

A-Engrossed
Senate Bill 922

Ordered by the Senate May 17
Including Senate Amendments dated May 17

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

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.

Requires self-insurer for purposes of financial responsibility requirements to provide coverage for permissive drivers. Permits recovery of amount under insured's uninsured motorist coverage if insured recovers from self-insurer less than amount of insured's uninsured motorist coverage under applicable motor vehicle liability insurance policy.

A BILL FOR AN ACT

1
2 Relating to self-insurers for purposes of financial responsibility requirements; creating new provisions; and amending ORS 742.502, 742.504 and 806.130.

3
4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 806.130 is amended to read:

6 806.130. To qualify as a self-insurer for purposes of financial responsibility requirements under
7 ORS 806.060, a person must do all of the following:

8 (1) Apply to the Department of Transportation and be issued by the department a certificate of
9 self-insurance under ORS 806.140.

10 (2) Either:

11 (a) Establish to the satisfaction of the department that the person [*is possessed*] **possesses** and
12 will continue to [*be possessed of*] **possess** the ability to pay and discharge judgments described under
13 ORS 806.040 that might be obtained against the applicant; or

14 (b) Be [*duly*] qualified under the laws of the State of Oregon or under an ordinance of a city of
15 this state to act as a self-insurer and be acting as [*such*] **a self-insurer**.

16 (3) Agree to **provide the coverage and to** pay the same amounts with respect to an accident
17 occurring while the certificate is in force that an insurer would be obligated to [*pay*] **provide** under
18 a motor vehicle liability insurance policy, including **the coverage required under ORS 806.080**
19 **(1)(b) and** uninsured motorist coverage and liability coverage to at least the limits specified in ORS
20 806.070.

21 (4) Have more than 25 motor vehicles including commercial buses registered in the person's
22 name.

23 **SECTION 1a. (1) With respect to an accident occurring while a certificate of self-**
24 **insurance issued under ORS 806.140 is in force, the liability protection provided and the**
25 **amounts paid under ORS 806.130 (3) are secondary to any motor vehicle liability insurance**
26 **coverage available to a customer of the self-insurer or an operator of the self-insured vehicle**
27 **unless otherwise agreed to by the self-insurer. A self-insurer is required to provide 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 **minimum payments established under ORS 806.070 only when the motor vehicle liability in-**
 2 **surance policy of a customer of the self-insurer or an operator of the self-insured vehicle**
 3 **does not provide the minimum required payments established in ORS 806.070.**

4 **(2) A self-insurer may recover from a customer of the self-insurer or an operator of the**
 5 **self-insured vehicle the amounts paid under ORS 806.130 (3).**

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

7 742.502. (1) Every motor vehicle liability policy insuring against loss suffered by any natural
 8 person resulting from liability imposed by law for bodily injury or death arising out of the owner-
 9 ship, maintenance or use of a motor vehicle shall provide *[therein]* **in the policy** or by indorsement
 10 *[thereon]* **on the policy** uninsured motorist coverage when *[such]* **the** policy is either:

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

12 (b) Issued or delivered by an insurer doing business in this state with respect to any motor ve-
 13 hicle then principally used or principally garaged in this state.

14 (2)(a) A motor vehicle bodily injury liability policy shall have the same limits for uninsured
 15 motorist coverage as for bodily injury liability coverage unless a named insured in writing elects
 16 lower limits. The insured may not elect limits lower than the amounts prescribed to meet the re-
 17 quirements of ORS 806.070 for bodily injury or death. Uninsured motorist coverage larger than the
 18 amounts required by ORS 806.070 *[shall]* **must** include underinsurance coverage for *[damages]* **bodily**
 19 **injury** or death caused by accident and arising out of the ownership, maintenance or use of a motor
 20 vehicle *[that is insured for]* **with motor vehicle liability insurance that provides recovery in** an
 21 amount that is less than the insured's uninsured motorist coverage. Underinsurance *[benefits]* **cov-**
 22 **erage** shall be equal to uninsured motorist coverage *[benefits]* less the amount recovered from other
 23 *[automobile]* **motor vehicle** liability insurance policies.

