

Senate Bill 430

Sponsored by Senator FERRIOLI (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 coverage limits for insured's uninsured motorist coverage, less amounts recovered from other motor vehicle liability insurance policies.

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

A BILL FOR AN ACT

1
2 Relating to amounts insurers must pay under limits for uninsured motorist coverage; creating new
3 provisions; and amending ORS 742.500, 742.502 and 742.504.

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)] **(1)(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 in ORS
14 803.430, of more than 8,000 pounds, if the insured has employees that operate the trucks and a
15 workers' compensation law, a disability benefits law or a similar law covers the employees; or

16 (C) Farm-type tractors or self-propelled equipment designed for use principally off public high-
17 ways.

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

20 [(5)] **(2)** "Uninsured motorist coverage" means coverage within the terms and conditions speci-
21 fied in ORS 742.504 that insures the insured or the heirs or legal representative of the insured for
22 all sums that the insured or the heirs or legal representative is legally entitled to recover as dam-
23 ages for bodily injury or death that is caused by accident and that arises from owning, maintaining
24 or using an uninsured vehicle in amounts or limits not less than the amounts or limits prescribed
25 for bodily injury or death under ORS 806.070.

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

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

28 742.502. (1) Every motor vehicle liability policy that insures against a loss that a natural person
29 suffers and that results from liability imposed by law for bodily injury or death that arises out of
30 owning, maintaining or using a motor vehicle shall provide in the policy or by indorsement on the

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 policy uninsured motorist coverage if the policy is either:

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

3 (b) Issued or delivered by an insurer that does business in this state with respect to any motor
4 vehicle then principally used or principally garaged in this state.

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

19 (b) If a named insured elects lower limits, the named insured shall sign a statement to elect
20 lower limits within 60 days after the time the named insured makes the election. The statement must
21 acknowledge that a named insured was offered uninsured motorist coverage with the limits equal
22 to those for bodily injury liability. The statement must have a brief summary that is not part of the
23 insurance contract and that describes what uninsured motorist coverage provides and what the
24 underinsured coverage provides. The summary must also state the price for coverage with limits
25 equal to the named insured's bodily injury liability limits and the price for coverage with the lower
26 limits the named insured requested. The statement remains in force until a named insured rescinds
27 the statement in writing or until the motor vehicle bodily injury liability limits are changed. The
28 Department of Consumer and Business Services shall approve the form of statement that complies
29 with this paragraph.

30 (c) A statement electing lower limits need not be signed if vehicles are either added to or sub-
31 tracted from a policy or if the policy is amended, renewed, modified or replaced by the same insurer
32 or an insurer within a group of companies that is under common ownership or control, unless the
33 liability limits of the policy are changed.

34 (3) The insurer that issues the policy may offer one or more options of uninsured motorist cov-
35 erage that are larger than the amounts prescribed to meet the requirements of ORS 806.070 and in
36 excess of the limits provided under the policy for motor vehicle bodily injury liability insurance.
37 Offers of uninsured motorist coverage must include underinsurance coverage for bodily injury or
38 death that is caused by accident and that arises out of owning, maintaining or using a motor vehicle
39 with motor vehicle liability insurance that provides recovery in an amount that is less than the
40 *[sums that the insured or the heirs or legal representative of the insured is legally entitled to recover*
41 *as damages for bodily injury or death that is caused by accident and that arises out of owning, main-*
42 *taining or using an uninsured vehicle]* **insured's uninsured motorist coverage**. Underinsurance
43 coverage must be equal to the *[sums that the insured or the heirs or legal representative of the insured*
44 *is legally entitled to recover as damages for bodily injury or death that is caused by accident and that*
45 *arises from owning, maintaining or using an uninsured vehicle up to the limits of the uninsured mo-*

1 *torist coverage*] **uninsured motorist coverage less the amount recovered from other motor**
 2 **vehicle liability insurance policies.**

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

4 (5) Uninsured motorist coverage and underinsurance coverage must provide coverage for bodily
 5 injury or death if:

6 (a) **The limits for uninsured motorist coverage of the insured equal the limits of the li-**
 7 **ability policy of the person whose fault caused the bodily injury or death; and**

