

This Is (Legal) Jeopardy!

2007 Legislative Update

**Willamette Valley American Inn of Court
September 20, 2007**

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Jeopardy

Injury Law	Land Use/ Real Property Law	Employment Law	Family Law	Grab Bag
<u>Q \$100</u>	<u>Q \$100</u>	<u>Q \$100</u>	<u>Q \$100</u>	<u>Q \$100</u>
<u>Q \$200</u>	<u>Q \$200</u>	<u>Q \$200</u>	<u>Q \$200</u>	<u>Q \$200</u>
<u>Q \$300</u>	<u>Q \$300</u>	<u>Q \$300</u>	<u>Q \$300</u>	<u>Q \$300</u>
<u>Q \$400</u>	<u>Q \$400</u>	<u>Q \$400</u>	<u>Q \$400</u>	<u>Q \$400</u>
<u>Q \$500</u>	<u>Q \$500</u>	<u>Q \$500</u>	<u>Q \$500</u>	<u>Q \$500</u>

Final Jeopardy

\$100 Question from Employment Law

An employee who does not receive
statutorily required rest or meal breaks
has a private cause of action against
an employer for wages related to:

- a. Rest breaks only
- b. Meal breaks only
- c. Rest and meal breaks
- d. neither, only BOLI can impose penalties for these violations

\$100 Answer from Employment Law

A. Rest breaks only



\$200 Question from Employment Law

Remedies for unlawful employment discrimination under Title VII, include back pay, front pay, equitable relief, compensatory and punitive damages, and awards of attorney fees to prevailing employees. Remedies under Oregon's discrimination statute include back pay equitable, attorney fees and what else:

- a. Nothing
- b. Compensatory, but not punitive damages
- c. Compensatory and punitive damages, subject to caps based on size of employer
- d. The kitchen sink

\$200 Answer from Employment Law

D. The kitchen sink



\$300 Question from Employment Law

In order for a nonsolicitation agreement to be enforceable in Oregon, ORS 653.295 requires an employer to provide a new employee with how much notice that the agreement will be required?

- a. 1 Month
- b. 2 Weeks
- c. None, so long as the contract is entered into before working.
- d. None

\$300 Answer from Employment Law

D. None



\$400 Question from Employment Law

May an employer lawfully terminate a worker who was seriously injured on the job if the worker refuses a suitable light duty job for no reason whatsoever?

\$400 Answer from Employment Law

After January 1, 2008,
probably not.



\$500 Question from Employment Law

When does the statute of limitations begin to run on a claim of unlawful pay discrimination under Title VII?

\$500 Answer from Employment Law

At the time the employer takes an employee's protected status (e.g. race, religion, gender, age...etc.) into consideration in making a pay decision.



I. Employment Law

Question 1:

An employee who does not receive statutorily required rest or meal breaks has a private cause of action against an employer for wages related to:

- **A: Rest Breaks only**
- B: Meal Breaks only
- C: Rest & Meal Breaks
- D: Neither, only BOLI can impose penalties for these violations

Commentary:

- This was the holding in *Gafur v. Legacy Good Samaritan Hospital and Medical Center*, 213 Or.App. 343, 161 P.3d 319 (2007), a dream case for plaintiff's attorneys. Prior to *Gafur*, the general consensus was that Oregon's wage and hour statutes did not provide a private cause of action for missed meal or rest breaks, and that the only remedy was a civil penalty to be assessed by BOLI. *See, e.g., Talarico v. Hoffman Structures, Inc.*, 1999 WL 1454859 (D. Or. 1999); *Cooper v. Thomason et al*, 2006 WL 2993376 (D. Or. 2006). In *Gafur*, however, the Court of Appeals ruled that Oregon law provides a private cause of action for unpaid wages related to rest breaks. The court reasoned that because a paid 10-minute rest break is required for every four hours worked, the statute requires an employer to pay an employee four hours' wages for every three hours and fifty minutes worth of work. If an employer fails to provide the break, then it has received 10 minutes of unpaid labor, which triggers an employee's right to file a wage claim.
- A legislative change of similar effect in California triggered an onslaught of class actions against companies that traditionally have difficulty with rest breaks, particularly restaurants. Oregon courts may begin to see a similar upswing in such cases as a result of this decision.
- If an employee has worked 40 hours in a week, these additional 10 minutes could end up triggering overtime claims.
- *Gafur* is on appeal to the Supreme Court, so these rules could potentially change in the coming year.

Question 2: Remedies for unlawful employment discrimination under Title VII include backpay, frontpay, equitable relief, compensatory and punitive damages, and awards of attorney fees to prevailing employees. Remedies under Oregon's discrimination statute include backpay, equitable relief, attorney fees and what else:

- A: Nothing
- B: Compensatory, but not punitive damages
- C: Compensatory and punitive damages, subject to caps based on size of employer
- **D: The kitchen sink**

Commentary:

- Prior to passage of HB 2260, the remedies afforded by Oregon's nondiscrimination statute were generally limited to backpay, equitable relief, and attorney fees. As a result, most employee-side attorneys filed analogous Title VII claims, which provided for compensatory and punitive damages as well. Damages under the federal statute, however, are capped based on the size of the employer, with a maximum award of \$300,000.
- As a result of the expansion of remedies offered under Oregon's discrimination statute, particularly the fact that they are *uncapped* unlike Title VII, state courts may well see an increase in lawsuits that do not include federal claims that often result in removal to federal court. Further increasing the likelihood of increased state court litigation of these claims is the fact that federal courts, even when litigating state law discrimination claims, employ a burden shifting scheme generally seen as beneficial to employers. Oregon state courts do not use this method, limiting the opportunity for employers to resolve discrimination claims on motions for summary judgment.

Question 3: In order for a nonsolicitation agreement to be enforceable in Oregon, ORS 653.295 requires an employer to provide a new employee with how much notice that the agreement will be required?

- A: 1 month
- B: 2 weeks
- C: None, so long as contract is entered before beginning work
- **D: None**

Commentary:

- SB 248 dramatically changed the world of restrictive covenants in employment. Before this bill, all post-employment restrictive covenants were all lumped under the heading "noncompetition agreements" and subject to the same general requirements. In order to be enforceable, the agreements had to be reasonably limited in terms of geographic and temporal scope, and also had to be entered on or before "initial employment." SB 248 has made a number of changes:
- Noncompetition and nonsolicitation agreements are treated differently: A traditional noncompetition agreement that restricts an employee from working for a competitor within a specific geographic region for a period of time (as opposed to a restriction from simply soliciting customers or employees) is subject to new requirements regarding: (1) notice; (2) employee qualifications; (3) protectable interest; (4) minimum compensation; and (5) scope of the restriction:
 - Notice: (1) Employee must be notified of the noncomp requirement in a "written employment offer." (2) Notice must be *received* by the worker at least "two weeks" before the employee's first day of work. ORS 653.295(1)(a)(A).
 - Employee Qualifications: The worker must qualify as an exempt "administrative," "executive" or "professional" employee under Oregon wage and hour law. ORS 653.295(1)(b).
 - Protectable Interest: The employer must demonstrate that it has a "protectable interest," which is now defined by statute to include only trade secrets and competitively sensitive confidential business or professional information (*e.g.* product development plans, product launch plans, marketing strategies or sales plans). ORS 653.295(1)(c). Special requirements exist for "on-air talent."
 - Compensation: The employee must be paid an annual gross salary and/or commissions at the time of termination greater than the median family income for a four-person family (approx. \$62,000 in Oregon currently). ORS 653.295(1)(d). Does not apply to "on-air talent."
 - Scope of Restriction: The maximum time restriction that can be enforced is two years—anything more is voidable and may not be enforced. ORS 653.295(2)
 - Buy Out Option: The exempt status and minimum salary requirements DO NOT apply if, for the time the employee is restricted from working, the employer provides the employee the greater of (a) at least 50% of the employee's annual gross base salary and commissions at the time of the employee's termination; or (b) 50% of the median family income for a four-person family. ORS 653.295(6)

- Agreements that merely prohibit a person from soliciting customers or employees of a former employer are no longer deemed "noncompetition agreements." Thus, the Notice, Employee Qualifications, Protectable Interest, Compensation and Scope of Restriction limitations DO NOT apply to nonsolicitation agreements. ORS 653.295(4). In essence, customer-specific restrictions are no longer limited by the statute.

Question 4: May an employer lawfully terminate a worker who was seriously injured on the job if the worker refuses a suitable light duty job for no reason whatsoever?

- **Answer: After January 1, 2008, probably not.**

Commentary:

- HB 2460 expands the Oregon Family Leave Act ("OFLA") in several ways, and also changes the Oregon Workers' Compensation Act. Most importantly here, it provides that a worker's compensation claimant who refuses an offer of modified or light duty work, and who is otherwise is entitled to OFLA leave, (a) automatically commences a period of protected OFLA leave immediately upon refusing the offer of modified work; and (b) need not give any written or oral notice to the employer that the employee is commencing OFLA leave.

Question 5: When does the statute of limitations begin to run on a claim of unlawful pay discrimination under Title VII?

- **A: As soon as the employer takes an employee's protected status (race, religion, gender, age...etc.) into consideration in making a pay decision?**

Commentary:

- This was the holding in *Ledbetter v. Goodyear Tire & Rubber Co.*, US , 127 S. Ct. 2162 (2007). Lilly Ledbetter had worked for Goodyear for 18 years. Just before her retirement, Ledbetter filed a claim with the EEOC alleging that she had been discriminated against with respect to her pay for many years based on her gender. She argued that the unlawful consideration of her gender in making pay decisions many years earlier had impacted her with each paycheck up to the present day, and argued that each paycheck triggered a new statute of limitations. She argued that pay discrimination was like a cumulative series of individual events like hostile work environment sexual harassment in which the statute of limitation runs from the last event that is part of the claim. The Court, however, held that a discriminatory pay decision is a discrete act like a termination, and so the statute of limitation runs from date of the decision.
- At this time, it is unclear whether Oregon courts will interpret Oregon law in a similar fashion.
- In order to avoid potential statute of limitation problems, *Ledbetter* may cause workers to file seemingly minor pay discrimination claims at very early dates.
- As of July 30, 2007, Congress is considering H.R. 2831, the "Lilly Ledbetter Fair Pay Act," which would reverse the Court's decision. If passed, a new statute of limitations would be triggered by each paycheck, retirement annuity payment...etc. As a result, decisions made many years ago could still be the basis of a pay discrimination claim even years after an employee retires from a company.

Enrolled
House Bill 2260

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Dan Gardner)

CHAPTER

AN ACT

Relating to unlawful employment practices; creating new provisions; and amending ORS 659A.885.

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

SECTION 1. ORS 659A.885 is amended to read:

659A.885. (1) Any individual claiming to be aggrieved by an unlawful practice specified in subsection (2) of this section may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and such other equitable relief as may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Except as provided in subsection (3) of this section:

(a) The judge shall determine the facts in an action under this subsection; and

(b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (3).

(2) An action may be brought under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, 171.120, 399.235, 476.574, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.100 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.203, 659A.218, 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.300, 659A.306, 659A.309, 659A.315, 659A.318 or 659A.421 (1) or (3).

