

Senate Bill 411

Sponsored by Senators GELSER, ROSENBAUM (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires insurer to pay claims up to maximum coverage under policy of uninsured motorist coverage based on insured's total damages for personal injuries, less amounts recovered from other motor vehicle liability insurance policies.

Modifies amount of reimbursement due personal injury protection provider when total benefits exceed damages.

Extends personal injury protection benefit coverage for certain expenses from one year after date of injury to two years after date of injury.

A BILL FOR AN ACT

1
2 Relating to personal injury protection benefits; creating new provisions; and amending ORS 742.500,
3 742.502, 742.504, 742.524 and 742.544.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 742.500 is amended to read:

6 742.500. As used in ORS 742.500 to 742.506:

7 (1) **"Bodily injury" has the meaning given that term in ORS 742.504.**

8 (2) **"Insured" has the meaning given that term in ORS 742.504.**

9 (3)(a) **"Motor vehicle" means every self-propelled device in, upon or by which any person
10 or property is or may be transported or drawn upon a public highway.**

11 (b) **"Motor vehicle" does not include:**

12 (A) **A device used exclusively on stationary rails or tracks;**

13 (B) **Motor trucks, as defined in ORS 801.355, that have a registration weight, as defined
14 in ORS 803.430, of more than 8,000 pounds, if the insured has employees that operate the
15 trucks and a workers' compensation law, a disability benefits law or a similar law covers the
16 employees; or**

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

19 (4) **"Sums that the insured or the heirs or legal representative of the insured is legally
20 entitled to recover as damages" has the meaning given that term in ORS 742.504.**

21 [(1)] (5) **"Uninsured motorist coverage" means coverage within the terms and conditions speci-
22 fied in ORS 742.504 [insuring] that insures the insured[,] or the heirs or legal representative of the
23 insured for all sums [which] that the insured or the heirs or [they shall be] legal representative
24 is legally entitled to recover as damages for bodily injury or death that is caused by accident and
25 [arising out of the ownership, maintenance or use of] that arises from owning, maintaining or
26 using an uninsured [motor] vehicle in amounts or limits not less than the amounts or limits pre-
27 scribed for bodily injury or death under ORS 806.070.**

28 (6) **"Uninsured vehicle" has the meaning given that term in ORS 742.504.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 [(2) "Motor vehicle" means every self-propelled device in, upon or by which any person or property
2 is or may be transported or drawn upon a public highway, but does not include:]

3 [(a) Devices used exclusively upon stationary rails or tracks;]

4 [(b) Motor trucks as defined in ORS 801.355 that have a registration weight, as defined by ORS
5 803.430 of more than 8,000 pounds, when the insured has employees who operate such trucks and such
6 employees are covered by any workers' compensation law, disability benefits law or any similar law;
7 or]

8 [(c) Farm-type tractors or self-propelled equipment designed for use principally off public
9 highways.]

10 **SECTION 2.** ORS 742.502 is amended to read:

11 742.502. (1) Every motor vehicle liability policy [*insuring*] **that insures** against a loss [*suffered*
12 *by any*] **that a** natural person [*resulting*] **suffers and that results** from liability imposed by law for
13 bodily injury or death [*arising out of the ownership, maintenance or use of*] **that arises out of**
14 **owning, maintaining or using** a motor vehicle shall provide in the policy or by indorsement on the
15 policy uninsured motorist coverage [*when*] **if** the policy is either:

16 (a) Issued for delivery in this state; or

17 (b) Issued or delivered by an insurer [*doing*] **that does** business in this state with respect to any
18 motor vehicle then principally used or principally garaged in this state.