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

12 (6) Uninsured motorist coverage and underinsurance coverage must provide coverage for bodily
 13 injury or death if the amount recovered from a self-insurer is less than the [*sums that the insured*
 14 *or the heirs or legal representative of the insured is legally entitled to recover as damages for bodily*
 15 *injury or death that is caused by accident and that arises out of owning, maintaining or using an*
 16 *uninsured vehicle*] **limits for uninsured motorist coverage of the insured.**

17 (7) As used in this section and except as otherwise provided in this subsection, “amount recov-
 18 ered from other motor vehicle liability insurance policies” means the proceeds of liability insurance
 19 or the proceeds received from a public body under ORS 30.260 to 30.300 that are recovered by or
 20 on behalf of the injured party. Proceeds recovered on behalf of the injured party include proceeds
 21 the injured party’s insurer receives as reimbursement for personal injury protection benefits the
 22 insurer provides to the injured person, proceeds the medical providers of the injured person receive
 23 and proceeds received as attorney fees on the claim of the injured person. If applicable liability in-
 24 surance policy limits are exhausted upon payment, settlement or judgment by division among two
 25 or more injured persons, “amount recovered from other motor vehicle liability insurance policies”
 26 means the proceeds that are recovered by or on behalf of the injured person but does not include
 27 any proceeds of the liability policy that other injured persons receive.

28 **SECTION 3.** ORS 742.504 is amended to read:

29 742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide
 30 uninsured motorist coverage that in each instance is no less favorable in any respect to the insured
 31 or the beneficiary than if the following provisions were set forth in the policy. However, nothing
 32 contained in this section requires the insurer to reproduce in the policy the particular language of
 33 any of the following provisions:

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

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

1 (2) As used in this policy:

2 (a) "Bodily injury" means bodily injury, sickness or disease, including death resulting therefrom.

3 (b) "Hit-and-run vehicle" means a vehicle that causes bodily injury to an insured arising out of
4 physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the
5 time of the accident, provided:

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

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

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

16 (c) "Insured," when unqualified and when applied to uninsured motorist coverage, means:

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

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

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

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

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

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

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

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

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

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

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

1 and

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

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

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

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

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

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

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

20 (j) "Sums that the insured or the heirs or legal representative of the insured is legally entitled
21 to recover as **general and special damages from the owner or operator of an uninsured**
22 **vehicle**" means the amount of damages that:

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

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

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

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

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

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

42 (C) A phantom vehicle.

43 (D) A stolen vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

24 (4)(a) This coverage does not apply to bodily injury of an insured with respect to which the in-
 25 sured or the legal representative of the insured shall, without the written consent of the insurer,
 26 make any settlement with or prosecute to judgment any action against any person or organization
 27 who may be legally liable therefor.

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

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

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

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

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

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

45 (D) 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, if the insurer has refused consent under paragraph (a) of this subsection, the insured
 3 protects the insurer's right of subrogation to the claim against the tortfeasor.

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

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

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

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

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

33 **(b) Any payment made under this coverage to or for an insured must be applied to reduce**
 34 **any amount that the insured may be entitled to recover from any person who is an insured**
 35 **under the bodily injury liability coverage of this policy.**

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

38 **(A) All sums paid on account of the bodily injury by or on behalf of the owner or operator**
 39 **of the uninsured vehicle and by or on behalf of any other person or organization jointly or**
 40 **severally liable together with the owner or operator for the bodily injury, including all sums**
 41 **paid under the bodily injury liability coverage of the policy; and**

42 **(B) The amount paid and the present value of all amounts payable on account of the bodily in-**
 43 **jury under any workers' compensation law, disability benefits law or any similar law.**

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

1 given to the insurer pursuant to subsection (4)(d)(C) or (D) of this section.