(3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424, **659A.030**, 659A.040, 659A.043, 659A.046, 659A.069, 659A.100 to 659A.145, 659A.230, 659A.250 to 659A.262, 659A.318 or 659A.421 (1) or (3):

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$200, whichever is greater, and punitive damages;

(b) At the request of any party, the action shall be tried to a jury;

(c) Upon appeal of any judgment finding a violation, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1); and

(d) Any attorney fee agreement shall be subject to approval by the court.

(4) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574, 659A.203 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this section, compensatory damages or \$250, whichever is greater.

(5) Any individual against whom any distinction, discrimination or restriction on account of race, color, religion, sex, national origin, marital status or age, if the individual is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS 659A.400, by any person acting on behalf of [such] the place or by any person aiding or abetting [such] the place or person in violation of ORS 659A.406 may bring an action against the operator or manager of [such] the place, the employee or person acting on behalf of [such] the place or the aider or abettor of [such] the place or person. Notwithstanding subsection (1) of this section, in an action under this subsection:

(a) The court may award, in addition to the relief authorized under subsection (1) of this section, compensatory and punitive damages;

(b) The operator or manager of the place of public accommodation, the employee or person acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all damages awarded in the action;

(c) At the request of any party, the action shall be tried to a jury;

(d) The court shall award reasonable attorney fees to a prevailing plaintiff;

(e) The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails only if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court; and

(f) Upon any appeal of a judgment under this subsection, the appellate court shall review the judgment pursuant to the standard established by ORS 19.415 (1).

SECTION 2. The amendments to ORS 659A.885 by section 1 of this 2007 Act apply to actions commenced on or after the effective date of this 2007 Act.

Passed by House March 7, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 17, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State

Enrolled
Senate Bill 248

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

CHAPTER

AN ACT

Relating to employment agreements; creating new provisions; and amending ORS 36.620 and 653.295.

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

SECTION 1. ORS 36.620 is amended to read:

36.620. (1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(2) Subject to ORS 36.625 (8), the court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

(5) A written arbitration agreement entered into between an employer and employee and otherwise valid under subsection (1) of this section is voidable and may not be enforced by a court unless:

(a) The employer informs the employee in a written employment offer received by the employee at least two weeks before the first day of the employee's employment that an arbitration agreement is required as a condition of employment; or

(b) The arbitration agreement is entered into upon a subsequent bona fide advancement of the employee by the employer.

SECTION 2. ORS 653.295 is amended to read:

653.295. (1) A noncompetition agreement entered into between an employer and employee is [void] **voidable** and may not be enforced by [any court in] **a court** of this state unless [the agreement is entered into upon the]:

[(a) *Initial employment of the employee with the employer; or*]

[(b) *Subsequent bona fide advancement of the employee with the employer.*]

(a)(A) The employer informs the employee in a written employment offer received by the employee at least two weeks before the first day of the employee's employment that a noncompetition agreement is required as a condition of employment; or

(B) The noncompetition agreement is entered into upon a subsequent bona fide advancement of the employee by the employer;

(b) The employee is a person described in ORS 653.020 (3);

(c) The employer has a protectable interest. As used in this paragraph, an employer has a protectable interest when the employee:

(A) Has access to trade secrets, as that term is defined in ORS 646.461;

(B) Has access to competitively sensitive confidential business or professional information that otherwise would not qualify as a trade secret, including product development plans, product launch plans, marketing strategy or sales plans; or

(C) Is employed as an on-air talent by an employer in the business of broadcasting and the employer:

(i) In the year preceding the termination of the employee's employment, expended resources equal to or exceeding 10 percent of the employee's annual salary to develop, improve, train or publicly promote the employee, provided that the resources expended by the employer were expended on media that the employer does not own or control; and

(ii) Provides the employee, for the time the employee is restricted from working, the greater of compensation equal to at least 50 percent of the employee's annual gross base salary and commissions at the time of the employee's termination or 50 percent of the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination; and

(d) The total amount of the employee's annual gross salary and commissions, calculated on an annual basis, at the time of the employee's termination exceeds the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination. This paragraph does not apply to an employee described in paragraph (c)(C) of this subsection.

(2) The term of a noncompetition agreement may not exceed two years from the date of the employee's termination. The remainder of a term of a noncompetition agreement in excess of two years is voidable and may not be enforced by a court of this state.

[(2)] (3) [Subsection (1) of this section applies] Subsections (1) and (2) of this section apply only to noncompetition agreements made in the context of an employment relationship or contract and not otherwise.

[(3)(a) Subsection (1)(a) of this section applies only to noncompetition agreements entered into after July 22, 1977.]

[(b) Subsection (1)(b), subsections (4) and (5) and subsection (6)(a) of this section apply to employment relationships and bonus restriction agreements in effect or entered into after October 15, 1983.]

(4) [Subsection (1) of this section does] Subsections (1) and (2) of this section do not apply to:

(a) Bonus restriction agreements, which are lawful agreements that may be enforced by the courts in this state; or

(b) A covenant not to solicit employees of the employer or solicit or transact business with customers of the employer.

(5) Nothing in this section restricts the right of any person to protect trade secrets or other proprietary information by injunction or any other lawful means under other applicable laws.

(6) Notwithstanding subsection (1)(b) and (d) of this section, a noncompetition agreement is enforceable for the full term of the agreement, for up to two years, if the employer provides the employee, for the time the employee is restricted from working, the greater of:

(a) Compensation equal to at least 50 percent of the employee's annual gross base salary and commissions at the time of the employee's termination; or

(b) Fifty percent of the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination.

[(6)] (7) As used in this section:

(a) "Bonus restriction agreement" means an agreement, written or oral, express or implied, between an employer and employee under which:

(A) Competition by the employee with the employer is limited or restrained after termination of employment, but the restraint is limited to a period of time, a geographic area and specified activities, all of which are reasonable in relation to the services described in subparagraph (B) of this paragraph;

(B) The services performed by the employee pursuant to the agreement include substantial involvement in management of the employer's business, personal contact with customers, knowledge of customer requirements related to the employer's business or knowledge of trade secrets or other proprietary information of the employer; and

(C) The penalty imposed on the employee for competition against the employer is limited to forfeiture of profit sharing or other bonus compensation that has not yet been paid to the employee.

(b) **"Broadcasting" means the activity of transmitting of any one-way electronic signal by radio waves, microwaves, wires, coaxial cables, wave guides or other conduits of communications.**

[(b)] (c) "Employee" and "employer" have the meanings given those terms in ORS 652.310.

[(c)] (d) "Noncompetition agreement" means an agreement, written or oral, express or implied, between an employer and employee under which the employee agrees that the employee, either alone or as an employee of another person, will not compete with the employer in providing products, processes or services that are similar to the employer's products, processes or services for a period of time or within a specified geographic area after termination of employment.

SECTION 3. The amendments to ORS 653.295 by section 2 of this 2007 Act apply to non-competition agreements entered into on or after the effective date of this 2007 Act.

SECTION 4. The amendments to ORS 36.620 by section 1 of this 2007 Act apply to arbitration agreements entered into on or after the effective date of this 2007 Act.

SECTION 5. Any noncompetition agreement entered into before the effective date of this 2007 Act shall continue to be governed by ORS 653.295 as in effect immediately before the effective date of this 2007 Act.

Passed by Senate May 11, 2007

Received by Governor:

Repassed by Senate June 26, 2007

.....M.,....., 2007

Approved:

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Secretary of Senate

.....M.,....., 2007

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President of Senate

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Governor

Passed by House June 22, 2007

Filed in Office of Secretary of State:

Repassed by House June 27, 2007

.....M.,....., 2007

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Speaker of House

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Secretary of State

653.295 Noncompetition agreements; bonus restriction agreements; applicability of restrictions. (1) A noncompetition agreement entered into between an employer and employee is void and may not be enforced by any court in this state unless the agreement is entered into upon the:

- (a) Initial employment of the employee with the employer; or
- (b) Subsequent bona fide advancement of the employee with the employer.

(2) Subsection (1) of this section applies only to noncompetition agreements made in the context of an employment relationship or contract and not otherwise.

(3)(a) Subsection (1)(a) of this section applies only to noncompetition agreements entered into after July 22, 1977.

(b) Subsection (1)(b), subsections (4) and (5) and subsection (6)(a) of this section apply to employment relationships and bonus restriction agreements in effect or entered into after October 15, 1983.

(4) Subsection (1) of this section does not apply to bonus restriction agreements, which are lawful agreements that may be enforced by the courts in this state.

(5) Nothing in this section restricts the right of any person to protect trade secrets or other proprietary information by injunction or any other lawful means under other applicable laws.

(6) As used in this section:

(a) "Bonus restriction agreement" means an agreement, written or oral, express or implied, between an employer and employee under which:

(A) Competition by the employee with the employer is limited or restrained after termination of employment, but the restraint is limited to a period of time, a geographic area and specified activities, all of which are reasonable in relation to the services described in subparagraph (B) of this paragraph;

(B) The services performed by the employee pursuant to the agreement include substantial involvement in management of the employer's business, personal contact with customers, knowledge of customer requirements related to the employer's business or knowledge of trade secrets or other proprietary information of the employer; and

(C) The penalty imposed on the employee for competition against the employer is limited to forfeiture of profit sharing or other bonus compensation that has not yet been paid to the employee.

(b) "Employee" and "employer" have the meanings given those terms in ORS 652.300.

(c) "Noncompetition agreement" means an agreement, written or oral, express or implied, between an employer and employee under which the employee agrees that the employee, either alone or as an employee of another person, will not compete with the employer in providing products, processes or services that are similar to the employer's products, processes or services for a period of time or within a specified geographic area after termination of employment.

Enrolled
House Bill 2460

Sponsored by Representatives HOLVEY, ROSENBAUM, SCHAUFLEER

CHAPTER

AN ACT

Relating to Oregon family leave; creating new provisions; and amending ORS 659A.043, 659A.046, 659A.150 and 659A.162.

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

SECTION 1. ORS 659A.150 is amended to read:

659A.150. As used in ORS 659A.150 to 659A.186:

- (1) "Covered employer" means an employer described in ORS 659A.153.
- (2) "Eligible employee" means any employee of a covered employer other than those employees exempted under the provisions of ORS 659A.156.
- (3) "Family leave" means a leave of absence described in ORS 659A.159, **except that "family leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, under ORS chapter 656.**
- (4) "Family member" means the spouse of an employee, the biological, adoptive or foster parent or child of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis.
- (5) "Health care provider" means:
 - (a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person's professional license or certificate and who is:
 - (A) A physician licensed to practice medicine under ORS 677.110, including a doctor of osteopathy;
 - (B) A podiatrist licensed under ORS 677.825;
 - (C) A dentist licensed under ORS 679.090;
 - (D) A psychologist licensed under ORS 675.030;
 - (E) An optometrist licensed under ORS 683.070;
 - (F) A naturopath licensed under ORS 685.080;
 - (G) A registered nurse licensed under ORS 678.050;
 - (H) A nurse practitioner certified under ORS 678.375;
 - (I) A direct entry midwife licensed under ORS 687.420;
 - (J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner;
 - (K) A clinical social worker licensed under ORS 675.530; or
 - (L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.

(6) "Serious health condition" means:

(a) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;

(b) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or

(c) Any period of disability due to pregnancy, or period of absence for prenatal care.

