

# Senate Bill 421

Sponsored by Senator FREDERICK (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits insurer from receiving reimbursement or subrogation for personal injury protection benefits or health benefits insurer provided to person injured in motor vehicle accident from any recovery injured person obtains in action for damages except to extent that injured person first receives full compensation for injured person's injuries and reimbursement or subrogation is paid only from amount of recovery in excess of amount that fully compensates for injured person's injuries.

Specifies presumptions that apply to determination of when injured person receives full compensation for injured person's injuries.

Prohibits person with whom injured person enters into settlement or from whom injured person obtains judgment in connection with claim or action from naming insurer that seeks reimbursement or subrogation as payee on check, draft or other form of payment in satisfaction of claim or judgment.

Specifies additional duties of insurer and prohibitions on certain of insurer's actions.

Becomes operative on January 1, 2020.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to reimbursements for benefits paid to persons injured in motor vehicle accidents; creating  
3 new provisions; amending ORS 742.536, 742.538 and 742.544; and prescribing an effective date.

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

5 **SECTION 1.** ORS 742.536 is amended to read:

6 742.536. (1) *[When]* **If** an authorized motor vehicle liability insurer has furnished personal injury  
7 protection benefits, or an authorized health insurer has furnished benefits, *[for]* **to** a person **who**  
8 **was** injured in a motor vehicle accident, *[if such]* **and the** injured person makes a claim, or *[insti-*  
9 *tutes]* **brings** legal action, for damages for *[such]* injuries against any **other** person, *[such]* **the** in-  
10 jured person shall give notice of *[such]* **the** claim or legal action to the insurer by personal service  
11 or by registered or certified mail. Service of a copy of the summons and complaint or copy of other  
12 process served in connection with *[such a]* **the** legal action *[shall be]* **is** sufficient notice to the  
13 insurer, in which case a return showing service of *[such]* **the** notice *[shall]* **must** be filed with the  
14 clerk of the court but *[shall]* **is** not *[be]* a part of the record except to give notice.

15 (2) *[The]* **An** insurer may elect to seek reimbursement as provided in this section for benefits  
16 *[it]* **the insurer** has *[so]* furnished, **to the injured person** out of any recovery *[under such]* **the**  
17 **injured person obtains from** a claim or legal action, *[,]* if the insurer has not been a party **under**  
18 **ORS 742.534** to an interinsurer reimbursement proceeding with respect to *[such]* benefits *[under*  
19 *ORS 742.534]* **the insurer furnished to the injured person** and **the insurer** is entitled by the  
20 terms of *[its]* **the insurer's** policy to the benefit of this section. The insurer shall give written notice  
21 of *[such]* **an election under this subsection by personal service or by registered or certified**  
22 **mail** within 30 days *[from the receipt of]* **after receiving the** notice or knowledge of *[such]* **the** claim  
23 or legal action to the person *[making]* **who made the** claim or *[instituting]* **brought the** legal action  
24 and to the person against whom *[claim is made or legal action instituted, by personal service or by*

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 registered or certified mail] **the injured person made a claim or brought legal action.** In the case  
 2 of a legal action, a return showing service of [such] **the** notice of election [shall] **must** be filed with  
 3 the clerk of the court but [shall] **is not [be]** a part of the record except to give notice to the claimant  
 4 and the defendant of the lien of the insurer.

5 (3) If the insurer [so] serves [such] **a** written notice of **the insurer's** election **under subsection**  
 6 **(2) of this section** and, [where] **if** applicable, [such] **files a** return [is so filed] **showing service:**

7 [(a) *The insurer has a lien against such cause of action for benefits it has so furnished, less the*  
 8 *proportion, not to exceed 100 percent, of expenses, costs and attorney fees incurred by the injured per-*  
 9 *son in connection with the recovery that the amount of the lien before such reduction bears to the*  
 10 *amount of the recovery.*]

11 **(a) Subject to ORS 742.544, an insurer has a lien, for not more than the amount of ben-**  
 12 **efits the insurer furnished, against an injured person's recovery in an action for damages,**  
 13 **less a proportionate amount of not more than 100 percent of the expenses, costs and attor-**  
 14 **ney fees the injured person incurred in connection with the recovery. The proportionate**  
 15 **amount must be calculated as the ratio between the amount of the lien before a reduction**  
 16 **under this paragraph and the amount of the recovery.**

17 (b) The injured person shall include **the benefits the insurer furnished** as damages in [such]  
 18 **a claim or legal action** [*the benefits so furnished by the insurer*].