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

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

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

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

13 (B) While occupying a vehicle not owned by a named insured under this coverage, the insurance
14 under this coverage shall apply only as excess insurance over any primary insurance available to
15 the occupant that is similar to this coverage, and this excess insurance coverage shall then apply
16 only to the *[sums that the insured or the heirs or legal representative of the insured is legally entitled*
17 *to recover as damages for bodily injury or death that is caused by accident and that arises out of*
18 *owning, maintaining or using an uninsured vehicle.]* **amount by which the applicable limit of li-**
19 **ability of this excess coverage exceeds the sum of the applicable limits of liability of all pri-**
20 **mary insurance available to the occupant.**

21 **(b) If an insured is an insured under other primary or excess insurance available to the**
22 **insured that is similar to this coverage, then the insured's damages do not exceed the higher**
23 **of the applicable limits of liability of this insurance or the additional primary or excess in-**
24 **surance available to the insured, and the insurer is not liable under this coverage for a**
25 **greater proportion of the insured's damages than the proportion that the applicable limit of**
26 **liability of this coverage bears to the sum of the applicable limits of liability of this insurance**
27 **and other primary or excess insurance that is available to the insured.**

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

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

- 1 (a) In the county and state of residence of the insured;
- 2 (b) In the county and state where the insured's cause of action against the uninsured motorist
- 3 arose; or
- 4 (c) At any other place mutually agreed upon by the insured and the insurer.
- 5 (11) In the event of payment to any person under this coverage:
- 6 (a) The insurer shall be entitled to the extent of the payment to the proceeds of any settlement
- 7 or judgment that may result from the exercise of any rights of recovery of the person against any
- 8 uninsured motorist legally responsible for the bodily injury because of which payment is made;
- 9 (b) The person shall hold in trust for the benefit of the insurer all rights of recovery that the
- 10 person shall have against such other uninsured person or organization because of the damages that
- 11 are the subject of claim made under this coverage, but only to the extent that the claim is made or
- 12 paid herein;
- 13 (c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one
- 14 or more of whom is uninsured, the insured shall have the election to receive from the insurer any
- 15 payment to which the insured would be entitled under this coverage by reason of the act or acts
- 16 of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with
- 17 legal action against any or all persons claimed to be liable to the insured for the injuries. If the
- 18 insured elects to receive payment from the insurer under this coverage, then the insured shall hold
- 19 in trust for the benefit of the insurer all rights of recovery the insured shall have against any other
- 20 person, firm or organization because of the damages that are the subject of claim made under this
- 21 coverage, but only to the extent of the actual payment made by the insurer;
- 22 (d) The person shall do whatever is proper to secure and shall do nothing after loss to prejudice
- 23 such rights;
- 24 (e) If requested in writing by the insurer, the person shall take, through any representative not
- 25 in conflict in interest with the person, designated by the insurer, such action as may be necessary
- 26 or appropriate to recover payment as damages from such other uninsured person or organization,
- 27 such action to be taken in the name of the person, but only to the extent of the payment made
- 28 hereunder. In the event of a recovery, the insurer shall be reimbursed out of the recovery for ex-
- 29 penses, costs and attorney fees incurred by the insurer in connection therewith; and
- 30 (f) The person shall execute and deliver to the insurer any instruments and papers as may be
- 31 appropriate to secure the rights and obligations of the person and the insurer established by this
- 32 provision.
- 33 (12)(a) The parties to this coverage agree that no cause of action shall accrue to the insured
- 34 under this coverage unless within two years from the date of the accident:
- 35 (A) Agreement as to the amount due under the policy has been concluded;
- 36 (B) The insured or the insurer has formally instituted arbitration proceedings;
- 37 (C) The insured has filed an action against the insurer; or
- 38 (D) Suit for bodily injury has been filed against the uninsured motorist and, within two years
- 39 from the date of settlement or final judgment against the uninsured motorist, the insured has
- 40 formally instituted arbitration proceedings or filed an action against the insurer.
- 41 (b) For purposes of this subsection:
- 42 (A) "Date of settlement" means the date on which a written settlement agreement or release is
- 43 signed by an insured or, in the absence of these documents, the date on which the insured or the
- 44 attorney for the insured receives payment of any sum required by the settlement agreement. An
- 45 advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for pur-

1 poses of the time limitation in this subsection.

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

4 **SECTION 4. The amendments to ORS 742.500, 742.502 and 742.504 by sections 1 to 3 of this**
5 **2017 Act apply to motor vehicle liability policies that are issued or renewed on or after the**
6 **effective date of this 2017 Act.**

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