SECTION 2. ORS 659A.162 is amended to read:

659A.162. (1) Except as specifically provided by ORS 659A.150 to 659A.186, an eligible employee is entitled to up to 12 weeks of family leave within any one-year period.

(2)(a) In addition to the 12 weeks of leave authorized by subsection (1) of this section, [a] **eligible** female employee may take a total of 12 weeks of leave within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disables the **eligible** employee from performing any available job duties offered by the employer.

(b) An **eligible** employee who takes 12 weeks of family leave within a one-year period for the purpose specified in ORS 659A.159 (1)(a) may take up to an additional 12 weeks of leave within the one-year period for the purpose specified in ORS 659A.159 (1)(d).

(3) When two family members work for the same covered employer, the **eligible** employees may not take concurrent family leave unless:

(a) One employee needs to care for the other employee who is suffering from a serious health condition; or

(b) One employee needs to care for a child who has a serious health condition while the other employee is also suffering a serious health condition.

(4) An **eligible** employee may take family leave for the purposes specified in ORS 659A.159 (1)(a) in two or more nonconsecutive periods of leave only with the approval of the employer.

(5) Leave need not be provided to an eligible employee by a covered employer for the purpose specified in ORS 659A.159 (1)(d) if another family member is available to care for the child.

(6) A covered employer may not reduce the amount of family leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury.

[(6)] (7) The Commissioner of the Bureau of Labor and Industries shall adopt rules governing when family leave for a serious health condition of an **eligible** employee or a family member of the **eligible** employee may be taken intermittently or by working a reduced workweek. Rules adopted by the commissioner under this subsection shall allow taking of family leave on an intermittent basis or by use of a reduced workweek to the extent permitted by federal law and to the extent that taking family leave on an intermittent basis or by use of a reduced workweek will not result in the loss of an **eligible** employee's exempt status under the federal Fair Labor Standards Act.

SECTION 3. The amendments to ORS 659A.150 and 659A.162 by sections 1 and 2 of this 2007 Act apply only to periods of family leave taken on or after the effective date of this 2007 Act.

SECTION 4. ORS 659A.043 is amended to read:

659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of such position. A worker's former position is available even if that position has been filled by a replacement while the injured worker was absent. If the former position is not available, the worker shall be reinstated in any other existing position that is vacant and suitable. A certificate by the attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 that the physician or nurse practitioner approves the worker's return to

the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Notwithstanding subsection (1) of this section:

(a) The right to reinstatement to the worker's former position under this section terminates when whichever of the following events first occurs:

(A) A medical determination by the attending physician or, after an appeal of such determination to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made that the worker cannot return to the former position of employment.

(B) The worker is eligible and participates in vocational assistance under ORS 656.340.

(C) The worker accepts suitable employment with another employer after becoming medically stationary.

(D) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(E) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 has released the worker for employment unless the worker requests reinstatement within that time period.

(F) Three years elapse from the date of injury.

(b) The right to reinstatement under this section does not apply to:

(A) A worker hired on a temporary basis as a replacement for an injured worker.

(B) A seasonal worker employed to perform less than six months' work in a calendar year.

(C) A worker whose employment at the time of injury resulted from referral from a hiring hall operating pursuant to a collective bargaining agreement.

(D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury and at the time of the worker's demand for reinstatement.

(4) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under subsection (3)(a)(D) of this section and who otherwise is entitled to family leave under ORS 659A.150 to 659A.186:

(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186 upon refusing the offer of employment; and

(b) Need not give additional written or oral notice to the employer that the employee is commencing a period of family leave.

[(4)] (5) Any violation of this section is an unlawful employment practice.

SECTION 5. ORS 659A.043, as amended by section 22, chapter 811, Oregon Laws 2003, and section 470, chapter 22, Oregon Laws 2005, is amended to read:

659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the worker's employer to the worker's former position of employment upon demand for such reinstatement, if the position exists and is available and the worker is not disabled from performing the duties of such position. A worker's former position is available even if that position has been filled by a replacement while the injured worker was absent. If the former position is not available, the worker shall be reinstated in any other existing position that is vacant and suitable. A certificate by the attending physician that the physician approves the worker's return to the worker's regular employment or other suitable employment shall be prima facie evidence that the worker is able to perform such duties.

(2) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(3) Notwithstanding subsection (1) of this section:

(a) The right to reinstatement to the worker's former position under this section terminates when whichever of the following events first occurs:

(A) A medical determination by the attending physician or, after an appeal of such determination to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made that the worker cannot return to the former position of employment.

(B) The worker is eligible and participates in vocational assistance under ORS 656.340.

(C) The worker accepts suitable employment with another employer after becoming medically stationary.

(D) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(E) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for employment unless the worker requests reinstatement within that time period.

(F) Three years elapse from the date of injury.

(b) The right to reinstatement under this section does not apply to:

(A) A worker hired on a temporary basis as a replacement for an injured worker.

(B) A seasonal worker employed to perform less than six months' work in a calendar year.

(C) A worker whose employment at the time of injury resulted from referral from a hiring hall operating pursuant to a collective bargaining agreement.

(D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury and at the time of the worker's demand for reinstatement.

(4) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under subsection (3)(a)(D) of this section and who otherwise is entitled to family leave under ORS 659A.150 to 659A.186:

(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186 upon refusing the offer of employment; and

(b) Need not give additional written or oral notice to the employer that the employee is commencing a period of family leave.

[(4)] (5) Any violation of this section is an unlawful employment practice.

SECTION 6. ORS 659A.046 is amended to read:

659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(3) Notwithstanding subsection (1) of this section, the right to reemployment under this section terminates when whichever of the following events first occurs:

(a) The worker cannot return to reemployment at any position with the employer either by determination of the attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 or upon appeal of that determination, by determination of a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.

(b) The worker is eligible and participates in vocational assistance under ORS 656.340.

(c) The worker accepts suitable employment with another employer after becoming medically stationary.

(d) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(e) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or a nurse practitioner authorized to provide compensable medical services under ORS 656.245 has released the worker for reemployment unless the worker requests reemployment within that time period.

(f) Three years elapse from the date of injury.

(4) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(5) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under subsection (3)(d) of this section and who otherwise is entitled to family leave under ORS 659A.150 to 659A.186:

(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186 upon refusing the offer of employment; and

(b) Need not give additional written or oral notice to the employer that the employee is commencing a period of family leave.

[(5)] (6) Any violation of this section is an unlawful employment practice.

[(6)] (7) This section applies only to employers who employ six or more persons.

SECTION 7. ORS 659A.046, as amended by section 24, chapter 811, Oregon Laws 2003, is amended to read:

659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing the duties of the worker's former regular employment shall, upon demand, be reemployed by the worker's employer at employment which is available and suitable.

(2) A certificate of the worker's attending physician that the worker is able to perform described types of work shall be prima facie evidence of such ability.

(3) Notwithstanding subsection (1) of this section, the right to reemployment under this section terminates when whichever of the following events first occurs:

(a) The worker cannot return to reemployment at any position with the employer either by determination of the attending physician or upon appeal of that determination, by determination of a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.

(b) The worker is eligible and participates in vocational assistance under ORS 656.340.

(c) The worker accepts suitable employment with another employer after becoming medically stationary.

(d) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary.

(e) Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for reemployment unless the worker requests reemployment within that time period.

(f) Three years elapse from the date of injury.

(4) Such right of reemployment shall be subject to the provisions for seniority rights and other employment restrictions contained in a valid collective bargaining agreement between the employer and a representative of the employer's employees.

(5) Notwithstanding ORS 659A.165, a worker who refuses an offer of employment under subsection (3)(d) of this section and who otherwise is entitled to family leave under ORS 659A.150 to 659A.186:

(a) Automatically commences a period of family leave under ORS 659A.150 to 659A.186 upon refusing the offer of employment; and

(b) Need not give additional written or oral notice to the employer that the employee is commencing a period of family leave.

[(5)] (6) Any violation of this section is an unlawful employment practice.

[(6)] (7) This section applies only to employers who employ six or more persons.

SECTION 8. The amendments to ORS 659A.043 and 659A.046 by sections 4 to 7 of this 2007 Act apply only to refusals of employment under ORS 659A.043 (3)(a)(D) and 659A.046 (3)(d) that occur after the effective date of this 2007 Act.

Passed by House March 7, 2007

Repassed by House June 8, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 6, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

.....
Secretary of State

\$100 Question from Land Use/Real Property Law

In what way has the
Oregon Legislature
chosen to ensure that
environmental justice
concerns are addressed
by state agencies?

\$100 Answer from Land Use/Real Property Law

Through the creation of
an Environmental
Justice Task Force.
(reference SB 420)



\$200 Question from Land Use/Real Property Law

What mechanism can a school district use to collect construction taxes in order to help fund capital improvements?

\$200 Answer from Land Use/Real Property Law

An intergovernmental
agreement with local
government. (reference
SB1036)



\$300 Question from Land Use/Real Property Law

What special steps does
one need to take to
assert an adverse
possession claim against
a school district?

\$300 Answer from Land
Use/Real Property Law
After January 1, 2008,
none. Reference
HB2676, taking effect
01/08/2007



\$400 Question from Land Use/Real Property Law

Former ORS 222.750 states: When territory not within a city is surrounded by the corporate boundaries of the city, or by the corporate boundaries of the city and the ocean shore or a stream, bay, lake or other body of water, it is within the power and authority of that city to annex such territory. What does surrounded mean?

1. Completely encircled, but not touching.
2. The city's boundaries must be contiguous in at least 25%.
3. The city's boundaries must be 100% contiguous.

\$400 Answer from Land Use/Real Property Law

3. The city's
boundaries must be
100% contiguous.



\$500 Question from Land Use/Real Property Law

In a petition for judicial review of a state administrative agency's final order in a Measure 37 claim, what courts have jurisdiction if the Final Order is a denial of relief?

\$500 Answer from Land Use/Real Property Law

Marion County Circuit Court
or any circuit court where the
petitioner resides or has a principal
place of business (ORS 197.352,
183.484; Emmel , et al. v. Dep't of
Land Conservation and Development,
et al., 213 Or App 681 (July 5, 2007))



FILED: July 5, 2007

IN THE COURT OF APPEALS OF THE STATE OF OREGON

WAYNE EMMEL,
ROMAYNE EMMEL,
and EMMEL BROTHERS RANCH,

Petitioners,

v.

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
and DEPARTMENT OF ADMINISTRATIVE SERVICES,

Respondents.

Department of Land Conservation and Development
M129856; A135136

On respondents' motion to hold in abeyance filed April 5, 2007; petitioners' objection to motion to hold in abeyance filed April 19, 2007; respondents' motion to determine jurisdiction filed April 5, 2007; and petitioners' reply to motion to dismiss filed April 19, 2007.

Hardy Myers, Attorney General, Mary H. Williams, Solicitor General, and
Denise G. Fjordbeck, Senior Assistant Attorney General, for motions.

Daniel L. Cronin *contra*.

Before Wollheim, Presiding Judge, and Schuman and Rosenblum, Judges.

PER CURIAM

Motion to hold in abeyance dismissed as moot; motion to determine jurisdiction granted; appeal dismissed.