19 (2)(a) A motor vehicle bodily injury liability policy [*shall*] **must** have the same limits for
20 uninsured motorist coverage as for bodily injury liability coverage unless a named insured in writing
21 elects lower limits. The insured may not elect limits lower than the amounts prescribed to meet the
22 requirements of ORS 806.070 for bodily injury or death. Uninsured motorist coverage [*shall*] **must**
23 include underinsurance coverage for bodily injury or death caused by accident and arising out of
24 the ownership, maintenance or use of a motor vehicle with motor vehicle liability insurance that
25 provides recovery in an amount that is less than the insured's [*uninsured motorist coverage*] **sums**
26 **that the insured or the heirs or legal representative of the insured is legally entitled to re-**
27 **cover as damages for bodily injury or death that is caused by accident and that arises out**
28 **of owning, maintaining or using an uninsured vehicle.** Underinsurance coverage [*shall*] **must** be
29 equal to [*uninsured motorist coverage*] **the sums that the insured or the heirs or legal repre-**
30 **sentative of the insured is legally entitled to recover as damages for bodily injury or death**
31 **that is caused by accident and that arises out of owning, maintaining or using an uninsured**
32 **vehicle, less the amount recovered from other motor vehicle liability insurance policies, up to the**
33 **limits of the uninsured motorist coverage.**

34 (b) If a named insured elects lower limits, the named insured shall sign a statement [*electing*]
35 **to elect** lower limits within 60 days [*of*] **after** the time the named insured makes the election. The
36 statement [*shall*] **must** acknowledge that a named insured was offered uninsured motorist coverage
37 with the limits equal to those for bodily injury liability. The statement [*shall contain*] **must have** a
38 brief summary[, *which may not be construed as*] **that is not** part of the insurance contract[, *of*] **and**
39 **that describes** what uninsured [*and underinsured*] motorist [*coverages provide and shall*] **coverage**
40 **provides and what the underinsured coverage provides. The summary must also** state the
41 price for coverage with limits equal to the named insured's bodily injury liability limits and the price
42 for coverage with the lower limits [*requested by*] the named insured **requested.** The statement [*shall*
43 *remain*] **remains** in force until [*rescinded in writing by*] a named insured **rescinds the statement**
44 **in writing** or until the motor vehicle bodily injury liability limits are changed. [*The form of state-*
45 *ment used to comply with this paragraph shall be approved by*] The Department of Consumer and

1 Business Services **shall approve the form of statement that complies with this paragraph.**

2 (c) A statement electing lower limits need not be signed *[when]* **if** vehicles are either added to
3 or subtracted from a policy or *[when]* **if** the policy is amended, renewed, modified or replaced by the
4 same *[company]* **insurer or an insurer within a group of companies that is** under common owner-
5 ship or control, unless the liability limits of the policy are changed.

6 (3) The insurer *[issuing]* **that issues** the policy may offer one or more options of uninsured
7 motorist coverage **that are** larger than the amounts prescribed to meet the requirements of ORS
8 806.070 and in excess of the limits provided under the policy for motor vehicle bodily injury liability
9 insurance. Offers of uninsured motorist coverage *[shall]* **must** include underinsurance coverage for
10 bodily injury or death **that is** caused by accident and *[arising out of the ownership, maintenance or*
11 *use of]* **that arises out of owning, maintaining or using** a motor vehicle with motor vehicle li-
12 ability insurance that provides recovery in an amount that is less than the *[insured's uninsured*
13 *motorist coverage]* **sums that the insured or the heirs or legal representative of the insured is**
14 **legally entitled to recover as damages for bodily injury or death that is caused by accident**
15 **and that arises out of owning, maintaining or using an uninsured vehicle.** Underinsurance
16 coverage *[shall]* **must** be equal to *[uninsured motorist coverage]* **the sums that the insured or the**
17 **heirs or legal representative of the insured is legally entitled to recover as damages for**
18 **bodily injury or death that is caused by accident and that arises from owning, maintaining**
19 **or using an uninsured vehicle,** less the amount recovered from other motor vehicle liability in-
20 surance policies, **up to the limits of the uninsured motorist coverage.**

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

22 (5) Uninsured motorist coverage and underinsurance coverage *[shall]* **must** provide coverage for
23 bodily injury or death *[when:]* **if**

