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Testimony of State Farm Insurance Companies, to the Senate Rules Committee, regarding **HB 2821A.**

Chair Rosenbaum and Members of the Committee:

Today you are asked to consider **HB 2821A**, a bill that will *require* all Oregonians to pay more for insurance coverage when insuring a personal automobile. State Farm's testimony is intended to ensure your Committee understands the cost associated with providing more coverage, and to make certain you appreciate **this cost burden will be disproportional and will paid for in large part by Oregon's poorest and most vulnerable citizens.**

HB 2821A affects benefits for both Personal Injury Protection (PIP) and Uninsured Motorist (UM/UIM) coverages, which must be purchased and included with every motor-vehicle liability insurance policy sold in Oregon.

PIP coverage is sometimes called "no-fault" – because it's available in an accident situation to an insured driver and the passengers in his/her vehicle, regardless of fault. PIP pays for medical expenses, loss of income, household services, child care, and even funeral benefits. Oregon is one of just several states that *require* PIP coverage be carried. (Only 13 states require that insurers offer some form of PIP, and most allow an insured to opt out of purchasing the coverage). In Oregon, the minimum benefits for PIP coverage are set out by statute, (ORS 742.524).

Uninsured Motorist coverage pays damages to an insured, in instances where the insured's negligence is equal to or less than that of an at-fault driver, who is *either* <u>un</u>insured (UM), meaning the other driver has no insurance, or <u>under</u>insured (UIM), meaning the other driver is insured but has limits of liability coverage that are inadequate.

<u>HB 2821A will do three things</u>:

1. Double the benefit period for PIP medical expenses, from one year to two years.
2. Change the subrogation/reimbursement rights of PIP insurers.
3. Change the way in which <u>under</u>insured (UIM) benefits are calculated.

<u>Doubling the PIP Medical Benefit Period</u>

Today, PIP benefits are available to insureds for one year after an accident. PIP medical is primary coverage, and pays "before" an insured's own health insurance or Medicare/Medicaid coverage becomes applicable. HB 2821A would change the PIP medical benefit period from one year - to two years. This change would only affect a small percentage of claims, as most minor and moderate injury claims resolve within one-year of injury – and most major injury claims exhaust the insured's PIP medical coverage limits before that time. Extending the PIP medical benefit period will, however, impact some claims. State Farm's actuaries estimate the average "per policy" cost of this increased coverage benefit will be **$5 per year.**

Changing Insurers Subrogation Rights

PIP benefits are immediately available to persons injured in car accidents, without regard to liability. But when another person/driver is at-fault, the PIP carrier is able to seek reimbursement of amounts paid as PIP benefits, from that at-fault person/driver. A PIP carrier's right of subrogation is already subordinate to the insured/beneficiary first recovering all of his/her *economic* damages. So, if an insured has medical bills or wage loss or other economic damages that were not covered as PIP benefits, (e.g. projected future medical expenses, projected future wage loss, etc.) -- the insured is already entitled to recover those "not paid by PIP" economic losses from the at-fault person's liability insurance limits, *before* the PIP insurer is reimbursed.

However, the PIP insurer is reimbursed before the insured/beneficiary recovers *non-economic* damages. Non-economic damages are awarded for reasons like pain-and-suffering, loss of consortium, interference with parent-child relationship, loss of enjoyment of life, etc. HB 2821A would change the subrogation "position" of PIP insurers – allowing PIP carrier reimbursement only after an insured first recovers all economic *and* non-economic damages.

A PIP insurer's subrogation or reimbursement rights are statutory. (ORS 742.534 et seq.; ORS 742.544). The Legislature intended that PIP insurers be reimbursed *after* an insured/beneficiary recovers all of his/her *economic* damages, and *before* that insured/beneficiary recovers any of his/her *non-economic* damages. This helps keep PIP coverage affordable, as subrogation/reimbursement recoveries reduce insurers' net claim costs in providing this coverage and resulting rate needs). State Farm's actuaries estimate the average "per policy" cost of this change in subrogation position will be **$10 per year.**

Changing the Form of UM Coverage, from "Difference-In-Limits" to "Excess"

As originally introduced, HB 2821 did two things – it changed the PIP medical benefit period from one to two years, and it changed PIP insurers' subrogation/reimbursement position as outlined above. However, during the April 4th work session before the House's Consumer Protection and Government Efficiency Committee, Oregon Trial Lawyers were allowed to offer an amendment that also changes UIM coverage from the current statutorily prescribed modified "difference-in-limits" form of coverage – to an "excess" form of coverage.