PER CURIAM

Claimants sought \$5,505,500 from the state pursuant to ORS 197.352, commonly known as Measure 37, contending that land use regulations reduced the value of their property in Grant County by that amount. The Department of Land Conservation and Development (DLCD) denied their claim on the ground that two of the three claimants are not the owners of the property and that, as to the third claimant, "no state laws enacted or adopted since [that claimant] acquired the subject property restrict the use of the property." Claimants have sought judicial review in the Circuit Court of Grant County and in this court. DLCD, in response, has filed in this court a "Motion to Determine Jurisdiction." We hold that jurisdiction lies in the circuit court of Grant County.

As we explained in *Corey v. DLCD*, 210 Or App 542, 545, 152 P3d 933 (2007), this court has jurisdiction if the final order resulted from a proceeding "[i]n which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard." ORS 183.310(2)(a)(A). As we also explained in *Corey*, the principles guiding the determination of whether the Due Process Clause of the Fourteenth Amendment of the United States Constitution required notice and a hearing derive from *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 US 40, 119 S Ct 977, 143 L Ed 2d 130 (1999), as construed by the Oregon Supreme Court in *Koskela v. Willamette Industries, Inc.*, 331 Or 362, 15 P3d 548 (2000). *Corey*, 210 Or App at 548-49. Those principles are summarized as follows.

A person has no constitutionally protected property interest in a government benefit for which the person is making a claim of entitlement; the interest arises only when the entitlement is established. Consequently, the person has no right to a hearing as to the determination of entitlement itself. Once initial entitlement is established, however, a person has a constitutionally protected property interest in receiving all of the benefit for which he or she qualifies. Consequently, a person has the right to a hearing (and, under the Oregon Administrative Procedures Act, a full contested case hearing) regarding the extent of the benefit. *Id.* at 551.

Applying those principles in the context of a Measure 37 claim, we concluded in *Corey* that, because the claimant had established her entitlement to compensation or waiver, she had the constitutional right to a hearing regarding the extent of her entitlement. *Id.* at 551-52. Here, in contrast, the decision of which judicial review is sought is DLCD's determination whether claimants had any entitlement at all. Under *Koskela*, that decision is not one on which claimants had a right to a hearing. The final order containing that decision was an order in other than a contested case. Jurisdiction lies in the circuit court.

Motion to hold in abeyance dismissed as moot; motion to determine jurisdiction granted; appeal dismissed.



II. Land Use/Real Estate Law

Question 1: In a petition for judicial review of a State Agency's Final Order in a Measure 37 claim, what courts have jurisdiction if the Final Order is a denial of relief?

Answer: Marion County Circuit Court or any circuit court where the petitioner resides or has a principal place of business.

ORS 197.352, 183.484; *Emmel, et. al. v. Department of Land Conservation and Development, et. al.*, 213 Or App 681 (July 5, 2007).

Written explanation

In the recent Oregon Court of Appeals decision of *Emmel, et. al. v. Department of Land Conservation and Development, et. al.*, 213 Or App 681 (July 5, 2007), the Court of Appeals determined that the procedure whereby a State agency issues a Final Order denying relief under Measure 37 is an other than contested case hearing. Therefore, under ORS 183.484 of the Administrative Procedures Act ("APA") jurisdiction over judicial review of the state agency's decision is in a circuit court, not the Court of Appeals. (Judicial review of orders in other than contested case hearings is conferred on the Marion County Circuit Court or the Circuit Court where the petitioner resides or has a principal place of business.) The appeal was dismissed for lack of jurisdiction.

Question 2: In what way has the Oregon Legislature chosen to ensure that environmental justice concerns are addressed by state agencies?

Answer. Through the creation of an Environmental Justice Task Force.

SB420 requires the Governor to appoint a 12-member task force to advise and review decisions of "natural resource agencies" (e.g., the Department of Environmental Quality, the State Department of Agriculture, the Water Resources Department, the State Department of Fish and Wildlife, the State Forestry Department, the Department of State Lands, the Department of Education, the State Department of Geology and Mineral Industries, the Department of Land Conservation and Development, the State Marine Board, the Public Utility Commission, the Department of Transportation, the State Fire Marshal and the Department of Human Services). The bill appears designed to include the voices of minority and low-income communities in the decision making process of natural resources agencies.

It also appears that the Task Force is to raise awareness throughout the state of environmental justice issues. It is required to meet with "environmental justice communities" and make recommendations to the Governor based on concerns expressed by these communities. It is also required to engage in general public outreach activities.

The law also requires natural resources agencies to consider environmental justice issues when making decisions and to hold hearings at which members of communities affected by natural resource agency decisions can be heard. Moreover, it requires these agencies to report annually to the Environmental Justice Task Force and the Governor on the agency's efforts to address environmental justice concerns.

Therefore, lawyers who work with these natural resources agencies on behalf of their clients should be prepared to address environmental justice issues with those agencies and at any public hearings the lawyer may attend.

Question 3: What mechanism can a school district use to collect construction taxes in order to help fund capital improvements?

Answer: An intergovernmental agreement with local government.

SB 1036 permits construction taxes imposed by a school district to be collected by another local government, local service district or special government body pursuant to a written agreement with a school district. The district board must adopt a tax by resolution after entering into an IGA with local governments for collection of the tax. This agreement will contain collection duties and provide an administrative fee to the local government for collecting the tax.

Such taxes are limited to new construction or construction that adds additional square footage to existing buildings. Excluded from taxation are private school improvements, public contracting, affordable residential housing, hospital improvements, religious facilities construction, and agricultural buildings.

Taxes are limited to \$1 per square foot for residential buildings and \$.50 per square foot for non-residential buildings. Moreover, a non-residential building cannot be taxed more than \$25,000. SB 1036 appears to contemplate that the implementation of these taxes will be similar to system development charges (SDCs).

Question 4: What special steps does one need to take to assert an adverse possession claim against a school district?

Answer: After January 1, 2008, none, because it will not be possible.

HB2676 prohibits assertion of an adverse possession claim against school districts, education service districts, schools for children who are deaf, or schools for children who are blind. The law takes effect on January 1, 2008.

Question 5: Former ORS 222.750 states: "When territory not within a city is surrounded by the corporate boundaries of the city, or by the corporate boundaries of the city and the ocean shore or a stream, bay, lake or other body of water, it is within the power and authority of that city to annex such territory." What does "surrounded by" mean?

- 1. Completely encircled, but not touching**
- 2. the city's boundaries must be contiguous with at least 25% of the territory**
- 3. the city's boundaries must be contiguous with 100% of the territory**

Answer: 3.

The Oregon Supreme Court has interpreted the language to mean that "the city boundaries must be completely contiguous with the perimeter of the area to be annexed." *Costco Wholesale corp et. al. v. City of Beaverton*, SC S53777 (June 7, 2007) (Gillette, J, dissenting, joined by DeMuniz, C.J.). Thus, if a city completely surrounds a territory, but it is composed of more than one property, the city must annex the entire territory and cannot choose to annex only one of the properties making up the full territory.

NOTE: Prior to issuance of the opinion in *Costco*, the Oregon Legislature passed HB 2760, changing ORS 222.750 in significant ways. The bill permits the city to include as a part of its territory public right of ways and water ways, so long as this does not constitute more than 25% of the territory to be annexed. An exception to the 25% maximum occurs when the public right of way at issue is Interstate 5.

HB 2760 also now requires a city to provide notice to property owners in the territory to be annexed and to provide at least one public hearing on the annexation matter prior to proceeding with the annexation.



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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July 6, 2007

TO: Interested Persons, Local Governments and State Agencies

**FROM: Lane Shetterly, Director
Department of Land Conservation and Development (DLCD)**

SUBJECT: 2007 Land Use Legislation

Attached is a report on legislation adopted by the 2007 legislature and that relates to land use planning or related topics such as agency budgets, property law, or city annexations. The list describes legislation that relates to city, county or state land use planning and related matters, and also describes the legislatively referred ballot measure related to land use planning. Not all the bills on this list have necessarily been signed by the governor as of the date of the report. You may also access this list on the DLCD web site at <http://www.lcd.state.or.us/>

The attached list provides only a brief description of each legislative measure. Many of these new laws have other elements in addition to those described in the summary, and many details are not included in this summary. Therefore, it is recommended that you use this document primarily as a reference to new laws that may be of interest to you. If a particular bill does not specify an effective date (usually found at the very end of the bill before the signature lines), the effective date is January 1, 2008.

The attached list includes, for each bill, a hyperlink that can be used to access a "pdf file" of the enrolled version of the bill published on the state's legislative web site. The home page of the legislative web site is <http://www.leg.state.or.us/>.

All legislation considered in the 2007 legislative session, including bills that were not passed, may be obtained at http://www.leg.state.or.us/bills_laws. Print copies of enrolled bills may be ordered by calling the legislative publication office in the state capitol at (503) 986-1180. (This department does not have print copies of legislative measures available for distribution.)

If you have questions or comments about the enclosed report or new legislation, please call Bob Rindy at (503) 373-0050 ext. 229 or email: bob.rindy@state.or.us.

Land Use Legislation Report July 6, 2007

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

The following bills that relate to land use or the state land use program have been enacted by the 2007 Oregon Legislature. Not all of these bills have been signed by the Governor at the time of this report. For questions contact Bob Rindy, (503)373-0050 Ext 229; Bob.rindy@state.or.us

Senate Bills

SB 239

Summary: Eliminates certain land use regulations, relating to agricultural quarantines and embargoes, and to animal and plant disease control, from the list of land use regulations that may restrict use and reduce fair market value of private real property and for which a land owner may claim compensation under Measure 37.
<http://www.leg.state.or.us/07reg/measpdf/sb0200.dir/sb0239.enrolled.pdf>

SB 310

Summary: Authorizes sale of county property by private sale if property is unsuited for dwelling under applicable city or county regulations.
<http://www.leg.state.or.us/07reg/measpdf/sb0300.dir/sb0310.enrolled.pdf>

SB 311

Summary: Adds criteria for determining when an application to a county for a discretionary permit or zone change is deemed complete for purposes of the statutory time limit for action by county.
<http://www.leg.state.or.us/07reg/measpdf/sb0300.dir/sb0311.enrolled.pdf>

SB 336

Summary: Defines "large school district" for purposes school facility planning. Modifies statutory provisions regarding school facility planning and extends length of school facility plan to 10 years. Revises required elements of school facility plan and requires that districts and local governments cooperatively identify and provide adequate land for school facilities by adopting appropriate zoning, aggregating parcels in separate ownership, or adding one or more sites designated for school facilities to an urban growth boundary. Removes statutory provision providing that school capacity cannot be sole basis for approval or denial of a residential development application.
<http://www.leg.state.or.us/07reg/measpdf/sb0300.dir/sb0336.en.pdf>

SB 350

Summary: Modifies administrative provisions for economic and community development. Revises economic and community development programs. Eliminates statutory references to Ports Division and International Trade Commission. Establishes Industry Outreach Fund. Continuously appropriates moneys in fund to Economic and Community Development Department for specified purposes. Declares emergency, effective on passage.
<http://www.leg.state.or.us/07reg/measpdf/sb0300.dir/sb0350.en.pdf>

417

Summary: Abolishes the local government boundary commission having jurisdiction over boundary changes in Lane County, and the Lane County Local Government Boundary Commission Fund. Transfers moneys in the fund to Lane County for specified purposes related to changes to boundaries.

