

House Bill 2369

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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 motor vehicle liability insurer from settling with injured individual until 60 days after motor vehicle accident.

Provides that settlement agreement may not restrict ability of insurer to recover personal injury protection benefits by subrogation.

Requires liability insurer to provide to injured individual plain and concise statement of consequences of entering into settlement agreement.

Exempts from disclosure under public records law traffic crash exchange reports or similar reports describing vehicular accidents that are prepared by law enforcement officers. Provides exceptions to exemption by which traffic exchange reports or similar reports may be disclosed.

A BILL FOR AN ACT

1 Relating to motor vehicles; creating new provisions; and amending ORS 192.502.

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

3 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of the Insurance Code.**

4 **SECTION 2. (1) A motor vehicle liability insurer may not enter into a settlement agree-**
5 **ment with an injured individual:**

6 (a) **Until 60 calendar days after the date of the accident; and**

7 (b) **Unless the insurer provides the individual a plain and concise statement of the con-**
8 **sequences of entering into the settlement agreement.**

9 (2) **A motor vehicle liability insurer who enters into a settlement agreement with an in-**
10 **jured individual following an accident may not include in the settlement agreement a pro-**
11 **vision that restricts the ability of the individual's insurer to recover personal injury**
12 **protection benefits under ORS 742.538 even if the settlement agreement is entered into prior**
13 **to the insurer furnishing personal injury protection benefits to the individual.**

14 **SECTION 3. ORS 192.502 is amended to read:**

15 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

16 (1) Communications within a public body or between public bodies of an advisory nature to the
17 extent that they cover other than purely factual materials and are preliminary to any final agency
18 determination of policy or action. This exemption shall not apply unless the public body shows that
19 in the particular instance the public interest in encouraging frank communication between officials
20 and employees of public bodies clearly outweighs the public interest in disclosure.

21 (2) Information of a personal nature such as but not limited to that kept in a personal, medical
22 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the
23 public interest by clear and convincing evidence requires disclosure in the particular instance. The
24 party seeking disclosure shall have the burden of showing that public disclosure would not consti-
25 tute an unreasonable invasion of privacy.

26 (3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and
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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 telephone numbers contained in personnel records maintained by the public body that is the em-
 2 ployer or the recipient of volunteer services. This exemption:

3 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-
 4 unteers who are elected officials, except that a judge or district attorney subject to election may
 5 seek to exempt the judge's or district attorney's address or telephone number, or both, under the
 6 terms of ORS 192.445;

7 (b) Does not apply to employees or volunteers to the extent that the party seeking disclosure
 8 shows by clear and convincing evidence that the public interest requires disclosure in a particular
 9 instance;

10 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a pro-
 11 fessional education association of which the substitute teacher may be a member; and

12 (d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

13 (4) Information submitted to a public body in confidence and not otherwise required by law to
 14 be submitted, where such information should reasonably be considered confidential, the public body
 15 has obliged itself in good faith not to disclose the information, and when the public interest would
 16 suffer by the disclosure.

17 (5) Information or records of the Department of Corrections, including the State Board of Parole
 18 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of
 19 a person in custody of the department or substantially prejudice or prevent the carrying out of the
 20 functions of the department, if the public interest in confidentiality clearly outweighs the public in-
 21 terest in disclosure.

22 (6) Records, reports and other information received or compiled by the Director of the Depart-
 23 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
 24 otherwise required by law to be made public, to the extent that the interests of lending institutions,
 25 their officers, employees and customers in preserving the confidentiality of such information out-
 26 weighs the public interest in disclosure.

27 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

28 (8) Any public records or information the disclosure of which is prohibited by federal law or
 29 regulations.

30 (9)(a) Public records or information the disclosure of which is prohibited or restricted or other-
 31 wise made confidential or privileged under Oregon law.

32 (b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information
 33 compiled in a public record when:

34 (A) The basis for the claim of exemption is ORS 40.225;

35 (B) The factual information is not prohibited from disclosure under any applicable state or fed-
 36 eral law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410
 37 to 192.505;

38 (C) The factual information was compiled by or at the direction of an attorney as part of an
 39 investigation on behalf of the public body in response to information of possible wrongdoing by the
 40 public body;

41 (D) The factual information was not compiled in preparation for litigation, arbitration or an
 42 administrative proceeding that was reasonably likely to be initiated or that has been initiated by
 43 or against the public body; and

44 (E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
 45 characterizing or partially disclosing the factual information compiled by or at the attorney's di-

1 rection.

2 (10) Public records or information described in this section, furnished by the public body ori-
 3 ginally compiling, preparing or receiving them to any other public officer or public body in con-
 4 nection with performance of the duties of the recipient, if the considerations originally giving rise
 5 to the confidential or exempt nature of the public records or information remain applicable.

6 (11) Records of the Energy Facility Siting Council concerning the review or approval of security
 7 programs pursuant to ORS 469.530.