24 (b) **If a named insured elects lower limits, the named insured shall sign** a statement elect-
 25 ing lower limits *[shall be signed and dated by a named insured]* within 60 days of the time *[a]* **the**
 26 named insured *[elects lower limits]* **makes the election.** The statement shall acknowledge that a
 27 named insured was offered uninsured motorist coverage with the limits equal to those for bodily
 28 injury liability. The statement shall contain a brief summary, which *[shall]* **may** not be construed
 29 as part of the insurance contract, of what uninsured and underinsured motorist coverages provide
 30 and shall state the price for coverage with limits equal to the named insured's bodily injury liability
 31 limits and the price for coverage with the lower limits requested by the named insured. The state-
 32 ment shall remain in force until rescinded in writing by a named insured or until *[such time as]* **the**
 33 motor vehicle bodily injury liability limits are changed. The form of statement used to comply with
 34 this paragraph shall be approved by the Department of **Consumer and Business Services.**

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

39 (3) The insurer issuing *[such]* **the** policy may offer one or more options of uninsured motorist
 40 coverage larger than the amounts prescribed to meet the requirements of ORS 806.070 and in excess
 41 of the limits provided under the policy for motor vehicle bodily injury liability insurance. Offers of
 42 uninsured motorist coverage larger than the amounts required by ORS 806.070 shall include under-
 43 insurance coverage for *[damages]* **bodily injury** or death caused by accident and arising out of the
 44 ownership, maintenance or use of a motor vehicle with liability insurance that provides recovery in
 45 an amount that is less than the insured's uninsured motorist coverage. Underinsurance *[benefits]*

1 **coverage** shall be equal to uninsured motorist coverage [*benefits*] less the amount recovered from
2 other [*automobile*] **motor vehicle** liability insurance policies.

3 (4) Underinsurance coverage [*shall be*] **is** subject to ORS 742.504 and 742.542.

4 **(5) Uninsured motorist coverage and underinsurance coverage shall provide coverage for**
5 **bodily injury or death if the amount recovered from a self-insurer is less than the limits for**
6 **uninsured motorist coverage of the insured.**

7 [(5)] **(6) As used in this section and** except as provided in this subsection, [*the*] “amount re-
8 covered from other [*automobile*] **motor vehicle** liability insurance policies” means the proceeds of
9 liability insurance recovered by or on behalf of the injured party. Proceeds recovered on behalf of
10 the injured party include proceeds received by the injured party’s insurer as reimbursement for
11 personal injury protection benefits provided to the injured person, proceeds received by the medical
12 providers of the injured person and proceeds received as attorney fees on the claim of the injured
13 person. Where applicable liability insurance policy limits are exhausted upon payment, settlement
14 or judgment by division among two or more injured persons, [*the*] “amount recovered from other
15 [*automobile*] **motor vehicle** liability insurance policies” means the proceeds that are recovered by
16 or on behalf of the injured person but does not include any proceeds of that liability policy received
17 by other injured persons.

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

19 742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide
20 uninsured motorist coverage [*which*] **that** in each instance is no less favorable in any respect to the
21 insured or the beneficiary than if the following provisions were set forth in the policy. However,
22 nothing contained in this section [*shall require*] **requires** the insurer to reproduce in [*such*] **the**
23 policy the particular language of any of the following provisions:

24 (1)(a) The insurer will pay all sums [*which*] **that** the insured, the heirs or the legal represen-
25 tative of the insured [*shall be*] **is** legally entitled to recover as general and special damages from the
26 owner or operator of an uninsured vehicle because of bodily injury sustained by the insured caused
27 by accident and arising out of the ownership, maintenance or use of [*such*] **the** uninsured vehicle.
28 Determination as to whether the insured, the insured’s heirs or the insured’s legal representative is
29 legally entitled to recover such damages, and if so, the amount thereof, shall be made by agreement
30 between the insured and the insurer, or, in the event of disagreement, may be determined by arbi-
31 tration as provided in subsection (10) of this section.

32 (b) No judgment against any person or organization alleged to be legally responsible for bodily
33 injury, except for proceedings instituted against the insurer as provided in this policy, shall be
34 conclusive, as between the insured and the insurer, on the issues of liability of [*such*] **the** person
35 or organization or of the amount of damages to which the insured is legally entitled.