<http://www.leg.state.or.us/07reg/measpdf/sb0400.dir/sb0417.en.pdf>

SB 420

Summary: Creates the Environmental Justice Task Force and specifies its duties and responsibilities. Requires natural resource agencies to create a citizen advocate position that is responsible for encouraging public participation and ensuring the agency considers environmental justice issues and considers the effects of agency actions on environmental justice issues. Lists "natural resource agencies" affected by the bill, including the Department of Land Conservation and Development.

<http://www.leg.state.or.us/07reg/measpdf/sb0400.dir/sb0420.en.pdf>

SB 514

Summary: Establishes property tax special assessment program for land subject to conservation easements. Allows land presently subject to farm use or forestland special assessment to be transferred to conservation easement special assessment without payment of additional tax.

<http://www.leg.state.or.us/07reg/measpdf/sb0500.dir/sb0514.en.pdf>

SB 615

Summary: Grants metropolitan service district (Metro) jurisdiction over boundary changes within Metro district boundaries. Eliminates the current process for contested boundary changes, including the three-person commission established by Metro for contested boundary changes. Requires that Metro establish new criteria for boundary changes and boundary change hearings, and create a notification process and an uncontested boundary change process.

<http://www.leg.state.or.us/07reg/measpdf/sb0600.dir/sb0615.en.pdf>

SB 625

Summary: Modifies the value of county land eligible to be sold by private sale. Governing body of a county may authorize the sale of county land by private sale if land has a real market value of less than \$15,000 on the assessment roll and is unsuited for the construction or placement of a dwelling under current zoning ordinances and building codes of the county.

<http://www.leg.state.or.us/07reg/measpdf/sb0600.dir/sb0625.en.pdf>

SB 665

Summary: Expands previously granted statutory authorization for a professional high-speed auto speedway and related uses in a specified area of Morrow County, notwithstanding requirements of Statewide Planning Goals 3, 11, and 14. Authorizes other related development in addition to development previously allowed in conjunction with the speedway, including commercial and industrial uses and a "speedway destination resort" consisting of a marina, golf course, RV park and resort

housing, through a master planning process, provided the speedway is used for sanctioned professional racing. Allows sewer and water systems to serve the speedway and related development. Declares emergency, effective on passage.
<http://www.leg.state.or.us/07reg/measpdf/sb0600.dir/sb0665.en.pdf>

SB 722

Summary: Modifies standard for review by metropolitan service district of comprehensive plans and land use regulations of cities and counties within district to determine whether comprehensive plans and land use regulations substantially comply with regional framework plan and functional plans. Establishes requirements for enforcement process.
<http://www.leg.state.or.us/07reg/measpdf/sb0700.dir/sb0722.enrolled.pdf>

SB 773

Summary: Eliminates reference to metropolitan service district in certain statutory provisions applicable to districts that conflict with or are superseded by more specific provisions applicable to metropolitan service districts.
<http://www.leg.state.or.us/07reg/measpdf/sb0700.dir/sb0773.en.pdf>

SB 967

Summary: Eliminates certain inactive legislative committees created by statute, and repeals statutes relating to the committees, including the Joint Legislative Committees on Water Policy, Oregon Plan, Transportation, Trade and Economic Development and Land Use.
<http://www.leg.state.or.us/07reg/measpdf/sb0900.dir/sb0967.en.pdf>

SB 1011

Summary: Authorizes counties and metropolitan service districts to create a process to designate rural reserves on land not included in urban growth boundaries or rural communities. Modifies the process for designating urban reserves in Metro area. Declares emergency, effective on passage.
<http://www.leg.state.or.us/07reg/measpdf/sb1000.dir/sb1011.en.pdf>

SB 1036

Summary: Restricts local government power to impose construction excise taxes. Authorizes school districts to impose construction taxes. Dedicates revenues from such taxes to capital construction. Authorizes school district to pledge construction taxes to payment of obligations issued to finance or refinance capital improvements. Declares emergency, effective on passage.
<http://www.leg.state.or.us/07reg/measpdf/sb1000.dir/sb1036.en.pdf>

SB 1042

Summary: Prohibits siting of casino in incorporated city without approval of electors of city and cities adjacent to city. Requires city to submit question of siting of casino to electors of city before city can approve siting of casino in city. Exempts tribal casinos. Declares emergency, effective on passage.
<http://www.leg.state.or.us/07reg/measpdf/sb1000.dir/sb1042.enrolled.pdf>

SB 1044

Summary: Modifies ratio of "units for residential sale to units of overnight lodging" in destination resorts in Eastern Oregon (This modification corrects a scrivener's error in the destination resort statutes so as to re-establish the amended ratio intended by 2003 legislation).

<http://www.leg.state.or.us/07reg/measpdf/sb1000.dir/sb1044.enrolled.pdf>

SB 5549

Summary: Adjusts appropriations from General Fund to various agencies for specified purposes. Increases the appropriation to DLCD for Measure 37 claims administration and significantly reduces funding for the Big Look task force.

<http://www.leg.state.or.us/07reg/measpdf/sb5500.dir/sb5549.en.pdf>

House Bills

HB 2051

Summary: Postpones, from December 1, 2007 to a date not later than December 31, 2009, Metro's requirement to complete its inventory, determination and analysis of housing capacity and land need within the Metro area urban growth boundary.

<http://www.leg.state.or.us/07reg/measpdf/hb2000.dir/hb2051.en.pdf>

HB 2095

Summary: Allows housing authority to own mixed income housing projects, and to form, finance, have nonstock interest in and manage or operate partnerships, nonprofit corporations and limited liability companies to further purposes of housing authority. Revises definitions for affordable housing and for persons meeting housing authority income criteria. Defines "property of a housing authority" for tax and special assessment purposes.

<http://www.leg.state.or.us/07reg/measpdf/hb2000.dir/hb2095.en.pdf>

HB 2096

Summary: Authorizes formation of manufactured dwelling park nonprofit cooperatives. Allows manufactured dwelling park nonprofit cooperatives to qualify for housing loans and technical assistance programs. Requires report to 2009 legislature from the Land Conservation and Development Commission regarding streamlining of UGB requirements regarding manufactured housing.

<http://www.leg.state.or.us/07reg/measpdf/hb2000.dir/hb2096.en.pdf>

HB 2122

Summary: Authorizes agencies to delegate authority to enter a final order in a proceeding, or class of proceedings, to an officer or employee of the agency or to a class of officers or employees of the agency.

<http://www.leg.state.or.us/07reg/measpdf/hb2100.dir/hb2122.en.pdf>

HB 2210

Summary: Creates tax credits and other provisions relating to biofuel. Amends ORS 215 regarding exclusive farm use (EFU) zones to allow the on-farm processing of farm crops into biofuel.

<http://www.leg.state.or.us/07reg/measpdf/hb2200.dir/hb2210.en.pdf>

HB 2640

Summary: Establishes election dates, procedures, ballot titles and explanatory statements for legislatively referred measures, including the measure to amend Ballot Measure 37 (see HB 3540) to be voted on in the November 2007 election.

Appropriates moneys from General Fund to Secretary of State for expenses incurred in submitting specified measures to the people. Declares emergency, effective on passage.

<http://www.leg.state.or.us/07reg/measpdf/hb2600.dir/hb2640.en.pdf>

HB 2713

Summary: Authorizes utility easements for private utility infrastructure. Prohibits placement of public or private utility infrastructure within one foot of a survey monument on subdivision or partition plat.

<http://www.leg.state.or.us/07reg/measpdf/hb2700.dir/hb2713.en.pdf>

HB 2723

Summary: Provides authority, and establishes a process, for a county or city to validate an unlawfully created unit of land created on or before January 1, 2007. Allows existing use to continue on unlawful units of land. Requires specific documentation that a new lot or parcel is lawful to be included in deed by the seller of the new lot or parcel created after the effective date of this Act. Defines "lawfully established unit of land." Adds new warnings to buyers advising them to check on the lawfulness of a unit of land when considering purchase. Requires seller of property to disclose whether unit of land being transferred was unlawfully established.

<http://www.leg.state.or.us/07reg/measpdf/hb2700.dir/hb2723.en.pdf>

HB 2735

Summary: Prohibits local government from enforcing local laws regulating manufactured dwelling park closures or partial closures adopted or amended by a local government after July 1, 2007. Allows amendment of a local law after effective date of the Act if the amendment increases rights of manufactured dwelling park tenants to be equal to or greater than rights established by this Act. Modifies provisions relating to local restrictions on placement of manufactured dwelling due solely to its age. Establishes payment obligation for a manufactured dwelling park landlord closing a manufactured park or portion of a park. Allows tax credit to owners of manufactured dwelling as primary residence who end tenancy as result of the manufactured dwelling park closure. Establishes a payment obligation for a marina landlord closing a marina or portion of marina.

<http://www.leg.state.or.us/07reg/measpdf/hb2700.dir/hb2735.en.pdf>

HB 2760

Summary: Modifies requirements and procedures for a city to annex territory surrounded by the city. Allows no more than 25 percent of the perimeter of a city boundary to consist of public right of way for purposes of an "island annexation". Provides definition of creek and river when used to define city boundaries for purposes of an "island annexation", and allows Interstate Highway 5 to be included as part of a city boundary for such purpose. Requires the annexation date take effect at least three years and not more than ten years after proclamation of island annexation unless property is sold, in which case, annexation takes effect immediately upon property transfer. Specifies deadlines for city recorder to notify county clerk of approved delayed annexation. Declares an emergency, effective on passage.

<http://www.leg.state.or.us/07reg/measpdf/hb2700.dir/hb2760.en.pdf>

HB 2992

Summary: Allows division of lot or parcel in forest zone or mixed farm and forest zone into two parcels if one parcel is to be sold to provider of public parks or open space, or not-for-profit land conservation organization, and remaining parcel is large enough to support dwelling.

<http://www.leg.state.or.us/07reg/measpdf/hb2900.dir/hb2992.en.pdf>

HB 3013

Summary: Prohibits city or district from commencing annexation proceedings for part of area included within boundaries of area proposed for incorporation in petition for incorporation.

<http://www.leg.state.or.us/07reg/measpdf/hb3000.dir/hb3013.en.pdf>

HB 3025

Summary: Modifies definition of "land use decision" and "limited land use decision" to exclude decision of local government that approves or denies final plat or that determines whether final plat substantially conforms to tentative subdivision or partition plan.

<http://www.leg.state.or.us/07reg/measpdf/hb3000.dir/hb3025.en.pdf>

HB 3303

Summary: Requires city to allow electors, if any, in surrounded territory proposed to be annexed to vote if city charter, ordinance or resolution requires city to hold election in city. Requires that votes from city and territory be combined to determine single majority in election.

<http://www.leg.state.or.us/07reg/measpdf/hb3300.dir/hb3303.en.pdf>

HB 3337

Summary: Separates Eugene/Springfield urban growth boundary into two boundaries and requires each city, within two years, to demonstrate that the UGB provides sufficient buildable lands for 20-year housing needs.

<http://www.leg.state.or.us/07reg/measpdf/hb3300.dir/hb3337.en.pdf>

HB 3436

Summary: Modifies requirements for population forecasting for maintaining and updating comprehensive plans, including requirements currently adopted as LCDC rules (OAR 660-024-0030).