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

26 *[(b) the amount of liability insurance recovered is less than the [limits for uninsured motorist*
27 *coverage of the insured]* **sums that the insured or the heirs or legal representative of the in-**
28 **sured is legally entitled to recover as damages for bodily injury or death that is caused by**
29 **accident and that arises out of owning, maintaining or using an uninsured vehicle.**

30 (6) Uninsured motorist coverage and underinsurance coverage *[shall]* **must** provide coverage for
31 bodily injury or death if the amount recovered from a self-insurer is less than the *[limits for*
32 *uninsured motorist coverage of the insured]* **sums that the insured or the heirs or legal repre-**
33 **sentative of the insured is legally entitled to recover as damages for bodily injury or death**
34 **that is caused by accident and that arises out of owning, maintaining or using an uninsured**
35 **vehicle.**

36 (7) As used in this section and except as otherwise provided in this subsection, “amount recov-
37 ered from other motor vehicle liability insurance policies” means the proceeds of liability insurance
38 or the proceeds received from a public body under ORS 30.260 to 30.300 **that are** recovered by or
39 on behalf of the injured party. Proceeds recovered on behalf of the injured party include proceeds
40 *[received by]* the injured party’s insurer **receives** as reimbursement for personal injury protection
41 benefits *[provided]* **the insurer provides** to the injured person, proceeds *[received by]* the medical
42 providers of the injured person **receive** and proceeds received as attorney fees on the claim of the
43 injured person. *[Where]* **If** applicable liability insurance policy limits are exhausted upon payment,
44 settlement or judgment by division among two or more injured persons, “amount recovered from
45 other motor vehicle liability insurance policies” means the proceeds that are recovered by or on

1 behalf of the injured person but does not include any proceeds of *[that]* **the** liability policy *[received*
 2 *by]* **that** other injured persons **receive**.

3 **SECTION 3.** ORS 742.504, as amended by section 76, chapter 45, Oregon Laws 2014, is amended
 4 to read:

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

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

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

22 (2) As used in this policy:

23 (a) “Bodily injury” means bodily injury, sickness or disease, including death resulting therefrom.

24 (b) “Hit-and-run vehicle” means a vehicle that causes bodily injury to an insured arising out of
 25 physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the
 26 time of the accident, provided:

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

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

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

37 (c) “Insured,” when unqualified and when applied to uninsured motorist coverage, means:

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

44 (B) Any child residing in the household of the named insured if the insured has performed the
 45 duties of a parent to the child by rearing the child as the insured’s own although the child is not

1 related to the insured by blood, marriage or adoption; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 fenses;

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

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

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

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

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

18 (C) A phantom vehicle.

19 (D) A stolen vehicle.

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

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

22 (ii) That provides recovery to an insured in an amount that is less than the *[limits for uninsured*
23 *motorist coverage of the insured]* **sums that the insured or the heirs or legal representative of**
24 **the insured is legally entitled to recover as damages for bodily injury or death that is caused**
25 **by accident and that arises out of owning, maintaining or using an uninsured vehicle.**

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

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

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

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

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

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

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

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

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

45 (4)(a) This coverage does not apply to bodily injury of an insured with respect to which the in-

1 sured or the legal representative of the insured shall, without the written consent of the insurer,
2 make any settlement with or prosecute to judgment any action against any person or organization
3 who may be legally liable therefor.

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

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

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

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

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

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

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

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

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

39 (b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit
40 to physical examinations by physicians, physician assistants or nurse practitioners selected by the
41 insurer and shall, upon each request from the insurer, execute authorization to enable the insurer
42 to obtain medical reports and copies of records.

43 (6) If, before the insurer makes payment of loss hereunder, the insured or the legal represen-
44 tative of the insured institutes any legal action for bodily injury against any person or organization
45 legally responsible for the use of a vehicle involved in the accident, a copy of the summons and

1 complaint or other process served in connection with the legal action shall be forwarded imme-
2 diately to the insurer by the insured or the legal representative of the insured.