36 (2) As used in this policy:

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

39 (b) **“Hit-and-run vehicle” means a vehicle that causes bodily injury to an insured arising**
40 **out of physical contact of the vehicle with the insured or with a vehicle the insured is oc-**
41 **cupying at the time of the accident, provided:**

42 (A) **The identity of either the operator or the owner of the hit-and-run vehicle cannot**
43 **be ascertained;**

44 (B) **The insured or someone on behalf of the insured reported the accident within 72**
45 **hours to a police, peace or judicial officer, to the Department of Transportation or to the**

1 **equivalent department in the state where the accident occurred, and filed with the insurer**
2 **within 30 days thereafter a statement under oath that the insured or the legal representative**
3 **of the insured has a cause or causes of action arising out of the accident for damages against**
4 **a person or persons whose identities are unascertainable, and setting forth the facts in**
5 **support thereof; and**

6 **(C) At the insurer's request, the insured or the legal representative of the insured makes**
7 **available for inspection the vehicle the insured was occupying at the time of the accident.**

8 [(a)] (c) "Insured," when unqualified[, *means*] **and** when applied to uninsured motorist
9 coverage, **means:**

10 (A) The named insured as stated in the policy and any person designated as named insured in
11 the schedule and, while residents of the same household, the spouse of any [*such*] named insured and
12 relatives of either[;], provided[,], **that** neither [*such*] **the** relative nor **the** spouse is the owner of a
13 vehicle not described in the policy[;] and [*provided further*] **that**, if the named insured as stated in
14 the policy is other than an individual or husband and wife who are residents of the same household,
15 the named insured shall be only a person so designated in the schedule;

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

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

21 [(b)] (d) "Insured vehicle," except as provided in paragraph [(c)] (e) of this provision, means:

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

25 (B) A nonowned vehicle operated by the named insured or spouse if a resident of the same
26 household[;], provided **that** the actual use thereof is with the permission of the owner of [*such*] **the**
27 vehicle and [*such*] **the** vehicle is not owned by nor furnished for the regular or frequent use of the
28 insured or any member of the same household.

29 [(c)] (e) "Insured vehicle" does not include a trailer of any type unless [*such*] **the** trailer is a
30 described vehicle in the policy.

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

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

35 (A) The identity of either the operator or the owner of the phantom vehicle cannot be
36 ascertained;

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

40 (C) The insured or someone on behalf of the insured reported the accident within 72
41 hours to a police, peace or judicial officer, to the Department of Transportation or to the
42 equivalent department in the state where the accident occurred, and filed with the insurer
43 within 30 days thereafter a statement under oath that the insured or the legal representative
44 of the insured has a cause or causes of action arising out of the accident for damages against
45 a person or persons whose identities are unascertainable, and setting forth the facts in

1 **support thereof.**

2 **(h) “State” includes the District of Columbia, a territory or possession of the United**
3 **States and a province of Canada.**

4 [(d)] (i) “Uninsured vehicle,” except as provided in paragraph [(e)] (j) of this provision, means:

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

17 (B) A hit-and-run vehicle [as defined in paragraph (f) of this provision].

18 (C) A phantom vehicle [as defined in paragraph (g) of this provision].

19 **(D) A vehicle that is owned or operated by a self-insurer:**

20 **(i) That is not in compliance with ORS 806.130 (3); or**

21 **(ii) That provides recovery to an insured in an amount that is less than the limits for**
22 **uninsured motorist coverage of the insured.**

23 [(e)] (j) “Uninsured vehicle” does not include:

24 (A) An insured vehicle;

25 (B) **Except as provided in paragraph (i)(D) of this subsection,** a vehicle [which] **that** is
26 owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility
27 law, motor carrier law or any similar law;

28 (C) A vehicle [which] **that** is owned by the United States of America, Canada[,] **or** a state, **or**
29 a political subdivision **or agency** of any [such government or an agency of any of the foregoing] **of**
30 **those governments;**

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

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

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

37 [(f) “Hit-and-run vehicle” means a vehicle which causes bodily injury to an insured arising out of
38 physical contact of such vehicle with the insured or with a vehicle which the insured is occupying at
39 the time of the accident, provided:]

