

# Senate Bill 925

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 **as introduced**.

Provides that when insured is injured while occupying vehicle not owned by named insured, uninsured motorist coverage of insured is excess coverage.

## A BILL FOR AN ACT

1  
2 Relating to the application of uninsured motorist coverage to occupants of motor vehicles with  
3 similar uninsured motorist coverage; creating new provisions; and amending 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-**  
28 **cupying at the time of the accident, provided:**

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

31 (B) **The insured or someone on behalf of the insured reported the accident within 72**

**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 **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; and**

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

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

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

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

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

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

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

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

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

32 (f) **“Occupying” means in or upon or entering into or alighting from.**

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

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

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

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

1 **a person or persons whose identities are unascertainable, and setting forth the facts in**  
 2 **support thereof.**

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

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

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

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

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

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

21 (A) An insured vehicle;

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

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

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

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

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

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

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

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

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

45 [(g) “Phantom vehicle” means a vehicle which causes bodily injury to an insured arising out of a

1 *motor vehicle accident which is caused by an automobile which has no physical contact with the in-*  
 2 *sured or the vehicle which the insured is occupying at the time of the accident, provided:]*

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

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

7 [(C) *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.]*

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

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

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

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

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

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

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

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

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

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

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

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

45 (D) The insured gives credit to the insurer for the unrealized portion of the described liability

1 limits as if the full limits had been received if less than the described limits have been offered in  
2 settlement and, if the insurer has refused consent under paragraph (a) of this subsection, the insured  
3 protects the insurer's right of subrogation to the claim against the tortfeasor.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **(A) While occupying a vehicle owned by a named insured under this coverage, the in-**  
 13 **surance under this coverage is primary.**

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

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

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

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

1 award made by the arbitrators pursuant to this coverage in the event of such election. At the  
2 election of the insured, *[such]* **the** arbitration shall be held:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) For purposes of this subsection:

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

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

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

11