19 (c) In the case of a legal action, the action [shall] **must** be taken in the name of the injured  
 20 person.

21 (4) As used in this section, "makes a claim" [*or "claim" refers to*] **means delivers** a written de-  
 22 mand [*made and delivered*] for a specific amount of damages [*and which*] **that** meets [*other*] re-  
 23 quirements reasonably established by the director's rule.

24 **SECTION 2.** ORS 742.538 is amended to read:

25 742.538. If a motor vehicle liability insurer has furnished personal injury protection benefits, or  
 26 a health insurer has furnished benefits, [*for*] **to** a person **who was** injured in a motor vehicle  
 27 accident[,] and the interinsurer reimbursement benefit of ORS 742.534 is not available under the  
 28 terms of that section, [*and*] the insurer has not elected recovery by lien as provided in ORS 742.536,  
 29 and **the insurer** is entitled by the terms of [*its*] **the insurer's** policy to the benefit of this section:

30 (1) **Subject to ORS 742.544,** the insurer is entitled to the proceeds of any settlement or judg-  
 31 ment that [*may result*] **results** from the exercise of any rights of recovery [*of*] the injured person  
 32 **has** against any person legally responsible for the accident, to the extent of [such] **the benefits the**  
 33 **insurer** furnished [*by the insurer*] less the insurer's share of expenses, costs and attorney fees [*in-*  
 34 *curring by*] the injured person **incurred** in connection with [such] **the** recovery.

35 (2) The injured person shall hold in trust for the benefit of the insurer [*all such rights of recovery*  
 36 *which the injured person has, but only to the extent of such benefits furnished*] **the amount to which**  
 37 **the insurer is entitled under this section, which may not exceed the amount of benefits the**  
 38 **insurer furnished.**

39 (3) The injured person shall do whatever is proper to secure, and [*shall do nothing after loss*  
 40 *to*] **may not** prejudice, [such rights] **the rights an insurer has under this section.**

41 (4) If requested in writing by the insurer, the injured person shall take, **in the injured person's**  
 42 **name and** through any representative **the insurer designates who is** not in conflict in interest  
 43 with the injured person [*designated by the insurer, such action as may be necessary or appropriate to*  
 44 *recover such benefits furnished as damages from such responsible person, such action to be taken in*  
 45 *the name of the injured person, but only to the extent of the benefits furnished by the insurer. In the*

1 *event of a recovery, the insurer shall also be reimbursed out of such recovery for the injured person's*  
 2 *share of expenses, costs and attorney fees incurred by the insurer in connection with the recovery],*  
 3 **such action as is necessary or appropriate to recover the amounts to which the insurer is**  
 4 **entitled under this section, including amounts for the injured person's share of expenses,**  
 5 **costs and attorney fees that the insurer incurred in connection with the recovery.**

6 (5) In calculating respective shares of expenses, costs and attorney fees under this section, the  
 7 basis of allocation *[shall]* **must** be the respective proportions borne to the total recovery by:

8 (a) *[Such]* Benefits **the insurer** furnished *[by the insurer]*; and

9 (b) The total recovery less *[(a)]* **the benefits the insurer furnished.**

10 (6) The injured person shall execute and deliver to the insurer *[such]* instruments and papers  
 11 as *[may be]* **are** appropriate to secure the rights and obligations of the insurer and the injured per-  
 12 son as established by this section.

13 (7) Any provisions in a motor vehicle liability insurance policy or health insurance policy giving  
 14 rights to the insurer relating to subrogation or the subject matter of this section *[shall]* **must** be  
 15 construed and applied in accordance with the provisions of this section.

16 **SECTION 3. ORS 742.544 is added to and made a part of ORS 742.518 to 742.542.**

17 **SECTION 4.** ORS 742.544 is amended to read:

18 742.544. *[(1) A provider of personal injury protection benefits shall be reimbursed for personal in-*  
 19 *jury protection payments made on behalf of any person only to the extent that the total amount of*  
 20 *benefits paid exceeds the damages suffered by that person. As used in this section, "total amount of*  
 21 *benefits" means the amount of money recovered by a person from:]*

22 *[(a) Applicable underinsured motorist benefits described in ORS 742.502 (2);]*

23 *[(b) Liability insurance coverage available to the person receiving the personal injury protection*  
 24 *benefits from other parties to the accident;]*

25 *[(c) Personal injury protection payments; and]*

26 *[(d) Any other payments by or on behalf of the party whose fault caused the damages.]*