<http://www.leg.state.or.us/07reg/measpdf/hb3400.dir/hb3436.en.pdf>

HB 3485

Summary: Authorizes creation of affordable housing covenant restricting price, rental rate or occupancy to encourage development or ensure continued availability of rental and owner-occupied affordable housing for low or moderate income households or moderate income individuals

<http://www.leg.state.or.us/07reg/measpdf/hb3400.dir/hb3485.en.pdf>

HB 3540

Summary: Revises laws (ORS 197.352 enacted by 2004 Ballot Measure 37) relating to compensation of property owners for land use regulations. Continuously appropriates moneys in Compensation and Conservation Fund to Department of Land Conservation and Development to pay expenses incurred to review Measure 37 claims. Refers the revised law to the people for their approval or rejection at a special election to be held in November 2007, as specified and summarized in House Bill HB 2640.

<http://www.leg.state.or.us/07reg/measpdf/hb3500.dir/hb3540.en.pdf>

HB 3546

Summary: Allows public entities an additional 360 days to review and act on certain Measure 37 claims before the property owner is entitled to file civil action for compensation. Appropriates moneys from General Fund to the Department of Land Conservation and Development for costs of reviewing Measure 37 claims during the extended review period. Declares emergency, effective on passage.

<http://www.leg.state.or.us/07reg/measpdf/hb3500.dir/hb3546.en.pdf>

HB 5033

Summary: DLCDC Budget. Appropriates moneys from General Fund to Department of Land Conservation and Development for biennial expenses. Limits certain biennial expenditures from fees, moneys or other revenues. Limits biennial expenditures by department from federal funds. Declares emergency, effect July 1, 2007

<http://www.leg.state.or.us/07reg/measpdf/hb5000.dir/hb5033.en.pdf>

\$100 Question from Injury Law

Under new Oregon legislation, in an action for economic damages because of an injury caused by a dog, can the dog's owner allege as a defense that the owner could not foresee that the dog would cause the injury?

\$100 Answer from Injury Law

No. The owner of the dog may not assert as a defense that the owner could not foresee that the dog would cause the injury pursuant to HB 2345. The owner can continue to assert all other defenses appropriate to the claim.



\$200 Question from Injury Law

Under new Oregon legislation, can a workers' compensation claimant who prevails over a denial at hearing recover costs?

\$200 Answer from Injury Law

Yes. The prevailing claimant can recover up to \$1500.00 at the discretion of the ALJ.



\$300 Question from Injury Law

Under new Oregon legislation, are insurers permitted to provide for a family member step down to minimum limits for UM/UIM coverage even where the policy provides for higher limits?

\$300 Answer from Injury Law

No.



\$400 Question from Injury Law

Under new Oregon legislation, in a lawsuit against the underlying tortfeasor, is the PIP arbitration decision binding on:

- A. Plaintiff?
- B. Defendant?
- C. Plaintiff and Defendant?
- D. Neither Plaintiff or Defendant?

\$400 Answer from Injury Law

D. The PIP arbitration is not binding on either Plaintiff or Defendant in the case against the underlying tortfeasor pursuant to SB 256.



\$500 Question from Injury Law

Under new Oregon legislation, is the statute of limitations for a parent's claim for recovery of medical expenses paid by the parent on behalf of the minor child tolled?

\$500 Answer from Injury Law

Yes, under new Oregon legislation, the parent's claim is tolled by virtue of the child's disability (minority) to the same extent that the child's claim is tolled. HB 2366



III. Personal Injury/Workers' Compensation Law

Question 1: Under new Oregon legislation, in an action for economic damages because of an injury caused by a dog, can the dog's owner allege as a defense that the owner could not foresee that the dog would cause the injury?

Answer: No. The owner of the dog may not assert as a defense that the owner could not foresee that the dog would cause the injury pursuant to HB 2345. The owner can continue to assert all other defenses appropriate to the claim.

Question 2: Under new Oregon legislation, can a workers' compensation claimant who prevails over a denial at hearing recover costs?

Answer: Yes. The prevailing claimant can recover up to \$1,500 at the discretion of the ALJ. See SB 404 (attached).

Question 3: Under new Oregon legislation, are insurers permitted to provide for a family member step down to minimum limits for UM/UIM coverage even where the policy provides for higher limits?

Answer: No. See HB 3086 (attached).

Question 4: Under new Oregon legislation, in a lawsuit against the underlying tortfeasor, is the PIP arbitration decision binding on:

- a. Plaintiff?
- b. Defendant?
- c. Plaintiff and Defendant?
- d. Neither Plaintiff nor Defendant?

Answer: D. The PIP arbitration decision is not binding on either Plaintiff or Defendant in the case against the underlying tortfeasor pursuant to SB 256.

Question 5: Under new Oregon legislation, is the statute of limitations for a parent's claim for recovery of medical expenses paid by the parent on behalf of a minor child tolled?

Answer: Yes, under new Oregon legislation, the parent's claim is tolled by virtue of the child's disability (minority) to the same extent that the child's claim is tolled. HB 2366.

Question 6: Under new Oregon legislation, do you need court approval to settle a minor's claim for \$25,000?

Answer: No, pursuant to HB 3083, you do not need court approval to settle a claim in the amount of \$25,000 or less provided the following conditions are met: (1) a conservator has not been appointed for the minor; (2) the total amount of the claim is \$25,000 or less; (3) the moneys paid under the settlement agreement will be deposited directly into a federally insured savings account in the sole name of the minor with notice of the deposit to the minor; and (4) the person entering into the settlement agreement on behalf of the minor completes an affidavit or verified statement that attests that the person has made a reasonable inquiry and that the minor will be fully compensated by the settlement or that there is no practical way to obtain additional amounts from the party entering into the settlement agreement with the minor.

74th OREGON LEGISLATIVE ASSEMBLY--2007 Regular Session

Enrolled

House Bill 2345

Ordered printed by the Speaker pursuant to House Rule 12.00A (5).
Pre-session filed (at the request of House Interim Committee on
Judiciary)

CHAPTER

AN ACT

Relating to dogs.

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

SECTION 1. { + (1) For the purpose of establishing a claim for economic damages, as defined in ORS 31.710, in an action arising from an injury caused by a dog:

(a) The plaintiff need not prove that the owner of the dog could foresee that the dog would cause the injury; and

(b) The owner of the dog may not assert as a defense that the owner could not foresee that the dog would cause the injury.

(2) This section does not prevent the owner of a dog that caused an injury from asserting that the dog was provoked, or from asserting any other defense that may be available to the owner.

(3) This section does not affect the requirements for an award of punitive damages provided in ORS 31.730 (1). + }

Passed by House April 3, 2007

Repassed by House May 31, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 29, 2007

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President of Senate

Enrolled House Bill 2345 (HB 2345-B)

Page 1

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

.....
Governor

Filed in Office of Secretary of State:

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Secretary of State

74th OREGON LEGISLATIVE ASSEMBLY--2007 Regular Session

Enrolled

Senate Bill 404

Sponsored by COMMITTEE ON RULES

CHAPTER

AN ACT

Relating to workers' compensation claims; creating new provisions; and amending ORS 656.386 and 656.388

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

SECTION 1. ORS 656.386 is amended to read:

656.386. (1)(a) In all cases involving denied claims where a claimant finally prevails against the denial in an appeal to the Court of Appeals or petition for review to the Supreme Court, the court shall allow a reasonable attorney fee to the claimant's attorney. In such cases involving denied claims where the claimant prevails finally in a hearing before an Administrative Law Judge or in a review by the Workers' Compensation Board, then the Administrative Law Judge or board shall allow a reasonable attorney fee. In such cases involving denied claims where an attorney is instrumental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge, a reasonable attorney fee shall be allowed.

(b) For purposes of this section, a 'denied claim' is:

(A) A claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation;

(B) A claim for compensation for a condition omitted from a notice of acceptance, made pursuant to ORS 656.262 (6)(d), which the insurer or self-insured employer does not respond to within 60 days; or

(C) A claim for an aggravation made pursuant to ORS 656.273 (2) or for a new medical condition made pursuant to ORS 656.267, which the insurer or self-insured employer does not respond to within 60 days.

(c) A denied claim shall not be presumed or implied from an insurer's or self-insured employer's failure to pay compensation for a previously accepted injury or condition in timely fashion. Attorney fees provided for in this subsection shall be paid by the insurer or self-insured employer.

{ + (2)(a) If a claimant finally prevails against a denial as provided in subsection (1) of this section, the court, board or Administrative Law Judge may order payment of the claimant's reasonable expenses and costs for records, expert opinions and witness fees.

(b) The court, board or Administrative Law Judge shall determine the reasonableness of witness fees, expenses and costs for the purpose of paragraph (a) of this subsection.

(c) Payments for witness fees, expenses and costs ordered under this subsection shall be made by the insurer or self-insured employer and are in addition to compensation payable to the claimant.

(d) Payments for witness fees, expenses and costs ordered under this subsection may not exceed \$1,500 unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount. + }

{ - (2) - } { + (3) + } In all other cases, attorney fees shall be paid from the increase in the claimant's compensation, if any, except as otherwise expressly provided in this chapter.

SECTION 2. { + The amendments to ORS 656.386 by section 1 of this 2007 Act apply to workers' compensation claims in which the order on the compensability of the claim denial has not become final on or before the effective date of this 2007 Act. + }

SECTION 3. ORS 656.388 is amended to read:

656.388. (1) No claim or payment for legal services by an attorney representing the worker or for any other services rendered before an Administrative Law Judge or the Workers' Compensation Board, as the case may be, in respect to any claim or award for compensation to or on account of any person, shall be valid unless approved by the Administrative Law Judge or board, or if proceedings on appeal from the order of the board with respect to such claim or award are had before any court, unless approved by such court. In cases in which a claimant finally prevails after remand from the Supreme Court, Court of Appeals or board, then the Administrative Law Judge, board or appellate court shall approve or allow a reasonable attorney fee for services before every prior forum as authorized under ORS 656.307 (5), 656.308 (2), 656.382 or 656.386. No attorney fees shall be approved or allowed for representation of the claimant before the managed care organization or Director of the Department of Consumer and Business Services except for representation at the contested case hearing.

(2) Any claim for payment to a claimant's attorney by the claimant so approved shall, in the manner and to the extent fixed by the Administrative Law Judge, board or such court, be a lien upon compensation.

{ + (3) If an injured worker signs an attorney fee agreement with an attorney for representation on a claim made pursuant to this chapter and additional compensation is awarded to the worker or a settlement agreement is consummated on the claim after the fee agreement is signed and it is shown that the attorney with whom the fee agreement was signed was instrumental in obtaining the additional compensation or settling the claim, the Administrative Law Judge or the board shall grant the attorney a lien for attorney fees out of the additional compensation awarded or proceeds of the settlement in accordance with rules adopted by the board governing the payment of attorney fees. + }

{ - (3) - } { + (4) + } The board shall, after consultation with the Board of Governors of the Oregon State Bar, establish a schedule of fees for attorneys representing a worker and representing an insurer or self-insured employer, under this chapter.

{ - (4) - } { + (5) + } The board shall approve no claim for legal services by an attorney representing a claimant to be paid by the claimant if fees have been awarded to the claimant or

the attorney of the claimant in connection with the same proceeding under ORS 656.268.

{ - (5) - } { + (6) + } Insurers and self-insured employers shall make an annual report to the Director of the Department of Consumer and Business Services reporting attorney salaries and other costs of legal services incurred pursuant to this chapter. The report shall be in such form and shall contain such information as the director prescribes.