In Oregon today, when you purchase a private-passenger motor vehicle liability insurance policy, you *must* buy three types of coverages within that policy -- Liability coverage (pays other persons when your negligence causes them bodily injury or property damage); PIP coverage (discussed above); and Uninsured Motorist coverage that is available for you and your family, and persons occupying your car, if you sustain bodily injury in an accident with an uninsured (UM) or underinsured motorist (UIM).

Oregon law (ORS 742.502) *requires* insurers to sell the "difference-in-limits" form of Uninsured Motorist coverage. For example, an insured with 50/100* Uninsured Motorist coverage limits, (*$50,000 per person/$100,000 per accident), would have up to $50,000 available from this coverage – and is able to make an uninsured motorist bodily injury claim for both economic and non-economic damages against his/her own insurer – if the at-fault driver had no insurance (a UM claim). If that at-fault driver was insured, but only carried 25/50 liability coverage limits – the insured could then make an underinsured motorist claim (a UIM claim) for the difference between the limits of his own uninsured motorist coverage ($50,000 per person) and the at-fault driver's liability limits ($25,000 per person) - with that difference being $25,000 in this example.

As amended HB 2821A would change the form of Uninsured Motorist coverage, to what's called an "excess" form of coverage. That means *regardless* of what might be recoverable from the "underinsured" at-fault driver's policy (whether that is $15,000 – or $150,000 – or $1,500,000) – if his/her damages so warrant, the insured could still present a claim for his/her full policy limit ($50,000 in this example).

Because the "excess" form of UIM coverage means the policy's full limits are exposed in every accident situation, *changing Oregon law to require the purchase of this form of UIM coverage will require consumers to pay more*. And that expense will be greater for persons who today, can only afford to purchase the lowest required limits of uninsured motorist coverage (25/50), given the exponentially higher number of accidents that involve moderate/temporary injury – in comparison to accidents with serious/permanent injury. These actual cost differences can be seen in State Farm's average six-month rate information from the state of Georgia, where insurers are required to offer both the "difference-in-limits" and "excess" forms of UIM coverage.

Georgia Uninsured/Underinsured Bodily Injury Coverage Premiums – 6 months		
Limits (000)	Reduced by At-Fault Liability Limits (Difference-In-Limits)	Added on to At-Fault Liability Limits (Excess)
25/50	$16.60	$40.10
50/100	$24.40	$46.52
100/300	$39.01	$54.14
250/500	$49.47	$54.54
500/500	$56.11	$60.55
500/1000	$61.25	$62.96
1000/1000	$65.24	$66.57

State Farm's actuaries estimate the average "per policy" cost of adopting this form of UIM coverage, will be **$40 per year**. This is an estimated average for State Farm's policyholder group in Oregon. *The actual cost for persons who can only afford minimum limits coverage (i.e. 25/50) will be even greater.*

The Oregon Trial Lawyer proponents of this legislation, testified before the House's Consumer Protection and Government Efficiency Committee on April 4th, and stated that consumers today are paying premiums for coverage limits that are not being provided, when they said:

- "the problem with the current law is it keeps people from getting what they paid for"; and "they (insureds) are unable to obtain the full benefit of their own insurance policy"[1]
- Question from Chairman Holvey: "so the premium I'm paying for my policy stays with the insurance company?" Answer: "that's right. It's a windfall to the insurance company".[2]

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[1] Rob Dalton's testimony re: HB 2821, advocating adoption of amendment
[2] Neil Jackson, 4/4/13 testimony re: HB 2821, advocating adoption of amendment

Those statements were simply not true. Insurers provide UIM benefits in accordance with Oregon law (ORS 742.502). Oregon consumers pay premiums that reflect the cost of providing the "difference-in-limits" form of UIM coverage. This same form of coverage is used in 19 states. Insurers, including State Farm, categorically reject these misleading Oregon Trial Lawyer statements or inferences that insurers are withholding UIM benefits, or not affording coverage limits that have been paid for by our insureds.

Summary

HB 2821A, will *compel* ALL Oregonians to purchase more insurance coverage. Insurers like State Farm can predict with accuracy, the average cost of providing these more costly benefits. Our actuaries have estimated **the "average Oregon policyholder" will see an annual increase of $55 per year, per insured vehicle**, based upon the three changes to current law, that will occur if HB 2821A passes.

But average cost increases are just that --- averages. Many consumers who struggle today, just to afford *required* minimum insurance coverage limits - (i.e. Liability limits of 25/50/20, basic PIP, Uninsured Motorist limits of 25/50) - will actually pay much more than these average cost increases, particularly persons with less than perfect driving records, and those who fall into actuarially valid categories (youthful, older, single, male, etc.) that are associated with statistically higher claim activity.

