Portland area, in McMinnville, Salem, Medford, Bend and Eugene.

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UM/UIM Premium Base Rate Comparison

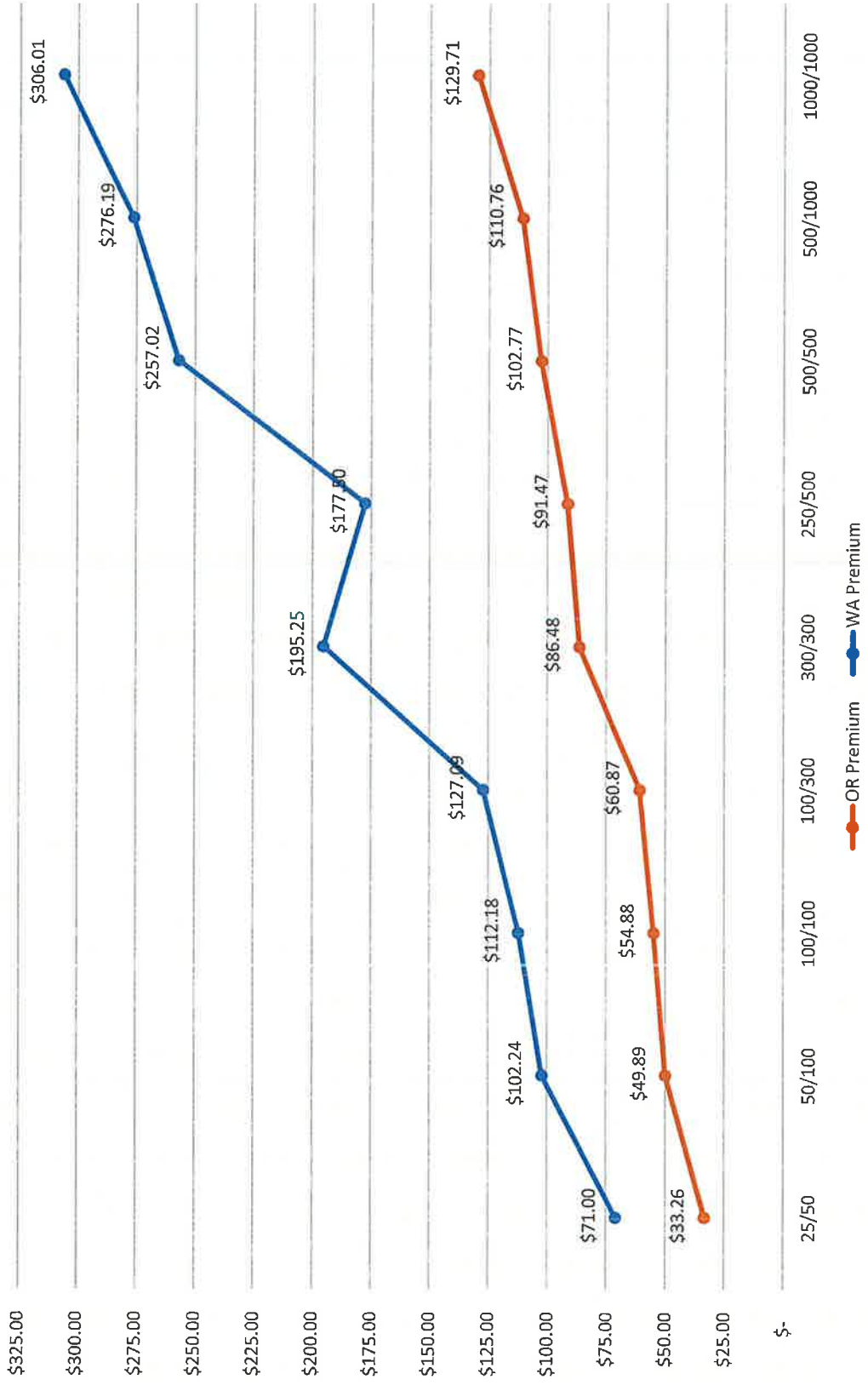


Chart 1

Rate Per Thousand

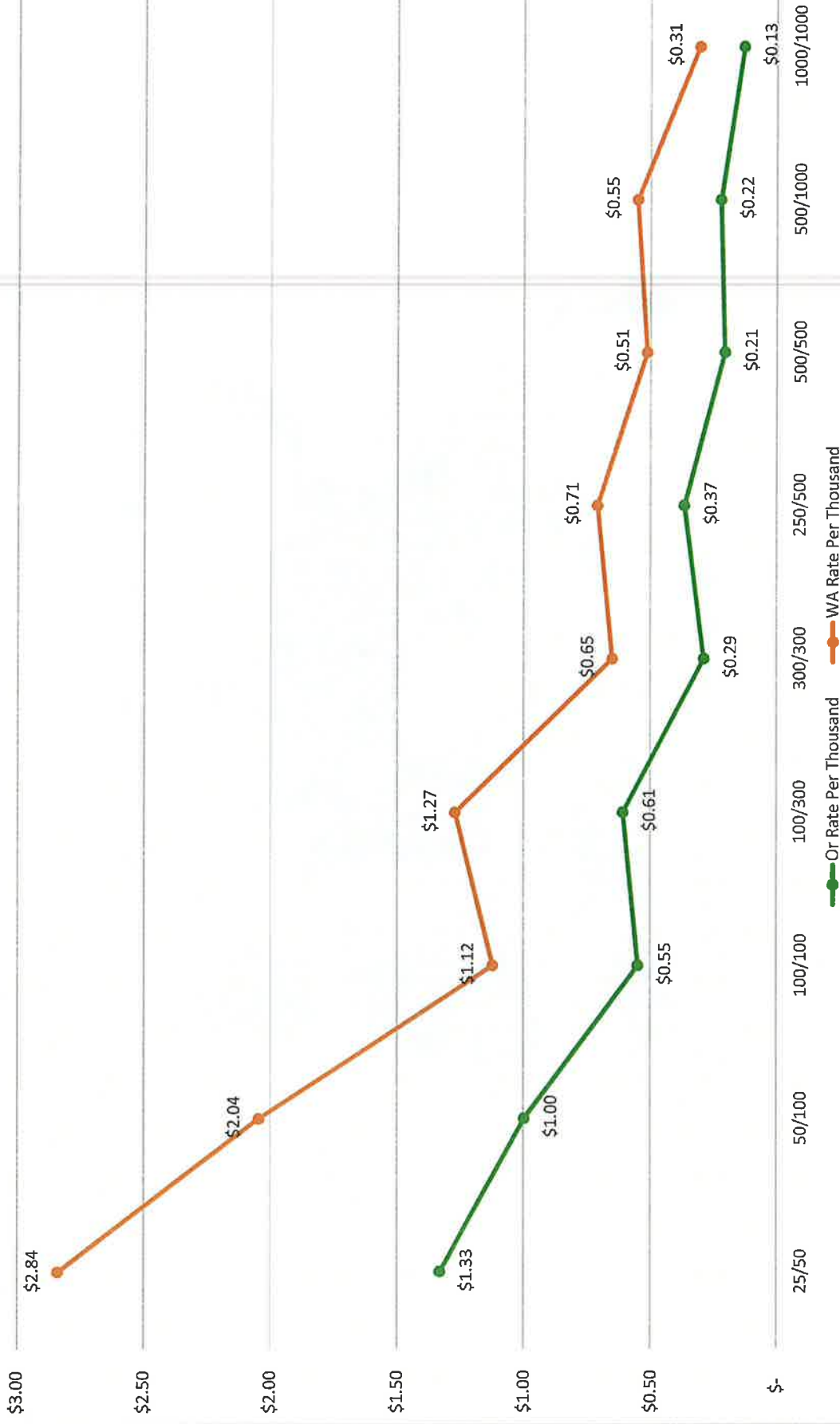


Chart 2