27 *[(2) Nothing in this section requires a person to repay more than the amount of personal injury*  
 28 *protection benefits actually received.]*

29 **(1) An insurer may not receive a reimbursement or subrogation for personal injury pro-**  
 30 **tection benefits or health benefits the insurer provided to a person injured in a motor vehicle**  
 31 **accident from any recovery the injured person obtains in an action for damages except to**  
 32 **the extent that:**

33 **(a) The injured person first receives full compensation for the injured person's injuries;**  
 34 **and**

35 **(b) The reimbursement or subrogation is paid only from the amount of the recovery in**  
 36 **excess of the amount that fully compensates for the injured person's injuries.**

37 **(2) For purposes of this section, the following rebuttable presumptions apply:**

38 **(a) The amount of any judgment that an injured person obtains is the amount necessary**  
 39 **to fully compensate for the injured person's injuries.**

40 **(b) An injured person has received full compensation for the injured person's injuries if**  
 41 **the amount of the recovery is less than the coverage available to the injured person from**  
 42 **the sum of benefits paid under another person's motor vehicle liability policy, under an**  
 43 **underinsured motorist policy described in ORS 742.502 (2), as personal injury protection**  
 44 **payments and from any other source of payment from or on behalf of the party whose fault**  
 45 **caused the injuries.**

1 (c) An injured person has not received full compensation for the injured person's injuries  
2 if the injured person recovers an amount that is equal to the coverage available to the in-  
3 jured person from the sum of benefits paid under another person's motor vehicle liability  
4 policy, under an underinsured motorist policy described in ORS 742.502 (2), as personal injury  
5 protection payments and from any other source of payment from or on behalf of the party  
6 whose fault caused the injuries.

7 (3) An insurer may not deny or refuse to provide benefits that are otherwise available  
8 to an injured person because of the potential the injured person has to make a claim or bring  
9 an action against another person or enter into a settlement with another person.

10 (4) A person with whom an injured person enters into a settlement or from whom the  
11 injured person obtains a judgment in connection with a claim or action may not name an  
12 insurer that seeks a reimbursement or subrogation under ORS 742.536 or 742.538 as a payee  
13 on a check, draft or other form of payment in satisfaction of the claim or judgment.

14 (5) An insurer may not delay, withhold or reduce benefits to an injured person because  
15 of an act or omission for which a third party is or may be liable or as a means of enforcing  
16 or attempting to enforce a claim for reimbursement or subrogation.

17 (6) An insurer that receives a reimbursement for benefits the insurer provided to an in-  
18 jured person shall apply the amount of the reimbursement as a credit against any lifetime  
19 maximum benefit set forth for the injured person in the policy, benefit plan or contract un-  
20 der which the insurer paid the benefits.

21 (7) A provision in a policy, benefit plan or contract that permits reimbursement or  
22 subrogation other than as provided in this section is void and unenforceable.

23 (8) This section does not:

24 (a) Prohibit insurers from coordinating benefits;

25 (b) Limit an insurer's right to seek reimbursement or subrogation to recover, without  
26 reduction, amounts the insurer paid for property damage;

27 (c) Limit an insurer that provided coverage against underinsured motorists from pursu-  
28 ing a claim against a party at fault; or

29 (d) Require a person to repay more than the amount of personal injury protection bene-  
30 fits that the person actually received.

31 **SECTION 5.** The amendments to ORS 742.536, 742.538 and 742.544 by sections 1, 2 and 4  
32 of this 2019 Act apply to insurance policies, contracts or plans that an insurer issues or re-  
33 news on or after the operative date specified in section 6 of this 2019 Act.

34 **SECTION 6.** (1) The amendments to ORS 742.536, 742.538 and 742.544 by sections 1, 2 and  
35 4 of this 2019 Act become operative on January 1, 2020.

36 (2) The Director of the Department of Consumer and Business Services may adopt rules  
37 and take any other action before the operative date specified in subsection (1) of this section  
38 that is necessary to enable the director, on and after the operative date specified in sub-  
39 section (1) of this section, to exercise or undertake all of the duties, functions and powers  
40 conferred on the director by the amendments to ORS 742.536, 742.538 and 742.544 by sections  
41 1, 2 and 4 of this 2019 Act.

42 **SECTION 7.** This 2019 Act takes effect on the 91st day after the date on which the 2019  
43 regular session of the Eightieth Legislative Assembly adjourns sine die.