

**Automobile Insurance Work Group:**  
**OVERLAPPING INSURANCE IN UM/UIM STATUTE**

**SB 925**

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**I. Introductory Summary**

The proposed legislation would clarify a poorly written provision of the model uninsured (UM) or underinsured motorist (UIM) policy that appears in ORS 742.504(9). It is a “model” provision of the sort that is included in each insurance policy in order to declare what happens when the policy overlaps or covers the same injury as does another similar UM or UIM policy. Clarification would expedite claims and avoid disputes.

**II. History of the Project**

At the prompting of several sources, the Oregon Law Commission’s Program Committee identified Oregon’s auto insurance statutes, particularly the uninsured and underinsured motorist provisions, as a subject for inquiry. *See* ORS 173.338(1) (Commission to discover defects and anachronisms and recommend law reform).

In 2003, the Auto Insurance Study Group considered 22 issues and prioritized the topics for remedial legislation.<sup>1</sup> Nine issues were deemed the highest priority. On February 27, 2004, the Oregon Law Commission approved the creation of a Work Group.<sup>2</sup> On April 29, 2004, the Work Group found consensus on five particular problem areas to address for the 2005 Legislative Session.<sup>3</sup> The Work Group agreed that any remedial legislation should be segregated

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<sup>1</sup> The Study Group was chaired by Commission member, Martha Walters, and was comprised of Justice Edwin Peterson, Senator Charlie Ringo, Dean Heiling, John Bachofner, and Joel DeVore.

<sup>2</sup> The Work Group consisted of the Study Group with the addition of four members: Stephen Murrell, Tom Mortland, Neal Jackson, and Richard Lane.

<sup>3</sup> Of the Study Group’s “highest priority” issues, the Work Group tabled four issues with the following numeric rankings: (1) the reported conflict between PIP offsets under ORS 742.542 and PIP

into separate bills to promote passage and to avoid “gut and stuff” changes. On October 27, 2004, five bills were recommended by the Work Group for consideration by the full Oregon Law Commission. This proposal involves a provision that can confound insurers and delay resolution of claims.

### **III. Statement of the Problem**

The problem with the overlapping insurance provision in ORS 742.504(9) is that it is difficult to understand, which leads to unnecessary disputes between insurers, or between insurers and their insureds. The subsection fails to state the obvious. That is, UM/UIM coverage under a policy is primary while the insured is occupying a vehicle owned by the named insured under the policy’s coverage. The statute beats around the bush, but just does not say what is primary to begin with. The bulk of the statute could be written more clearly to say when coverage is secondary or excess.

By contrast, the PIP statute does dictate which policy is primary and which is excess, thereby keeping life simple and avoiding disputes. *See* ORS 742.526. Revision of the UM/UIM statute would better parallel the relative clarity of the PIP statute on the priority of overlapping policies.

### **IV. Objectives of the Proposal**

A new subsection (A) says plainly that, while occupying a vehicle owned by the named insured, the insured’s policy is primary.

A rewritten subsection (B) says that an insured’s coverage is excess when occupying a car not owned by the insured.

The provisions permit the insurer to include anti-stacking language, which limits the overlapping coverage to the greater of the two policies. This is the current law.

Even so, because the provisions of ORS 742.504 are only model, minimum terms, any insurer is free to provide greater coverage, including coverage that stacks overlapping policies.

### **V. The Proposal**

The proposal is SB 925 (LC 843).

### **VI. Conclusion**

Revision of ORS 742.504(9) would clarify the meaning of the statute’s provision for overlapping UM/UIM coverage. Clarity may avoid future litigation.

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reimbursement under ORS 742.544; (2) the denial of underinsurance coverage when government negligence causes injury; (8) adding a statutory authorization for medical exams to the PIP statute; and (9) revising or clarifying the UM/UIM time limit in ORS 742.504(12).