With the advent of America's Affordable Health Care Act, Oregon consumers will be required purchase health insurance (or pay penalties) starting in 2014. That would also be the effective date for purchasing the more expensive, increased coverage required by HB 2821A.

State Farm would respectfully ask the Committee to consider these questions:

- Does it make sense, to require consumers to pay more to extend the PIP medical benefit period, when insureds will be required to have "backup" health insurance available, should accident related care go beyond one year?
- Does it make sense to subordinate insurers' PIP subrogation rights to their insureds' recovery of *non-economic* damages? (which are coincidentally used as the basis to calculate trial lawyers' contingency fees).
- Should Oregon's Trial Lawyers and persons wanting more UIM coverage, ask *all* Oregon insurance consumers to pay for higher uninsured motorist coverage limits -- or should concerned persons simply buy higher UIM limits (which are readily available at modest cost)?

As a mutual insurer, State Farm is privileged to insure some 690,000 vehicles in Oregon, (or roughly one-in-five insured vehicles). *Our goal is to ensure that insurance products remain affordable*, and are available to deal with life's contingencies. We feel obliged to speak out on behalf of our customers and all insurance consumers whenever the legislative ambitions of any special interest group jeopardize the affordability of important insurance products.

HB 2821A is regressive legislation that disproportionately impacts Oregon's less affluent citizens, who will have no choice but to pay more for a new standard of required minimum auto insurance coverage, should this bill become law. *State Farm would respectfully ask this Committee to fully appreciate and acknowledge the financial consequences of the three elements of this bill – as it considers the fairness and impact of this legislative proposal.*

Materials prepared by Paul Danner, Counsel, State Farm Insurance Companies

Vote "NO" on HB 2821

State Farm estimates that average premiums will increase by $55 per car, per year

(Provided by John Powell)

Amended HB 2821 does three things that will raise auto insurance rates in Oregon.

1. Adds "non-economic" damages to ORS 742.544. Currently, after an injured party is completely reimbursed for "economic damages" including medical bills and lost wages (including future loss); the at fault driver's insurer reimburses the injured party's Personal Injury Protection (PIP) insurer for medical and other expenses. HB 2821 subordinates that reimbursement, so that the PIP insurer is only reimbursed after the injured person recovers both economic and "non-economic" damages ("pain and suffering"). This change will lower overall reimbursements to PIP insurers, and rates for PIP must rise to cover this change.

2. HB 2821 also lengthens the Personal Injury Protection (PIP) medical benefit period from one to two years. PIP benefits were never intended to replace health insurance, which takes over after the PIP benefits are exhausted or the benefit period is completed. PIP premiums will need to be raised to cover this portion of HB 2821.

3. Amendments added to HB 2821 at the work session significantly change Uninsured Motorist (UIM) coverage, that must be sold with every Oregon auto insurance policy. UIM coverage protects an insured who is injured by an at-fault <u>un</u>insured driver (person with no liability insurance) or an at-fault <u>under</u>insured driver (person with inadequate insurance coverage limits). The difference between the insured's UIM limits and the underinsured driver's liability insurance limits, is the amount an insured can recover as a UIM coverage benefit. HB 2821 eliminates this "difference in limits" comparison. It changes UIM coverage to an "excess" form, meaning that regardless of what is recovered from the at-fault underinsured driver, (whether $25,000 or $2,500,000), the insured's UIM coverage is available to pay benefits. Current UIM rates are based upon UIM coverage providing a "difference in limits" benefit. <u>Changing to an "excess" benefit, will significantly increase the cost of UIM coverage, particularly those persons who today, can only afford to carry lower UIM coverage limits</u>.

   Below is chart comparing average premiums in Oregon and Washington. Washington law requires that UIM coverage be sold as excess insurance just as HB 2821 would require for Oregon, however Washington consumers are not required to purchase this coverage.

State Farm preferred driver rates Oregon v. Washington

The chart below shows the average Oregon premium for the "difference in limits" UIM coverage form sold today. These rates can be compared to the Washington premium for "excess" UIM coverage form, (with lowest and highest ranges shown). <u>Please note</u>: these rate differences are for a six-month policy term.

6-Month Rates

Limits (000)	OR	Lowest WA	Highest WA
25/50	$9.20	$19.40	$37.70
50/100	$15.18	$26.19	$50.90
100/200	$24.47	$36.08	$70.12
100/300	$24.84	$38.99	$75.78
250/500	$41.95	$59.17	$114.99
300/300	$40.76	$57.81	$112.35
500/500	$59.06	$72.94	$141.75
500/1000	$66.79	$81.87	$159.09
1000/1000	$80.04	$94.28	$183.22

As you can see from the illustration above, the rates charged in Washington are significantly higher than current rates in Oregon. If HB 2821 becomes law, insurance rates will be adjusted to pay for the increased payments.