40 [(A) There cannot be ascertained the identity of either the operator or the owner of such hit-and-run
41 vehicle;]

42 [(B) The insured or someone on behalf of the insured shall have reported the accident within 72
43 hours to a police, peace or judicial officer, to the Department of Transportation of the State of Oregon
44 or to the equivalent department in the state where the accident occurred, and shall have filed with the
45 insurer within 30 days thereafter a statement under oath that the insured or the legal representative

1 of the insured has a cause or causes of action arising out of such accident for damages against a per-
2 son or persons whose identity is unascertainable, and setting forth the facts in support thereof; and]

3 [(C) At the insurer's request, the insured or the legal representative of the insured makes available
4 for inspection the vehicle which the insured was occupying at the time of the accident.]

5 [(g) "Phantom vehicle" means a vehicle which causes bodily injury to an insured arising out of a
6 motor vehicle accident which is caused by an automobile which has no physical contact with the in-
7 sured or the vehicle which the insured is occupying at the time of the accident, provided:]

8 [(A) There cannot be ascertained the identity of either the operator or the owner of such phantom
9 vehicle;]

10 [(B) The facts of such accident can be corroborated by competent evidence other than the testimony
11 of the insured or any person having an uninsured motorist claim resulting from the accident; and]

12 [(C) The insured or someone on behalf of the insured shall have reported the accident within 72
13 hours to a police, peace or judicial officer, to the Department of Transportation of the State of Oregon
14 or to the equivalent department in the state where the accident occurred, and shall have filed with the
15 insurer within 30 days thereafter a statement under oath that the insured or the legal representative
16 of the insured has a cause or causes of action arising out of such accident for damages against a per-
17 son or persons whose identity is unascertainable, and setting forth the facts in support thereof.]

18 [(h) "Bodily injury" means bodily injury, sickness or disease, including death resulting
19 therefrom.]

20 [(i) "Occupying" means in or upon or entering into or alighting from.]

21 [(j) "State" includes the District of Columbia, a territory or possession of the United States and a
22 province of Canada.]

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

26 (3) This coverage applies only to accidents [which] **that** occur on and after the effective date
27 of the policy, during the policy period and within the United States of America, its territories or
28 possessions, or Canada.

29 (4)(a) This coverage does not apply to bodily injury of an insured with respect to which [such]
30 **the** insured or the legal representative of the insured shall, without the written consent of the
31 insurer, make any settlement with or prosecute to judgment any action against any person or or-
32 ganization who may be legally liable therefor.

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

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

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

41 (A) The limits of liability under any bodily injury liability [bonds or policies] **insurance** appli-
42 cable at the time of the accident regarding the injured person have been exhausted by payment of
43 judgments or settlements to the injured person or other injured persons;

44 (B) The described limits have been offered in settlement, the insurer has refused consent under
45 paragraph (a) of this subsection and the insured protects the insurer's right of subrogation to the

1 claim against the tortfeasor;

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

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

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

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

23 (b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit
24 to physical examinations by physicians selected by the insurer and shall, upon each request from the
25 insurer, execute authorization to enable the insurer to obtain medical reports and copies of records.

26 (6) If, before the insurer makes payment of loss hereunder, the insured or the legal represen-
27 tative of the insured *[shall institute]* **institutes** any legal action for bodily injury against any person
28 or organization legally responsible for the use of a vehicle involved in the accident, a copy of the
29 summons and complaint or other process served in connection with *[such]* **the** legal action shall be
30 forwarded immediately to the insurer by the insured or the legal representative of the insured.

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

37 (b) Any payment made under this coverage to or for an insured shall be applied in reduction
38 of any amount *[which]* **that** the insured may be entitled to recover from any person who is an in-
39 sured under the bodily injury liability coverage of this policy.

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

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

1 (B) The amount paid and the present value of all amounts payable on account of *[such]* **the**
2 bodily injury under any workers' compensation law, disability benefits law or any similar law.

