

Enrolled
Senate Bill 925

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

CHAPTER

AN ACT

Relating to the application of uninsured motorist coverage to occupants of motor vehicles with similar uninsured motorist coverage; creating new provisions; and amending ORS 742.504.

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

SECTION 1. ORS 742.504 is amended to read:

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

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

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

(2) As used in this policy:

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

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

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

(B) **The insured or someone on behalf of the insured reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the equivalent department in the state where the accident occurred, and filed with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured has a cause or causes of action arising out of the accident for damages against**

a person or persons whose identities are unascertainable, and setting forth the facts in support thereof; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible *[automobile]* **motor vehicle** bodily injury liability insurance, in at least the amounts or limits prescribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any person or organization legally responsible for the use of *[such]* **the** vehicle, or with respect to which there is *[such]* collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the *[same]* **insurance** denies coverage

[*thereunder*] or, within two years of the date of the accident, [*such*] **the** company writing the [*same*] **insurance** becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of a valid and collectible [*automobile*] **motor vehicle** bodily injury liability insurance applicable at the time of the accident.

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

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

[(e)] (j) "Uninsured vehicle" does not include:

(A) An insured vehicle;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) If, before the insurer makes payment of loss hereunder, the insured or the legal representative of the insured *[shall institute]* **institutes** any legal action for bodily injury against any person or organization legally responsible for the use of a vehicle involved in the accident, a copy of the

summons and complaint or other process served in connection with *[such]* **the** legal action shall be forwarded immediately to the insurer by the insured or the legal representative of the insured.

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

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

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

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

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

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

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

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

(9)(a) *[Except as provided in paragraph (c) of this subsection,]* With respect to bodily injury to an insured:

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

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

(b) *[With respect to bodily injury to an insured while occupying or through being struck by an uninsured vehicle, if such]* **If an** insured is an insured under other **primary or excess** insurance available to the insured *[which]* **that** is similar to this coverage, then the **insured’s** damages *[shall be]* **are** deemed not to exceed the higher of the applicable limits of liability of *[this insurance or such other insurance]* **the additional primary or excess insurance available to the insured**, and the insurer *[shall not be]* **is not** liable under this coverage for a greater proportion of the **insured’s** damages than the applicable limit of liability of this coverage bears to the sum of the applicable limits of liability of this insurance and *[such]* other **primary or excess** insurance **available to the insured.**

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

over any other insurance available to the insured [*which*] **that** is similar to this coverage, and this insurance shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability of all [*such*] other insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this subsection:

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

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

SECTION 2. The amendments to ORS 742.504 by section 1 of this 2005 Act apply to motor vehicle liability policies issued on or after the effective date of this 2005 Act.

Passed by Senate April 6, 2005

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Secretary of Senate

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President of Senate

Passed by House May 26, 2005

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Speaker of House

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

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Secretary of State