As mentioned above, State Farm estimates the increased premium resulting from passage of HB 2821 will be approximately $55.00 per car per year in Oregon. For high-risk drivers, the increase will be much more.

You may hear arguments that consumers already pay for these benefits. That is simply not the case; premiums are determined based upon actual claim experience for each coverage. Washington drivers pay more for auto insurance (*see following page*). One should also remember that health insurance covers medical expenses, and after 1-1-2014, the vast majority of drivers should be covered.

Attachment: Oregon v. Washington auto rates (released 1-14-2013)

Personal Auto Insurance State Average Expenditure

	2010	Rank	2009	Rank	2008	Rank	2007	Rank	2006	Rank	2005	Rank	2004	Rank	1-Year Change	Rank	10-year Change	Rank
New Jersey	1157	1	1101	2	1081	3	1104	2	1152	2	1185	2	1221	1	5.1%	1	12.6%	14
Dist. of Columbia	1134	2	1128	1	1127	1	1140	1	1164	1	1187	1	1185	2	0.5%	26	12.1%	16
Louisiana	1121	3	1100	3	1105	2	1096	3	1094	3	1078	5	1062	5	1.9%	14	33.7%	1
New York	1079	4	1058	4	1044	5	1047	4	1083	4	1125	3	1172	3	2.0%	13	6.3%	35
Florida	1037	5	1006	6	1055	4	1045	5	1069	5	1064	6	1062	6	3.0%	8	21.9%	3
Delaware	1031	6	1021	5	1007	6	1012	7	1024	8	1028	8	1022	8	0.9%	21	21.2%	4
Rhode Island	985	7	969	7	986	7	1017	6	1038	7	1062	7	1034	7	1.6%	16	11.9%	19
Connecticut	965	8	952	8	950	9	964	10	981	10	993	9	991	9	1.4%	18	5.8%	39
Maryland	948	9	929	10	922	10	933	11	964	11	969	11	973	12	2.0%	12	20.9%	5
Michigan	935	10	913	11	906	11	928	12	925	13	931	13	980	10	2.3%	11	27.1%	2
Nevada	931	11	944	9	970	8	999	8	1006	9	985	10	939	13	-1.4%	42	9.3%	22
Massachusetts	891	12	860	13	903	13	981	9	1042	6	1113	4	1113	4	3.5%	4	-4.8%	49
Alaska	890	13	897	12	904	12	923	13	955	12	968	12	974	11	-0.7%	37	7.8%	25
Texas	848	14	860	14	854	15	808	20	820	20	857	16	880	15	-1.4%	43	15.3%	10
West Virginia	830	15	815	17	807	19	819	18	827	19	859	15	875	16	1.9%	15	17.4%	7
Washington	815	16	827	16	839	16	841	15	839	17	842	20	839	20	-1.4%	41	8.7%	23
Pennsylvania	812	17	811	18	817	17	820	17	832	18	850	17	843	19	0.1%	32	11.8%	20
Arizona	804	18	842	15	864	14	883	14	919	14	929	14	931	14	-4.5%	51	-2.2%	48
Hawaii	766	19	786	19	816	18	837	16	853	15	846	18	817	22	-2.6%	50	8.6%	24
Georgia	749	20	755	20	761	21	782	21	788	22	785	24	779	24	-0.7%	38	6.5%	34
California	746	21	755	21	780	20	810	19	841	16	843	19	846	18	-1.2%	39	3.2%	43
Mississippi	745	22	738	23	749	22	765	22	746	26	746	27	749	29	1.0%	20	16.9%	8
South Carolina	738	23	738	24	749	23	762	23	756	24	754	25	763	25	0.0%	33	15.9%	9
Illinois	733	24	728	25	714	28	724	27	740	28	743	28	760	26	0.7%	25	7.3%	27
Colorado	730	25	741	22	729	25	738	25	784	23	829	21	850	17	-1.5%	44	-9.5%	51
Oregon	724	26	723	26	727	27	723	28	726	30	738	29	753	28	0.2%	29	12.7%	13
Kentucky	723	27	699	30	699	30	720	30	739	29	751	26	758	27	3.4%	5	12.0%	18
Utah	717	28	717	29	709	29	697	31	701	31	707	31	722	31	-0.0%	34	12.0%	17
New Hampshire	706	29	718	28	727	26	750	24	793	21	792	22	798	23	-1.6%	45	3.0%	44
New Mexico	704	30	718	27	730	24	733	26	740	27	731	30	728	30	-2.0%	47	6.3%	36