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

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

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

15 (9)(a) Except as provided in paragraph (c) of this subsection, with respect to bodily injury to an
16 insured while occupying a vehicle not owned by a named insured under this coverage, the insurance
17 under this coverage shall apply only as excess insurance over any other insurance available to
18 *[such]* **the** occupant *[which]* **that** is similar to this coverage, and this insurance shall then apply only
19 in the amount by which the applicable limit of liability of this coverage exceeds the sum of the ap-
20 plicable limits of liability of all *[such]* other insurance.

21 (b) With respect to bodily injury to an insured while occupying or through being struck by an
22 uninsured vehicle, if *[such]* **the** insured is an insured under other insurance available to the insured
23 *[which]* **that** is similar to this coverage, then the damages shall be deemed not to exceed the higher
24 of the applicable limits of liability of this insurance or *[such]* other insurance, and the insurer *[shall*
25 *not be]* **is not** liable under this coverage for a greater proportion of the damages than the applicable
26 limit of liability of this coverage bears to the sum of the applicable limits of liability of this insur-
27 ance and *[such]* other insurance.

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

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

1 election of the insured, *[such]* **the** arbitration shall be held:

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

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

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

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

7 (a) The insurer shall be entitled to the extent of *[such]* **the** payment to the proceeds of any
8 settlement or judgment that may result from the exercise of any rights of recovery of *[such]* **the**
9 person against any uninsured motorist legally responsible for the bodily injury because of which
10 *[such]* payment is made;

11 (b) *[Such]* **The** person shall hold in trust for the benefit of the insurer all rights of recovery
12 *[which]* **that** the person shall have against such other uninsured person or organization because of
13 the damages *[which]* **that** are the subject of claim made under this coverage, but only to the extent
14 that *[such]* **the** claim is made or paid herein;

15 (c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one
16 or more of whom is uninsured, the insured shall have the election to receive from the insurer any
17 payment to which the insured would be entitled under this coverage by reason of the act or acts
18 of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with
19 legal action against any or all persons claimed to be liable to the insured for *[such]* **the** injuries. If
20 the insured elects to receive payment from the insurer under this coverage, then the insured shall
21 hold in trust for the benefit of the insurer all rights of recovery the insured shall have against any
22 other person, firm or organization because of the damages *[which]* **that** are the subject of claim
23 made under this coverage, but only to the extent of the actual payment made by the insurer;

24 (d) *[Such]* **The** person shall do whatever is proper to secure and shall do nothing after loss to
25 prejudice such rights;

26 (e) If requested in writing by the insurer, *[such]* **the** person shall take, through any represen-
27 tative not in conflict in interest with *[such]* **the** person, designated by the insurer, such action as
28 may be necessary or appropriate to recover *[such]* payment as damages from such other uninsured
29 person or organization, such action to be taken in the name of *[such]* **the** person, but only to the
30 extent of the payment made hereunder. In the event of a recovery, the insurer shall be reimbursed
31 out of *[such]* **the** recovery for expenses, costs and attorney fees incurred by *[it]* **the insurer** in
32 connection therewith; and

33 (f) *[Such]* **The** person shall execute and deliver to the insurer *[such]* **any** instruments and papers
34 as may be appropriate to secure the rights and obligations of *[such]* **the** person and the insurer es-
35 tablished by this provision.

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

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

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

40 (C) The insured has filed an action against the insurer *[in a court of competent jurisdiction]*; or

41 (D) Suit for bodily injury has been filed against the uninsured motorist *[in a court of competent*
42 *jurisdiction]* and, within two years from the date of settlement or final judgment against the
43 uninsured motorist, the insured has formally instituted arbitration proceedings or filed an action
44 against the insurer *[in a court of competent jurisdiction]*.

45 (b) For purposes of this subsection:

1 (A) "Date of settlement" means the date on which a written settlement agreement or release is
2 signed by an insured or, in the absence of [*such*] **these** documents, the date on which the insured
3 or the attorney for the insured receives payment of any sum required by the settlement agreement.
4 An advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for
5 purposes of the time limitation in this subsection.

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

8 **SECTION 4. The amendments to ORS 742.502 and 742.504 by sections 2 and 3 of this 2005**
9 **Act apply to motor vehicle liability policies issued or renewed on or after the effective date**
10 **of this 2005 Act.**

11 _____