SECTION 4. { + The amendments to ORS 656.388 by section 3 of this 2007 Act apply to all claims in which an order that grants attorney fees is issued after the effective date of this 2007 Act, regardless of the date of injury. + }

Passed by Senate May 3, 2007

Repassed by Senate June 13, 2007

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Secretary of Senate

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President of Senate

Passed by House June 8, 2007

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Speaker of House

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.....
Governor

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.....
Secretary of State

74th OREGON LEGISLATIVE ASSEMBLY--2007 Regular Session

Enrolled

House Bill 3086

Sponsored by COMMITTEE ON CONSUMER PROTECTION

CHAPTER

AN ACT

Relating to motor vehicle liability insurance; creating new provisions; and amending ORS 742.450, 742.502 and 742.504.

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

SECTION 1. ORS 742.450 is amended to read:

742.450. (1) Every motor vehicle liability insurance policy issued for delivery in this state shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability.

(2) Every motor vehicle liability insurance policy issued for delivery in this state shall contain an agreement or indorsement stating that, as respects bodily injury and death or property damage, or both, the insurance provides either:

- (a) The coverage described in ORS 806.070 and 806.080; or
- (b) The coverage described in ORS 806.270.

(3) The agreement or indorsement required by subsection (2) of this section shall also state that the insurance provided is subject to all the provisions of the Oregon Vehicle Code relating to financial responsibility requirements as defined in ORS 801.280 or future responsibility filings as defined in ORS 801.290, as appropriate.

(4) Every motor vehicle liability insurance policy issued for delivery in this state shall provide liability coverage to at least the limits specified in ORS 806.070.

(5) Every motor vehicle liability insurance policy issued for delivery in this state shall provide liability coverage, up to the limits of coverage under the policy for a vehicle owned by the named insured, for the operation by the named insured of a motor vehicle provided to the named insured, without regard to whether the named insured is charged for the use of the motor vehicle, if:

(a) The motor vehicle is provided to the named insured by a person engaged in the business of repairing or servicing motor vehicles; and

(b) The motor vehicle is provided to the named insured as a temporary replacement vehicle while the named insured's vehicle is being repaired or serviced.

(6) A motor vehicle liability insurance policy issued for delivery in this state may exclude by name from coverage required by subsection (2)(a) of this section any person other than the named insured, for any of the reasons stated in subsection (7) of this section. When an insurer excludes a person as provided by

this subsection, the insurer shall obtain a statement or indorsement, signed by each of the named insureds, that the policy will not provide any coverage required by subsection (2)(a) of this section when the motor vehicle is driven by any named excluded person.

(7) A person may be excluded from coverage under a motor vehicle liability insurance policy as provided in subsection (6) of this section:

(a) Because of the driving record of the person. The Director of the Department of Consumer and Business Services by rule may establish restrictions on the use of the driving record in addition to other restrictions established by law.

(b) Because of any reason or set of criteria established by the director by rule.

{ + (8) Every motor vehicle liability insurance policy issued for delivery in this state shall contain a provision that provides liability coverage for each family member of the insured residing in the same household as the insured in an amount equal to the amount of liability coverage purchased by the insured. + }

SECTION 2. ORS 742.502 is amended to read:

742.502. (1) Every motor vehicle liability policy insuring against loss suffered by any natural person resulting from liability imposed by law for bodily injury or death arising out of the ownership, maintenance or use of a motor vehicle shall provide in the policy or by indorsement on the policy uninsured motorist coverage when the policy is either:

(a) Issued for delivery in this state; or

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

(2)(a) A motor vehicle bodily injury liability policy shall have the same limits for uninsured motorist coverage as for bodily injury liability coverage unless a named insured in writing elects lower limits. The insured may not elect limits lower than the amounts prescribed to meet the requirements of ORS 806.070 for bodily injury or death. Uninsured motorist coverage shall include underinsurance coverage for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of a motor vehicle with motor vehicle liability insurance that provides recovery in an amount that is less than the insured's uninsured motorist coverage. Underinsurance benefits shall be equal to uninsured motorist coverage benefits less the amount recovered from other motor vehicle liability insurance policies.

(b) If a named insured elects lower limits, the named insured shall sign a statement electing lower limits within 60 days of the time the named insured makes the election. The statement shall acknowledge that a named insured was offered uninsured motorist coverage with the limits equal to those for bodily injury liability. The statement shall contain a brief summary, which may not be construed as part of the insurance contract, of what uninsured and underinsured motorist coverages provide and shall state the price for coverage with limits equal to the named insured's bodily injury liability limits and the price for coverage with the lower limits requested by the named insured. The statement shall remain in force until rescinded in writing by a named insured or until the motor vehicle bodily injury liability limits are changed. The form of statement used to comply with this paragraph shall be approved by the Department of Consumer and Business Services.

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

(3) The insurer issuing such policy may offer one or more options of uninsured motorist coverage larger than the amounts prescribed to meet the requirements of ORS 806.070 and in excess of the limits provided under the policy for motor vehicle bodily injury liability insurance. Offers of uninsured motorist coverage shall include underinsurance coverage for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of a motor vehicle with motor vehicle liability insurance that provides recovery in an amount that is less than the insured's uninsured motorist coverage. Underinsurance benefits shall be equal to uninsured motorist coverage benefits less the amount recovered from other motor vehicle liability insurance policies.

(4) Underinsurance coverage is subject to ORS 742.504 and 742.542.

(5) Uninsured motorist coverage and underinsurance coverage shall provide coverage for bodily injury or death when:

(a) The limits for uninsured motorist coverage of the insured equal the limits of the liability policy of the person whose fault caused the bodily injury or death; and

(b) The amount of liability insurance recovered is less than the limits for uninsured motorist coverage of the insured.

(6) As used in this section and except as otherwise provided in this subsection, 'amount recovered from other motor vehicle liability insurance policies' means the proceeds of liability insurance { + or the proceeds received from a public body under ORS 30.270 + } recovered by or on behalf of the injured party. Proceeds recovered on behalf of the injured party include proceeds received by the injured party's insurer as reimbursement for personal injury protection benefits provided to the injured person, proceeds received by the medical providers of the injured person and proceeds received as attorney fees on the claim of the injured person. Where applicable liability insurance policy limits are exhausted upon payment, settlement or judgment by division among two or more injured persons, 'amount recovered from other motor vehicle liability insurance policies' means the proceeds that are recovered by or on behalf of the injured person but does not include any proceeds of that liability policy received by other injured persons.

SECTION 3. 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 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 requires the insurer to reproduce in the policy the particular language of any of the following provisions:

(1)(a) The insurer will pay all sums that the insured, the heirs or the legal representative of the insured 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 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 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.

(c) 'Insured,' when unqualified 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 named insured and relatives of either, provided that neither the relative nor the spouse is the owner of a vehicle not described in the policy and 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.

(d) 'Insured vehicle,' except as provided in paragraph (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 the vehicle and

the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any member of the same household.

(e) 'Insured vehicle' does not include a trailer of any type unless 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.

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

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

(B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability insurance;

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

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

{ + (j) 'Sums that the insured, the heirs or the legal representative of the insured is legally entitled to recover as general and special damages from the owner or operator of an uninsured vehicle' means the amount of damages that:

(A) A claimant could have recovered in a civil action from the owner or operator at the time of the injury after determination of fault or comparative fault and resolution of any applicable defenses;

(B) Are calculated without regard to the tort claims limitations of ORS 30.260 to 30.300; and

(C) Are no larger than benefits payable under the terms of the policy as provided in subsection (7) of this section. + }

{ - (j) - } { + (k) + } 'Uninsured vehicle,' except as provided in paragraph { - (k) - } { + (L) + } of this provision, means:

(A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible 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 the vehicle, or with respect to which there is collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the insurance denies coverage or the company writing the 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 motor vehicle bodily injury liability insurance applicable at the time of the accident.

(B) A hit-and-run vehicle.

(C) A phantom vehicle.

(D) A stolen vehicle.

{ - (k) - } { + (L) + } 'Uninsured vehicle' does not include:

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

(B) A vehicle 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 that is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any 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.

{ - (L) - } { + (m) + } '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 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 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 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

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 fails to furnish 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 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 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 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 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 the owner or operator for 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 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 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) 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 primary insurance available to the occupant 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 primary insurance available to the occupant.

(b) If an insured is an insured under other primary or excess insurance available to the insured that is similar to this coverage, then the insured's damages are deemed not to exceed the higher of the applicable limits of liability of the additional primary or excess insurance available to the insured, and the insurer 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 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 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 other insurance.

(10) If any person making claim hereunder and the insurer do not agree that 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 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 do not exceed \$100 and that all other costs of arbitration are borne by the insurer. 'Costs' as used in this provision does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. 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, 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 the payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the person against any uninsured motorist legally responsible for the bodily injury because of which payment is made;

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

(d) 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, the person shall take, through any representative not in conflict in interest with

the person, designated by the insurer, such action as may be necessary or appropriate to recover payment as damages from such other uninsured person or organization, such action to be taken in the name of 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 the recovery for expenses, costs and attorney fees incurred by the insurer in connection therewith; and

(f) The person shall execute and deliver to the insurer any instruments and papers as may be appropriate to secure the rights and obligations of 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; or

(D) Suit for bodily injury has been filed against the insured motorist 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.

(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 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 4. { + The amendments to ORS 742.450, 742.502 and 742.504 + } { + by sections 1 to 3 of this 2007 Act apply to motor vehicle liability insurance policies issued or renewed on or after the effective date of this 2007 Act. + }

.....
Chief Clerk of House

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Speaker of House

Passed by Senate June 18, 2007

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President of Senate

Enrolled House Bill 3086 (HB 3086-INTRO)

Page 11

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Enrolled

Senate Bill 256

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CHAPTER

AN ACT

Relating to arbitration of motor vehicle liability disputes; creating new provisions; and amending ORS 742.504, 742.520 and 742.522.

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

SECTION 1. { + Sections 2 and 3 of this 2007 Act are added to and made a part of ORS chapter 742. + }

SECTION 2. { + Unless the parties agree otherwise, arbitration proceedings under ORS 742.504 shall be conducted as follows:

(1) Parties to an arbitration proceeding shall submit the dispute to arbitration by a panel of three arbitrators. The panel shall consist of one arbitrator chosen by each party and one arbitrator chosen by the two arbitrators previously chosen to sit on the panel.

(2) An arbitration proceeding shall be conducted under local court rules in the county where the arbitration is held. + }

SECTION 3. { + (1) Arbitration proceedings under ORS 742.520 shall be conducted under local court rules in the county where the arbitration is held.

(2) Findings and awards made in an arbitration proceeding under this section:

- (a) Are binding on the parties to the arbitration proceeding;
- (b) Are not binding on any other party; and
- (c) May not be used for the purpose of collateral estoppel. + }

SECTION 4. { + Section 2 of this 2007 Act is repealed on January 2, 2012. + }

SECTION 5. 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 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 requires the insurer to reproduce in the policy the particular language of any of the following provisions:

(1)(a) The insurer will pay all sums that the insured, the heirs or the legal representative of the insured 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 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 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.

(c) 'Insured,' when unqualified 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 named insured and relatives of either, provided that neither the relative nor the spouse is the owner of a vehicle not described in the policy and 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.

