

(To Resolve Conflicts)

A-Engrossed Senate Bill 924

Ordered by the House May 25
Including House Amendments dated May 25 to resolve conflicts

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.

Modifies definition of "uninsured vehicle" for uninsured motorist coverage to include stolen vehicle.

A BILL FOR AN ACT

1
2 Relating to uninsured motorist coverage for stolen vehicles; creating new provisions; and amending
3 ORS 742.504.

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

5 **SECTION 1.** ORS 742.504 is amended to read:

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

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

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

23 (2) As used in this policy:

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

26 (b) **"Hit-and-run vehicle" means a vehicle that causes bodily injury to an insured arising**
27 **out of physical contact of the vehicle with the insured or with a vehicle the insured is oc-**

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 **cupying at the time of the accident, provided:**

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (A) **The identity of either the operator or the owner of the phantom vehicle cannot be**
41 **ascertained;**

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

45 (C) **The insured or someone on behalf of the insured reported the accident within 72**

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

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

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

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

12 **(B) The operator of the vehicle does not have collectible motor vehicle bodily injury li-**
13 **ability insurance;**

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

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

19 [(d)] **(j) "Uninsured vehicle,"** except as provided in paragraph [(e)] **(k)** of this provision, means:

20 **(A)** A vehicle with respect to the ownership, maintenance or use of which there is no collectible
21 [automobile] **motor vehicle** bodily injury liability insurance, in at least the amounts or limits pre-
22 scribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with
23 respect to any person or organization legally responsible for the use of [such] **the** vehicle, or with
24 respect to which there is [such] collectible bodily injury liability insurance applicable at the time
25 of the accident but the insurance company writing the [same] **insurance** denies coverage
26 [thereunder] or, within two years of the date of the accident, [such] **the** company writing the
27 [same] **insurance** becomes voluntarily or involuntarily declared bankrupt or for which a receiver is
28 appointed or becomes insolvent. It shall be a disputable presumption that a vehicle is uninsured in
29 the event the insured and the insurer, after reasonable efforts, fail to discover within 90 days from
30 the date of the accident, the existence of a valid and collectible [automobile] **motor vehicle** bodily
31 injury liability insurance applicable at the time of the accident.

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

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

34 **(D) A stolen vehicle.**

35 [(e)] **(k)** "Uninsured vehicle" does not include:

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

37 **(B)** A vehicle [which] **that** is owned or operated by a self-insurer within the meaning of any
38 motor vehicle financial responsibility law, motor carrier law or any similar law;

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

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

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

45 **(F)** A vehicle owned by or furnished for the regular or frequent use of the insured or any

1 member of the household of the insured.

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

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

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

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

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

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

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

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

28 [(h) *“Bodily injury” means bodily injury, sickness or disease, including death resulting*
29 *therefrom.]*

30 [(i) *“Occupying” means in or upon or entering into or alighting from.]*

31 [(j) *“State” includes the District of Columbia, a territory or possession of the United States and a*
32 *province of Canada.]*

33 [(k)] (L) *“Vehicle” means every device in, upon or by which any person or property is or may*
34 *be transported or drawn upon a public highway, but does not include devices moved by human*
35 *power or used exclusively upon stationary rails or tracks.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of any one accident.

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

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

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

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

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

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

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

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

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

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

43 (10) If any person making claim hereunder and the insurer do not agree that *[such]* **the** person
44 is legally entitled to recover damages from the owner or operator of an uninsured vehicle because
45 of bodily injury to the insured, or do not agree as to the amount of payment *[which]* **that** may be

1 owing under this coverage, then, in the event the insured and the insurer elect by mutual agreement
 2 at the time of the dispute to settle the matter by arbitration, the arbitration shall take place under
 3 the arbitration laws of the State of Oregon or, if the parties agree, according to any other proce-
 4 dure. Any judgment upon the award rendered by the arbitrators may be entered in any court having
 5 jurisdiction thereof, provided, however, **that** the costs to the insured of the arbitration proceeding
 6 *[shall]* **do** not exceed \$100 and that all other costs of arbitration *[shall be]* **are** borne by the insurer.
 7 “Costs” as used in this provision *[shall]* **does** not include attorney fees or expenses incurred in the
 8 production of evidence or witnesses or the making of transcripts of the arbitration proceedings.
 9 *[Such]* **The** person and the insurer each agree to consider themselves bound and to be bound by any
 10 award made by the arbitrators pursuant to this coverage in the event of such election. At the
 11 election of the insured, *[such]* **the** arbitration shall be held:

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

13 (b) In the county and state where the insured’s cause of action against the uninsured motorist
 14 arose; or

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (b) For purposes of this subsection:

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

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

18 **SECTION 2. If Senate Bill 925 becomes law, section 1 of this 2005 Act (amending ORS**
19 **742.504) is repealed and ORS 742.504, as amended by section 1, chapter __, Oregon Laws 2005**
20 **(Enrolled Senate Bill 925), is amended to read:**

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

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

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

38 (2) As used in this policy:

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

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

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

45 (B) The insured or someone on behalf of the insured reported the accident within 72 hours to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (h) "State" includes the District of Columbia, a territory or possession of the United States and

1 a province of Canada.