8 (12) Employee and retiree address, telephone number and other nonfinancial membership records
 9 and employee financial records maintained by the Public Employees Retirement System pursuant to
 10 ORS chapters 238 and 238A.

11 (13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
 12 agents of the treasurer or the council relating to active or proposed publicly traded investments
 13 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or
 14 liquidation of the investments. For the purposes of this subsection:

15 (a) The exemption does not apply to:

16 (A) Information in investment records solely related to the amount paid directly into an invest-
 17 ment by, or returned from the investment directly to, the treasurer or council; or

18 (B) The identity of the entity to which the amount was paid directly or from which the amount
 19 was received directly.

20 (b) An investment in a publicly traded investment is no longer active when acquisition, exchange
 21 or liquidation of the investment has been concluded.

22 (14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the
 23 Oregon Growth Account Board or the agents of the treasurer, council or board relating to actual
 24 or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a
 25 private asset including but not limited to records regarding the solicitation, acquisition, deployment,
 26 exchange or liquidation of the investments including but not limited to:

27 (A) Due diligence materials that are proprietary to an investment fund, to an asset ownership
 28 or to their respective investment vehicles.

29 (B) Financial statements of an investment fund, an asset ownership or their respective invest-
 30 ment vehicles.

31 (C) Meeting materials of an investment fund, an asset ownership or their respective investment
 32 vehicles.

33 (D) Records containing information regarding the portfolio positions in which an investment
 34 fund, an asset ownership or their respective investment vehicles invest.

35 (E) Capital call and distribution notices of an investment fund, an asset ownership or their re-
 36 spective investment vehicles.

37 (F) Investment agreements and related documents.

38 (b) The exemption under this subsection does not apply to:

39 (A) The name, address and vintage year of each privately placed investment fund.

40 (B) The dollar amount of the commitment made to each privately placed investment fund since
 41 inception of the fund.

42 (C) The dollar amount of cash contributions made to each privately placed investment fund since
 43 inception of the fund.

44 (D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State
 45 Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the

1 treasurer, council or board from each privately placed investment fund.

2 (E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately
 3 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment
 4 Council, the Oregon Growth Account Board or the agents of the treasurer, council or board.

5 (F) The net internal rate of return of each privately placed investment fund since inception of
 6 the fund.

7 (G) The investment multiple of each privately placed investment fund since inception of the fund.

8 (H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end
 9 basis to each privately placed investment fund.

10 (I) The dollar amount of cash profit received from each privately placed investment fund on a
 11 fiscal year-end basis.

12 (15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the
 13 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as
 14 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

15 (16) Reports of unclaimed property filed by the holders of such property to the extent permitted
 16 by ORS 98.352.

17 (17) The following records, communications and information submitted to the Oregon Economic
 18 and Community Development Commission, the Economic and Community Development Department,
 19 the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or
 20 other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services includ-
 21 ing, but not limited to, those described in ORS 285A.224:

22 (a) Personal financial statements.

23 (b) Financial statements of applicants.

24 (c) Customer lists.

25 (d) Information of an applicant pertaining to litigation to which the applicant is a party if the
 26 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
 27 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
 28 concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery
 29 or deposition statutes to a party to litigation or potential litigation.

30 (e) Production, sales and cost data.

31 (f) Marketing strategy information that relates to applicant's plan to address specific markets
 32 and applicant's strategy regarding specific competitors.

33 (18) Records, reports or returns submitted by private concerns or enterprises required by law
 34 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
 35 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such
 36 information is in a form which would permit identification of the individual concern or enterprise.
 37 Nothing in this subsection shall limit the use which can be made of such information for regulatory
 38 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
 39 payer of the delinquency immediately by certified mail. However, in the event that the payment or
 40 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the
 41 public body shall disclose, upon the request of any person, the following information:

42 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the
 43 payment or delivery of the taxes.

44 (b) The period for which the taxes are delinquent.

45 (c) The actual, or estimated, amount of the delinquency.

1 (19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-
2 pointed counsel, and all information supplied to the court from whatever source for the purpose of
3 verifying the financial eligibility of a person pursuant to ORS 151.485.

4 (20) Workers' compensation claim records of the Department of Consumer and Business Services,
5 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
6 ness Services, in any of the following circumstances:

7 (a) When necessary for insurers, self-insured employers and third party claim administrators to
8 process workers' compensation claims.

9 (b) When necessary for the director, other governmental agencies of this state or the United
10 States to carry out their duties, functions or powers.

11 (c) When the disclosure is made in such a manner that the disclosed information cannot be used
12 to identify any worker who is the subject of a claim.

13 (d) When a worker or the worker's representative requests review of the worker's claim record.

14 (21) Sensitive business records or financial or commercial information of the Oregon Health and
15 Science University that is not customarily provided to business competitors.

16 (22) Records of Oregon Health and Science University regarding candidates for the position of
17 president of the university.

18 (23) The records of a library, including:

19 (a) Circulation records, showing use of specific library material by a named person;

20 (b) The name of a library patron together with the address or telephone number of the patron;
21 and

22 (c) The electronic mail address of a patron.