(d) 'Insured vehicle,' except as provided in paragraph (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 the vehicle and the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any member of the same household.

(e) 'Insured vehicle' does not include a trailer of any type unless 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.

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

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

(B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability insurance;

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

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

(j) 'Uninsured vehicle,' except as provided in paragraph (k) of this provision, means:

(A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible 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 the vehicle, or with respect to which there is collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the insurance denies coverage or the company writing the 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 motor vehicle bodily injury liability insurance applicable at the time of the accident.

(B) A hit-and-run vehicle.

(C) A phantom vehicle.

(D) A stolen vehicle.

(k) 'Uninsured vehicle' does not include:

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

(B) A vehicle 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 that is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any 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.

(L) '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 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 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 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 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 fails to furnish 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 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 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 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 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 the owner or operator for 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 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 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) 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 primary insurance available to the occupant 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 primary insurance available to the occupant.

(b) If an insured is an insured under other primary or excess insurance available to the insured that is similar to this coverage, then the insured's damages are deemed not to exceed the higher of the applicable limits of liability of the additional primary or excess insurance available to the insured, and the insurer 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 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 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 other insurance.

(10) If any person making claim hereunder and the insurer do not agree that the person is legally entitled to recover damages from the owner or operator of an uninsured vehicle because of

payment 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 - } { + as described in section 2 of this 2007 Act + }. 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 do not exceed \$100 and that all other costs of arbitration are borne by the insurer. 'Costs' as used in this provision does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. 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, 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 the payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the person against any uninsured motorist legally responsible for the bodily injury because of which payment is made;

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

(d) 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, the person shall take, through any representative not in conflict in interest with the person, designated by the insurer, such action as may be necessary or appropriate to recover payment as damages from such other uninsured person or organization, such action to be taken in the name of 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 the recovery for expenses, costs and attorney fees incurred by the insurer in connection therewith; and

(f) The person shall execute and deliver to the insurer any instruments and papers as may be appropriate to secure the rights

and obligations of 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; or

(D) Suit for bodily injury has been filed against the uninsured motorist 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.

(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 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 6. ORS 742.504, as amended by section 5 of this 2007 Act, is amended to read:

742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide uninsured motorist coverage 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 requires the insurer to reproduce in the policy the particular language of any of the following provisions:

(1)(a) The insurer will pay all sums that the insured, the heirs or the legal representative of the insured 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 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 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.

(c) 'Insured,' when unqualified 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 named insured and relatives of either, provided that neither the relative nor the spouse is the owner of a vehicle not described in the policy and 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.

(d) 'Insured vehicle,' except as provided in paragraph (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 the vehicle and the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any member of the same household.

(e) 'Insured vehicle' does not include a trailer of any type unless 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.

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

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

(B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability insurance;

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

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

(j) 'Uninsured vehicle,' except as provided in paragraph (k) of this provision, means:

(A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible 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 the vehicle, or with respect to which there is collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the insurance denies coverage or the company writing the 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 motor vehicle bodily injury liability insurance applicable at the time of the accident.

(B) A hit-and-run vehicle.

(C) A phantom vehicle.

(D) A stolen vehicle.

(k) 'Uninsured vehicle' does not include:

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

(B) A vehicle 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 that is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any 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.

(L) '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 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 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 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 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 fails to furnish 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 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 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 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 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 the owner or operator for 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 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 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) 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 primary insurance available to the occupant 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 primary insurance available to the occupant.

(b) If an insured is an insured under other primary or excess insurance available to the insured that is similar to this coverage, then the insured's damages are deemed not to exceed the higher of the applicable limits of liability of the additional primary or excess insurance available to the insured, and the insurer 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 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 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 other insurance.

(10) If any person making claim hereunder and the insurer do not agree that 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 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 { - as described in section 2 of this 2007 Act - } { + 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 do not exceed \$100 and that all other costs of arbitration are borne by the insurer. 'Costs' as used in this provision does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. 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, 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 the payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the person against any uninsured motorist legally responsible for the bodily injury because of which payment is made;

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

(d) 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, the person shall take, through any representative not in conflict in interest with the person, designated by the insurer, such action as may be necessary or appropriate to recover payment as damages from such other uninsured person or organization, such action to be taken in the name of 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 the recovery for expenses, costs and attorney fees incurred by the insurer in connection therewith; and

(f) The person shall execute and deliver to the insurer any instruments and papers as may be appropriate to secure the rights and obligations of 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; or

(D) Suit for bodily injury has been filed against the uninsured motorist 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.

(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 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 7. { + The amendments to ORS 742.504 by section 6 of this 2007 Act become operative on January 2, 2012. + }

SECTION 8. ORS 742.520 is amended to read:

742.520. (1) Every motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle shall provide personal injury protection benefits to the person insured thereunder, members of that person's family residing in the same household, children not related to the insured by blood, marriage or adoption who are residing in the same household as the insured and being reared as the insured's own, passengers occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle.

(2) Personal injury protection benefits apply to a person's injury or death resulting:

(a) In the case of the person insured under the policy and members of that person's family residing in the same household, from the use, occupancy or maintenance of any motor vehicle, except the following vehicles:

(A) A motor vehicle, including a motorcycle or moped, that is owned or furnished or available for regular use by any of such persons and that is not described in the policy;

(B) A motorcycle or moped which is not owned by any of such persons, but this exclusion applies only when the injury or death results from such person's operating or riding upon the motorcycle or moped; and

(C) A motor vehicle not included in subparagraph (A) or (B) of this paragraph and not a private passenger motor vehicle.

However, this exclusion applies only when the injury or death results from such person's operating or occupying the motor vehicle.

(b) In the case of a passenger occupying or a pedestrian struck by the insured motor vehicle, from the use, occupancy or maintenance of the vehicle.

(3) Personal injury protection benefits consist of payments for expenses, loss of income and loss of essential services as provided in ORS 742.524.

(4) An insurer shall pay all personal injury protection benefits promptly after proof of loss has been submitted to the insurer.

(5) The potential existence of a cause of action in tort does not relieve an insurer from the duty to pay personal injury protection benefits.

(6) Disputes between insurers and beneficiaries about the amount of personal injury protection benefits, or about the denial of personal injury protection benefits, shall be decided by arbitration if mutually agreed to at the time of the dispute.

{ + Arbitration under this subsection shall take place as described in section 3 of this 2007 Act. + }

(7) An insurer:

(a) May not enter into or renew any contract that provides, or has the effect of providing, managed care services to beneficiaries.

(b) May enter into or renew any contract that provides evaluation services for beneficiaries.

SECTION 9. ORS 742.522 is amended to read:

742.522. { - (1) Arbitration under ORS 742.520 (6) is binding on the parties to the arbitration. - }

{ - (2) - } { + (1) + } Costs to the insured of the arbitration proceeding { + under ORS 742.520 (6) + } shall not

exceed \$100 and all other costs of arbitration shall be borne by the insurer.

{ + (2) + } As used in this { - subsection - } { + section + }, 'costs' does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings.

SECTION 10. { + Sections 2 and 3 of this 2007 Act and the amendments to ORS 742.504, 742.520 and 742.522 by sections 5, 8 and 9 of this 2007 Act apply to motor vehicle liability policies issued or renewed on or after the effective date of this 2007 Act. + }

SECTION 11. { + The amendments to ORS 742.504 by section 6 of this 2007 Act apply to motor vehicle liability policies issued or renewed on or after January 2, 2012. + }

Passed by Senate March 20, 2007

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Secretary of Senate

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President of Senate

Passed by House May 21, 2007

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Speaker of House

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State

74th OREGON LEGISLATIVE ASSEMBLY--2007 Regular Session

Enrolled

House Bill 2366

Ordered printed by the Speaker pursuant to House Rule 12.00A (5).
Pre-session filed (at the request of House Interim Committee on
Judiciary for Oregon State Bar Procedure and Practice
Committee)

CHAPTER

AN ACT

Relating to statutes of limitation; creating new provisions; and
amending ORS 12.160.

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

SECTION 1. ORS 12.160 is amended to read:

12.160. { - If, at the time the cause of action accrues, any person entitled to bring an action mentioned in ORS 12.010 to 12.050, 12.070 to 12.250 and 12.276 is within the age of 18 years or insane, the time of such disability shall not be a part of the time limited for the commencement of the action; but the period within which the action shall be brought shall not be extended more than five years by any such disability, nor shall it be extended in any case longer than one year after such disability ceases. - }

{ + (1) Subject to subsection (2) of this section, if a person is entitled to bring an action that is subject to the statutes of limitation prescribed by ORS 12.010 to 12.050, 12.070 to 12.250 or 12.276, and at the time the cause of action accrues the person is a child who is younger than 18 years of age, the statute of limitation for commencing the action is tolled for so long as the person is younger than 18 years of age.

(2) The time for commencing an action may not be extended under subsection (1) of this section for more than five years, or for more than one year after the person attains 18 years of age, whichever occurs first.

(3) Subject to subsection (4) of this section, if a person is entitled to bring an action that is subject to the statutes of limitation prescribed by ORS 12.010 to 12.050, 12.070 to 12.250 or 12.276, and at the time the cause of action accrues the person is insane, the statute of limitation for commencing the action is tolled for so long as the person is insane.

(4) The time for commencing an action may not be extended under subsection (3) of this section for more than five years, or for more than one year after the person is no longer insane, whichever occurs first.

(5) If a child's cause of action is tolled under subsection (1) of this section, a cause of action for recovery of damages for medical expenses incurred by a parent, guardian or conservator of the child is tolled for the same period of time as the child's cause of action if the medical expenses resulted from the same

wrongful conduct that is the basis of the child's cause of action. + }

SECTION 2. { + The amendments to ORS 12.160 by section 1 of this 2007 Act apply only to causes of action arising on or after the effective date of this 2007 Act. + }

Passed by House March 12, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 17, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State

74th OREGON LEGISLATIVE ASSEMBLY--2007 Regular Session

Enrolled

House Bill 3083

Sponsored by COMMITTEE ON CONSUMER PROTECTION

CHAPTER

AN ACT

Relating to minors.

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

SECTION 1. { + (1) A person having legal custody of a minor may enter into a settlement agreement with a person against whom the minor has a claim if:

(a) A conservator has not been appointed for a minor;

(b) The total amount of the claim is \$25,000 or less;

(c) The moneys paid under the settlement agreement will be deposited directly into a federally insured savings account in the sole name of the minor with notice of the deposit to the minor; and

(d) The person entering into the settlement agreement on behalf of the minor completes an affidavit or verified statement that attests that the person has made a reasonable inquiry and that:

(A) To the best of the person's knowledge, the minor will be fully compensated by the settlement; or

(B) There is no practical way to obtain additional amounts from the party entering into the settlement agreement with the minor.

(2) If a settlement agreement is entered into in compliance with subsection (1) of this section, the signature of the person entering into the settlement agreement on behalf of the minor is binding on the minor without the need for further court approval or review and has the same force and effect as if the minor were a competent adult entering into the settlement agreement.

(3) A person acting in good faith on behalf of a minor under this section is not liable to the minor for the moneys paid in settlement or for any other claim arising out of the settlement. + }

Enrolled House Bill 3083 (HB 3083-A)

Page 1

Passed by House June 22, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 25, 2007

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Page 2

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