2 (i) **“Stolen vehicle” means an insured vehicle that causes bodily injury to the insured**
3 **arising out of a motor vehicle accident if:**

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

5 (B) **The operator of the vehicle does not have collectible motor vehicle bodily injury li-**
6 **ability insurance;**

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

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

12 [(i)] (j) **“Uninsured vehicle,”** except as provided in paragraph [(j)] (k) of this provision, means:

13 (A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible
14 motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily
15 injury or death under ORS 806.070 applicable at the time of the accident with respect to any person
16 or organization legally responsible for the use of the vehicle, or with respect to which there is
17 collectible bodily injury liability insurance applicable at the time of the accident but the insurance
18 company writing the insurance denies coverage or, within two years of the date of the accident, the
19 company writing the insurance becomes voluntarily or involuntarily declared bankrupt or for which
20 a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a vehicle is
21 uninsured in the event the insured and the insurer, after reasonable efforts, fail to discover within
22 90 days from the date of the accident, the existence of a valid and collectible motor vehicle bodily
23 injury liability insurance applicable at the time of the accident.

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

25 (C) A phantom vehicle.

26 (D) **A stolen vehicle.**

27 [(j)] (k) **“Uninsured vehicle”** does not include:

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

29 (B) A vehicle that is owned or operated by a self-insurer within the meaning of any motor ve-
30 hicle financial responsibility law, motor 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 [(k)] (L) **“Vehicle”** means every device in, upon or by which any person or property is or may
40 be transported or drawn upon a public highway, but does not include devices moved by human
41 power 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 selected by the insurer and shall, upon each request from the
41 insurer, execute authorization to enable the insurer to obtain medical reports and copies of records.

42 (6) If, before the insurer makes payment of loss hereunder, the insured or the legal represen-
43 tative of the insured institutes any legal action for bodily injury against any person or organization
44 legally responsible for the use of a vehicle involved in the accident, a copy of the summons and
45 complaint or other process served in connection with the legal action shall be forwarded imme-

1 diately to the insurer by the insured or the legal representative of the insured.

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

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

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

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

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

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

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

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

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

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

33 (B) While occupying a vehicle not owned by a named insured under this coverage, the insurance
34 under this coverage shall apply only as excess insurance over any primary insurance available to
35 the occupant that is similar to this coverage, and this excess insurance shall then apply only in the
36 amount by which the applicable limit of liability of this excess coverage exceeds the sum of the
37 applicable limits of liability of all primary insurance available to the occupant.

38 (b) If an insured is an insured under other primary or excess insurance available to the insured
39 that is similar to this coverage, then the insured’s damages are deemed not to exceed the higher of
40 the applicable limits of liability of the additional primary or excess insurance available to the in-
41 sured, and the insurer is not liable under this coverage for a greater proportion of the insured’s
42 damages than the applicable limit of liability of this coverage bears to the sum of the applicable
43 limits of liability of this insurance and other primary or excess insurance available to the insured.

44 (c) With respect to bodily injury to an insured while occupying any motor vehicle used as a
45 public or livery conveyance, the insurance under this coverage shall apply only as excess insurance

1 over any other insurance available to the insured that is similar to this coverage, and this insurance
2 shall then apply only in the amount by which the applicable limit of liability of this coverage ex-
3 ceeds the sum of the applicable limits of liability of all other insurance.

4 (10) If any person making claim hereunder and the insurer do not agree that the person is le-
5 gally entitled to recover damages from the owner or operator of an uninsured vehicle because of
6 bodily injury to the insured, or do not agree as to the amount of payment that may be owing under
7 this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time
8 of the dispute to settle the matter by arbitration, the arbitration shall take place under the arbi-
9 tration laws of the State of Oregon or, if the parties agree, according to any other procedure. Any
10 judgment upon the award rendered by the arbitrators may be entered in any court having jurisdic-
11 tion thereof, provided, however, that the costs to the insured of the arbitration proceeding do not
12 exceed \$100 and that all other costs of arbitration are borne by the insurer. "Costs" as used in this
13 provision does not include attorney fees or expenses incurred in the production of evidence or wit-
14 nesses or the making of transcripts of the arbitration proceedings. The person and the insurer each
15 agree to consider themselves bound and to be bound by any award made by the arbitrators pursuant
16 to this coverage in the event of such election. At the election of the insured, the arbitration shall
17 be held:

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

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

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

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

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

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

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

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

41 (e) If requested in writing by the insurer, the person shall take, through any representative not
42 in conflict in interest with the person, designated by the insurer, such action as may be necessary
43 or appropriate to recover payment as damages from such other uninsured person or organization,
44 such action to be taken in the name of the person, but only to the extent of the payment made
45 hereunder. In the event of a recovery, the insurer shall be reimbursed out of the recovery for ex-

1 penses, costs and attorney fees incurred by the insurer in connection therewith; and

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

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

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

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

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

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

13 (b) For purposes of this subsection:

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

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

21 **SECTION 3. The amendments to ORS 742.504 by sections 1 and 2 of this 2005 Act apply**
22 **to motor vehicle liability insurance policies issued or renewed on or after the effective date**
23 **of this 2005 Act.**