3 (7)(a) The limit of liability stated in the declarations as applicable to “each person” is the limit
4 of the insurer’s liability for all damages because of bodily injury sustained by one person as the
5 result of any one accident and, subject to the above provision respecting each person, the limit of
6 liability stated in the declarations as applicable to “each accident” is the total limit of the
7 company’s liability for all damages because of bodily injury sustained by two or more persons as the
8 result of any one accident.

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

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

14 [(A) *All sums paid on account of the bodily injury by or on behalf of the owner or operator of the*
15 *uninsured vehicle and by or on behalf of any other person or organization jointly or severally liable*
16 *together with the owner or operator for the bodily injury, including all sums paid under the bodily*
17 *injury liability coverage of the policy; and]*

18 [(B)] the amount paid and the present value of all amounts payable on account of the bodily
19 injury under any workers’ compensation law, disability benefits law or any similar law.

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

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

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

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

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

34 (B) While occupying a vehicle not owned by a named insured under this coverage, the insurance
35 under this coverage shall apply only as excess insurance over any primary insurance available to
36 the occupant that is similar to this coverage, and this excess insurance **coverage** shall then apply
37 only *[in]* **to** the amount by which the *[applicable limit of liability of this excess coverage exceeds the*
38 *sum of]* **sums that the insured or the heirs or legal representative of the insured is legally**
39 **entitled to recover as damages for bodily injury or death that is caused by accident and that**
40 **arises out of owning, maintaining or using an uninsured vehicle exceed** the applicable limits
41 of liability of all primary insurance available to the occupant.

42 (b) If an insured is an insured under other primary or excess insurance available to the insured
43 that is similar to this coverage, then *[the insured’s damages are deemed not to exceed the higher of*
44 *the applicable limits of liability of this insurance or the additional primary or excess insurance avail-*
45 *able to the insured, and]* the insurer is not liable under this coverage for a greater proportion of the

1 insured's damages than the applicable limit of liability of this coverage bears to the sum of the ap-
 2 plicable limits of liability of this insurance and other primary or excess insurance available to the
 3 insured.

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

9 (10) If any person making claim hereunder and the insurer do not agree that the person is le-
 10 gally entitled to recover damages from the owner or operator of an uninsured vehicle because of
 11 bodily injury to the insured, or do not agree as to the amount of payment that may be owing under
 12 this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time
 13 of the dispute to settle the matter by arbitration, the arbitration shall take place as described in
 14 ORS 742.505. Any judgment upon the award rendered by the arbitrators may be entered in any court
 15 having jurisdiction thereof, provided, however, that the costs to the insured of the arbitration pro-
 16 ceeding do not exceed \$100 and that all other costs of arbitration are borne by the insurer.
 17 "Costs" as used in this provision does not include attorney fees or expenses incurred in the pro-
 18 duction of evidence or witnesses or the making of transcripts of the arbitration proceedings. The
 19 person and the insurer each agree to consider themselves bound and to be bound by any award made
 20 by the arbitrators pursuant to this coverage in the event of such election. At the election of the
 21 insured, the arbitration shall be held:

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

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

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

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

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

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

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

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

45 (e) If requested in writing by the insurer, the person shall take, through any representative not

1 in conflict in interest with the person, designated by the insurer, such action as may be necessary
 2 or appropriate to recover payment as damages from such other uninsured person or organization,
 3 such action to be taken in the name of the person, but only to the extent of the payment made
 4 hereunder. In the event of a recovery, the insurer shall be reimbursed out of the recovery for ex-
 5 penses, costs and attorney fees incurred by the insurer in connection therewith; and

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

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

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

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

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

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

17 (b) For purposes of this subsection:

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

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

25 **SECTION 4.** ORS 742.524 is amended to read:

26 742.524. (1) Personal injury protection benefits [*as*] required by ORS 742.520 [*shall*] consist of the
 27 following payments for the injury or death of each person:

