

(To Resolve Conflicts)

A-Engrossed
Senate Bill 926

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 vehicle for which insurance company writing liability coverage at time of accident becomes bankrupt more than two years after accident giving rise to claim.

A BILL FOR AN ACT

1
2 Relating to uninsured motorist coverage written by insurer that becomes bankrupt; creating new
3 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**

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 **out of physical contact of the vehicle with the insured or with a vehicle the insured is oc-**
2 **cupying at the time of the accident, provided:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (A) An insured vehicle;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 claim against the tortfeasor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) For purposes of this subsection:

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

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

8 **SECTION 2. If Senate Bill 925 becomes law, section 1 of this 2005 Act (amending ORS**
9 **742.504) is repealed and ORS 742.504, as amended by section 1, chapter __, Oregon Laws 2005**
10 **(Enrolled Senate Bill 925), is amended to read:**

11 742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide
12 uninsured motorist coverage that in each instance is no less favorable in any respect to the insured
13 or the beneficiary than if the following provisions were set forth in the policy. However, nothing
14 contained in this section requires the insurer to reproduce in the policy the particular language of
15 any of the following provisions:

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

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

28 (2) As used in this policy:

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

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

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

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

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

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

44 (A) The named insured as stated in the policy and any person designated as named insured in
45 the schedule and, while residents of the same household, the spouse of any named insured and rel-

1 atives of either, provided that neither the relative nor the spouse is the owner of a vehicle not de-
2 scribed in the policy and that, if the named insured as stated in the policy is other than an
3 individual or husband and wife who are residents of the same household, the named insured shall
4 be only a person so designated in the schedule;

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

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

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

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

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

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

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

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

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

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

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

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

37 (i) "Uninsured vehicle," except as provided in paragraph (j) of this provision, means:

38 (A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible
39 motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily
40 injury or death under ORS 806.070 applicable at the time of the accident with respect to any person
41 or organization legally responsible for the use of the vehicle, or with respect to which there is
42 collectible bodily injury liability insurance applicable at the time of the accident but the insurance
43 company writing the insurance denies coverage or[, *within two years of the date of the accident,*] the
44 company writing the insurance becomes voluntarily or involuntarily declared bankrupt or for which
45 a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a vehicle is

1 uninsured in the event the insured and the insurer, after reasonable efforts, fail to discover within
2 90 days from the date of the accident, the existence of a valid and collectible motor vehicle bodily
3 injury liability insurance applicable at the time of the accident.

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

5 (C) A phantom vehicle.

6 (j) "Uninsured vehicle" does not include:

7 (A) An insured vehicle;

8 (B) A vehicle that is owned or operated by a self-insurer within the meaning of any motor ve-
9 hicle financial responsibility law, motor carrier law or any similar law;

10 (C) A vehicle that is owned by the United States of America, Canada, a state, a political sub-
11 division of any such government or an agency of any such government;

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

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

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

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 that occur on and after the effective date of the
22 policy, during the policy period and within the United States of America, its territories or pos-
23 sessions, or Canada.

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

28 (b) This coverage does not apply to bodily injury to an insured while occupying a vehicle, other
29 than an insured vehicle, owned by, or furnished for the regular use of, the named insured or any
30 relative resident in the same household, or through being struck by 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 insurance applicable at the time of
37 the accident regarding the injured person have been exhausted by payment of judgments or settle-
38 ments 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 fails
17 to furnish 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 institutes any legal action for bodily injury against any person or organization
23 legally responsible for the use of a vehicle involved in the accident, a copy of the summons and
24 complaint or other process served in connection with the legal action shall be forwarded imme-
25 diately 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 that the insured may be entitled to recover from any person who is an insured under
34 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 the bodily injury by or on behalf of the owner or operator of
38 the uninsured vehicle and by or on behalf of any other person or organization jointly or severally
39 liable together with the owner or operator for the bodily injury, including all sums paid under the
40 bodily injury liability coverage of the policy; and

41 (B) The amount paid and the present value of all amounts payable on account of the bodily in-
42 jury 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 may not be reduced by the amount of
2 liability proceeds offered, described in subsection (4)(d)(B) or (D) of this section, that has not been
3 paid to the injured person. If liability proceeds have been offered and not paid, the amount payable
4 under the terms of the coverage shall include the amount of liability limits offered but not accepted
5 due to the insurer's refusal to consent. The insured shall cooperate so as to permit the insurer to
6 proceed by subrogation or assignment to prosecute the claim against the uninsured motorist.

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

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

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

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

17 (b) If an insured is an insured under other primary or excess insurance available to the insured
18 that is similar to this coverage, then the insured's damages are deemed not to exceed the higher of
19 the applicable limits of liability of the additional primary or excess insurance available to the in-
20 sured, and the insurer is not liable under this coverage for a greater proportion of the insured's
21 damages than the applicable limit of liability of this coverage bears to the sum of the applicable
22 limits of liability of this insurance and other primary or excess insurance available to the insured.

23 (c) With respect to bodily injury to an insured while occupying any motor vehicle used as a
24 public or livery conveyance, the insurance under this coverage shall apply only as excess insurance
25 over any other insurance available to the insured that is similar to this coverage, and this insurance
26 shall then apply only in the amount by which the applicable limit of liability of this coverage ex-
27 ceeds the sum of the applicable limits of liability of all other insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (b) For purposes of this subsection:

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

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

45 **SECTION 3. The amendments to ORS 742.504 by sections 1 and 2 of this 2005 Act apply**

1 **to motor vehicle liability insurance policies issued or renewed on or after the effective date**
2 **of this 2005 Act.**

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