23 (24) The following records, communications and information obtained by the Housing and Com-
24 munity Services Department in connection with the department's monitoring or administration of
25 financial assistance or of housing or other developments:

26 (a) Personal and corporate financial statements and information, including tax returns.

27 (b) Credit reports.

28 (c) Project appraisals.

29 (d) Market studies and analyses.

30 (e) Articles of incorporation, partnership agreements and operating agreements.

31 (f) Commitment letters.

32 (g) Project pro forma statements.

33 (h) Project cost certifications and cost data.

34 (i) Audits.

35 (j) Project tenant correspondence.

36 (k) Personal information about a tenant.

37 (L) Housing assistance payments.

38 (25) Raster geographic information system (GIS) digital databases, provided by private forestland
39 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
40 that is not otherwise required by law to be submitted.

41 (26) Sensitive business, commercial or financial information furnished to or developed by a
42 public body engaged in the business of providing electricity or electricity services, if the information
43 is directly related to a transaction described in ORS 261.348, or if the information is directly related
44 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
45 disclosure of the information would cause a competitive disadvantage for the public body or its re-

1 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
 2 velopment or review of generally applicable rate schedules.

3 (27) Sensitive business, commercial or financial information furnished to or developed by the
 4 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
 5 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
 6 and disclosure of the information would cause a competitive disadvantage for the Klamath
 7 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
 8 ment or review of generally applicable rate schedules.

9 (28) Personally identifiable information about customers of a municipal electric utility or a
 10 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,
 11 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
 12 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
 13 lease personally identifiable information about a customer, and a public body providing water, sewer
 14 or storm drain services may release the name, date of birth, driver license number, telephone num-
 15 ber, electronic mail address or Social Security number of a customer, if the customer consents in
 16 writing or electronically, if the disclosure is necessary for the utility, district or other public body
 17 to render services to the customer, if the disclosure is required pursuant to a court order or if the
 18 disclosure is otherwise required by federal or state law. The utility, district or other public body
 19 may charge as appropriate for the costs of providing such information. The utility, district or other
 20 public body may make customer records available to third party credit agencies on a regular basis
 21 in connection with the establishment and management of customer accounts or in the event such
 22 accounts are delinquent.

23 (29) A record of the street and number of an employee’s address submitted to a special district
 24 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

25 (30) Sensitive business records, capital development plans or financial or commercial information
 26 of Oregon Corrections Enterprises that is not customarily provided to business competitors.

27 (31) Documents, materials or other information submitted to the Director of the Department of
 28 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory
 29 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates
 30 or subsidiaries under ORS 646A.250 to 646A.270, 697.005 to 697.095, 697.602 to 697.842, 705.137,
 31 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the
 32 Insurance Code when:

33 (a) The document, material or other information is received upon notice or with an under-
 34 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of
 35 the document, material or other information; and

36 (b) The director has obligated the Department of Consumer and Business Services not to dis-
 37 close the document, material or other information.

38 (32) A county elections security plan developed and filed under ORS 254.074.

39 (33) Information about review or approval of programs relating to the security of:

40 (a) Generation, storage or conveyance of:

41 (A) Electricity;

42 (B) Gas in liquefied or gaseous form;

43 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

44 (D) Petroleum products;

45 (E) Sewage; or

1 (F) Water.

2 (b) Telecommunication systems, including cellular, wireless or radio systems.

3 (c) Data transmissions by whatever means provided.

4 (34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court des-
5 ignates the information as confidential by rule under ORS 1.002.

6 **(35)(a) Traffic crash exchange reports or similar reports that are prepared by a law**
7 **enforcement officer at or recently returned from the scene of an accident involving one or**
8 **more vehicles on a public road or highway in this state.**

9 **(b) The exemption under this subsection does not apply to records described in paragraph**
10 **(a) of this subsection that are sought by:**

11 **(A) The driver of a vehicle that is the subject of the record being sought;**

12 **(B) Any person alleging an injury as a result of the accident that is the subject of the**
13 **record being sought;**

14 **(C) An insurer that insures a driver, passenger or other person alleged to be injured as**
15 **a result of the accident that is the subject of the record being sought;**

16 **(D) An eyewitness to the accident that is the subject of the record being sought;**

17 **(E) An attorney representing any person described in subparagraphs (A) to (D) of this**
18 **paragraph; or**

19 **(F) Any person that has obtained a court order authorizing disclosure of a specific record**
20 **described in paragraph (a) of this subsection, upon a determination by the court that the**
21 **legitimate interests in disclosing the record outweigh the public's interests in ensuring that**
22 **persons involved in vehicular accidents not be subject to aggressive marketing efforts by**
23 **persons providing medical, legal or other services.**

24 **SECTION 4. Section 1 of this 2009 Act applies to motor vehicle accidents that occur on**
25 **or after the effective date of this 2009 Act and applies to settlement agreements entered into**
26 **on or after the effective date of this 2009 Act.**

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