

Rob Dolton TNC Testimony- 2021 session; HB 2393

I am an attorney from Clackamas, Oregon. For forty years, I have represented people who have been injured in motor vehicle collisions. On behalf of the injured victims of these crashes, I urge you to support HB 2393. I am here today to address the key components of the Bill: personal injury protection benefits or as we call it PIP and uninsured/underinsured motorist coverage or as we call it UM/UIM.

When you buy an auto insurance policy issued for delivery in the State of Oregon it will include PIP coverage and UM/UIM benefits. PIP coverage is automatically included in every Oregon policy unless the insured vehicle is “used as a public or livery conveyance”. The quoted language has been interpreted to exclude Transportation Network Companies (TNCs) like UBER, LYFT and taxi companies from the requirement of PIP coverage. To be fair, it should be noted that Lyft currently voluntarily provides PIP coverage to their passengers.

PIP has two main parts that become available if you are in an accident and are injured. The coverage applies immediately regardless of who caused the accident.

First, PIP provides up to \$15,000 to pay for your crash-related medical care. Second, PIP pays for your lost wages at the rate of 70% of your average weekly wages up to a maximum of \$3000 a month for up to 52 weeks. These funds become available right away. PIP coverage helps victims avoid a financial predicament from lost wages or with medical providers hounding them for payment.

In practice, the ‘livery conveyance’ PIP exclusion means that TNC drivers and their passengers are excluded from PIP coverage when they are hurt in an accident. The drivers are also excluded from workers compensation coverage as they are considered to be ‘independent contractors’. The consequences of an injury producing collision can be financially and physically devastating for drivers and their families. Many drivers earn their livelihood from their work as a TNC driver. When they are too injured to drive AND excluded from wage reimbursement through PIP, they have no income at all to live on.

For passengers, no PIP coverage comes a cruel surprise. When riding as a passenger in a TNC vehicle a person is not protected by the same mandatory PIP coverage that applies to every other passenger vehicle on the road. No PIP for TNC passengers means that the decision to take a TNC ride rather than one’s own car results in no money for medical bills and no wage reimbursement if the passenger is forced to miss work. If that passenger is lucky enough to have their own insured vehicle sitting at home in the driveway, PIP coverage can sometimes be available. However, recently insurance companies have been taking the position that they don’t have to provide PIP to their insured when they are hurt as a passenger in a TNC vehicle BECAUSE THE PERSON WAS RIDING IN A ‘LIVERY CONVEYANCE’ VEHICLE.

HB 2393 confirms a requirement that the insurance policy mandated for TNC vehicles include uninsured and underinsured motorist benefits (UM/UIM). This coverage only applies when the at fault party has inadequate (or no) insurance coverage to fully compensate the injured party for their injuries.

HB 2393 would require that policy limit coverage levels be the same for UM/UIM as specified for bodily injury liability. Clearly mandating identical policy limits will prevent a process known as ‘opt down’. Current Oregon law allows an insured to voluntarily, or as usually is the case, unknowingly select a lower UM/UIM policy limit coverage level for themselves and their families than is selected to compensate third parties for liability arising from their negligent acts by signing a written waiver form.

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HB 2393 would end 'opt down'. It just makes no sense to allow insurance companies to sell a lower level of coverage to auto insurance consumers and their families than is selected by that person to cover losses suffered by anyone else under the same insurance policy. The premium savings for this reduced coverage are so small as to be functionally almost non-existent. The financial consequence of this often inadvertent 'choice', however, can be devastating.

I will give you an example: a right-handed client of mine who makes his living as a high school tennis coach and teacher was in a severe T'bone crash at an intersection. He suffered an injury to his right wrist that eventually required surgery. Even after surgical repair, he is unable to engage in repetitive use of the right arm involving rotational forces. Obviously, this impacts his ability to demonstrate forehand tennis strokes for his students which involve 'top spin'.

Decades earlier my client had purchased an insurance policy to cover himself and his family in the event of a serious injury car crash. He picked \$500,000 as the bodily injury policy limit for his policy. It was only after the crash that he learned that all those years prior his insurance agent had sold him a policy that covered he and his family at a MUCH lower policy maximum benefit than the \$500,000 he thought he had purchased.

When he called his current agent to report the loss and find out what coverage would be available to compensate him for his collision related losses, the new agent informed him that the policy only covered he and his family for a maximum of \$100,000 not the \$500,000 he had selected for bodily injury when he bought the policy. HE HAD UNKNOWINGLY 'OPTED DOWN' TO A \$100,000 POLICY LIMIT LEVEL to cover himself and his family in the event the at-fault driver had inadequate coverage. In this case, the at-fault driver turned out to only have a minimum limits (\$25,000) policy. The potential loss of coverage for my client and his family from the inadvertent and undiscovered 'opt-down' was a \$400,000 difference in available benefits.

HB 2393, when adopted, will end the insurance companies' ability to sell 'opt down' policies.

The last area covered by HB 2393 deals with clarifying the order in which UIM policies are available to be accessed in the event an individual suffers a catastrophic loss. This language added by this Bill to ORS 742.504 (9) merely codifies what is the existing customary practice within our industry following the changes, allowing stacking, made by 2015's SB 411. No new coverages are added or created by this clarification. The language merely gives injured people and their lawyers a road map explaining in what order potentially available policies are available to them. This is important because a separate provision, ORS 742.506 points the parties to ORS 742.504 (9) to determine the order in which 'stacked' policies should be allocated.

Passing HB 2393 will guarantee that no longer will TNCs be allowed to use our roadways to generate profits without being required to provide the same auto insurance consumer protections that apply to everyone else.