28 (a) All reasonable and necessary expenses of medical, hospital, dental, surgical, ambulance and
 29 prosthetic services incurred within [*one year*] **two years** after the date of the person's injury, but
 30 not more than \$15,000 in the aggregate for all such expenses of the person. Expenses of medical,
 31 hospital, dental, surgical, ambulance and prosthetic services [*shall be*] **are** presumed to be reason-
 32 able and necessary unless the provider [*is given*] **receives** notice of denial of the charges not more
 33 than 60 calendar days after the insurer receives from the provider notice of the claim for the ser-
 34 vices. At any time during the first 50 calendar days after the insurer receives notice of claim, the
 35 provider shall, within 10 business days, answer in writing questions from the insurer regarding the
 36 claim. For purposes of determining when the 60-day period provided by this paragraph has elapsed,
 37 counting of days shall be suspended if the provider does not supply written answers to the insurer
 38 within 10 days and may not resume until the answers are supplied.

39 (b) If the injured person is usually engaged in a remunerative occupation and if disability con-
 40 tinues for at least 14 days, 70 percent of the loss of income from work during the period of the in-
 41 jured person's disability until the date the person is able to return to the person's usual occupation.
 42 This benefit is subject to a maximum payment of \$3,000 per month and a maximum payment period
 43 in the aggregate of 52 weeks. As used in this paragraph, "income" includes but is not limited to
 44 salary, wages, tips, commissions, professional fees and profits from an individually owned business
 45 or farm.

1 (c) If the injured person is not usually engaged in a remunerative occupation and if disability
 2 continues for at least 14 days, the expenses reasonably incurred by the injured person for essential
 3 services that were performed by a person who is not related to the injured person or residing in the
 4 injured person’s household in lieu of the services the injured person would have performed without
 5 income during the period of the person’s disability until the date the person is reasonably able to
 6 perform such essential services. This benefit is subject to a maximum payment of \$30 per day and
 7 a maximum payment period in the aggregate of 52 weeks.

8 (d) All reasonable and necessary funeral expenses incurred within one year after the date of the
 9 person’s injury, but not more than \$5,000.

10 (e) If the injured person is a parent of a minor child and is required to be hospitalized for a
 11 minimum of 24 hours, \$25 per day for child care, with payments to begin after the initial 24 hours
 12 of hospitalization and to be made for as long as the person is unable to return to work if the person
 13 is engaged in a remunerative occupation or for as long as the person is unable to perform essential
 14 services that the person would have performed without income if the person is not usually engaged
 15 in a remunerative occupation, but not to exceed \$750.

16 (2) With respect to the insured person and members of that person’s family residing in the same
 17 household, an insurer may offer forms of coverage for the benefits required by subsection (1)(a), (b)
 18 and (c) of this section with deductibles of up to \$250.

19 **SECTION 5.** ORS 742.544 is amended to read:

20 742.544. (1) A provider of personal injury protection benefits shall be reimbursed for personal
 21 injury protection payments made on behalf of any person only to the extent that the total amount
 22 of benefits paid exceeds the [economic] damages [as defined in ORS 31.710] suffered by that person.
 23 As used in this section, “total amount of benefits” means the amount of money recovered by a per-
 24 son from:

- 25 (a) Applicable underinsured motorist benefits described in ORS 742.502 (2);
- 26 (b) Liability insurance coverage available to the person receiving the personal injury protection
- 27 benefits from other parties to the accident;
- 28 (c) Personal injury protection payments; and
- 29 (d) Any other payments by or on behalf of the party whose fault caused the damages.

30 (2) Nothing in this section requires a person to repay more than the amount of personal injury
 31 protection benefits actually received.

32 **SECTION 6. The amendments to ORS 742.502, 742.504, 742.524 and 742.544 by sections 2**
 33 **to 5 of this 2015 Act apply to motor vehicle liability policies that are issued or renewed on**
 34 **or after the effective date of this 2015 Act.**