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VIA EMAIL – kenton.brine@pciaa.net

Kenton Brine
Property Casualty Insurers Association of America
Assistant Vice President, NW Region
1500 Water Street SW, Suite 2
Olympia, WA 98501

Re: A-Engrossed House Bill 2821

Dear Kenton:

This letter addresses your request for our opinion whether the Oregon Constitution permits the Legislative Assembly to add the –2 amendments to House Bill 2821.

The answer is no: More likely than not, A-Engrossed House Bill 2821 violates Article IV, section 20 of the Oregon Constitution, which provides:

Every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title.

The framers added Article IV, section 20 to the Constitution “to prevent deception” in the legislative process. *State v. Fugate*, 332 Or 195, 203 (2001). The “principal purpose of the title requirement * * * is to provide fair notice to legislators (and to others) of the contents of a bill [.]” *McIntire v. Forbes*, 322 Or 426, 438 (1996).

For purposes of House Bill 2821, therefore, the test for whether the Legislative Assembly may add the –2 amendments depends on whether a person interested in the –2 amendments would reasonably be expected to look for those amendments in a bill that relates to “personal injury protection benefits.”

The –2 amendments increase payments by insurers to an insured when the individual who injures the insured is underinsured. Our view is that a person interested in the extent of payment an insured is entitled to receive when the individual responsible for an accident is underinsured is unlikely to look for that subject in House Bill 2821.

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Kenton Brine
June 26 2013
Page 2

Under ORS 742.520 and 742.524, personal injury protection benefits cover medical expenses and other damages to be paid to an insured without regard to the fault of the insured or the other driver.

Under ORS 742.504, recovery on account of an underinsured driver can be offset by personal injury protection benefits. That circumstance shows, however, that an individual looking for changes in the law on personal injury protection benefits might reasonably be expected to look at a bill relating to underinsurance. It does not follow that a person looking for changes in the amount of underinsurance payments would reasonably be expected to look at a bill relating to personal injury protection benefits. In fact, an individual looking for changes in recoveries when the other party to an accident is underinsured would likely not look at a bill relating to personal injury protection benefits, because an insured receives personal injury protection benefits regardless of the amount of insurance of the other party.

Persons interested in personal injury protection benefits and uninsured or underinsured claims consider the concepts to be distinct:

Your insurance should pay your medical expenses (up to at least \$15,000 and at least 1 year after the accident); plus 70% of your lost wages (up to \$3,000 per month) if you are disabled for 14 days or longer, under your Personal Injury Protection (PIP) coverage.

In addition, you have an Uninsured Motorist claim with your insurance company for any medical expenses or lost wages not paid by PIP, plus a factor for pain and suffering and for any long-term problems due to this injury.

BerkshireGinsberg LLC, Frequently Asked Questions,
<http://www.berkshireginsberglaw.com/Frequently-Asked-Questions.shtml>. (Emphasis added.)

Please let us know if you have any questions or need additional information.

Very truly yours,

Davis Wright Tremaine LLP


Gregory A. Chaimov
GAC/jan
cc: Shawn Miller – shawn@millerpublicaffairs.com