

# House Bill 2239

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Transportation)

## 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**.

Provides that person commits offense of refusal to take test for intoxicants if person refuses to submit to blood test or to take urine test if requested to do so under Motorist Implied Consent Law. Provides that offense is punishable by fine of at least \$500 and not more than \$1,000.

## A BILL FOR AN ACT

1  
2 Relating to consequences of test refusal; amending ORS 813.095 and 813.130.

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

4 **SECTION 1.** ORS 813.095 is amended to read:

5 813.095. (1) A person commits the offense of refusal to take a [*breath*] test **for intoxicants** if the  
6 person refuses to:

7 (a) Take a breath test when requested to do so in accordance with the provisions of ORS  
8 813.100[.];

9 (b) **Take a blood test when requested to do so in accordance with the provisions of ORS**  
10 **813.100; or**

11 (c) **Take a urine test when requested to do so in accordance with the provisions of ORS**  
12 **813.131.**

13 (2) The offense described in this section, refusal to take a [*breath*] test **for intoxicants**, is a  
14 traffic offense punishable by a fine of at least \$500 and not more than \$1,000. The fine described in  
15 this section is in addition to any other consequence prescribed by law for refusal to take a  
16 [*breath*] test **for intoxicants**.

17 **SECTION 2.** ORS 813.130 is amended to read:

18 813.130. This section establishes the requirements for information about rights and consequences  
19 for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and  
20 consequences:

21 (1) The information about rights and consequences shall be substantially in the form prepared  
22 by the Department of Transportation. The department may establish any form it determines appro-  
23 priate and convenient.

24 (2) The information about rights and consequences shall be substantially as follows:

25 (a) Driving under the influence of intoxicants is a crime in Oregon, and the person is subject  
26 to criminal penalties if a test under ORS 813.100 shows that the person is under the influence of  
27 intoxicants. If the person refuses a test or fails, evidence of the refusal or failure may also be offered  
28 against the person.

29 (b) The person will fail a test under ORS 813.100 for purposes of criminal penalties if the test  
30 discloses a blood alcohol content of 0.08 percent or more by weight. The person will fail a test for

**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 purposes of the Motorist Implied Consent Law if the test discloses a blood alcohol content of:

2 (A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;

3 (B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or

4 (C) Any amount if the person was under 21 years of age.

5 (c) If the person refuses or fails a test under ORS 813.100, the person's driving privileges will  
6 be suspended. The outcome of a criminal charge for driving under the influence of intoxicants will  
7 not affect the suspension. The suspension will be substantially longer if the person refuses a test.

8 (d) If the person refuses a test or fails a breath test under ORS 813.100 and has an Oregon  
9 driver license or permit, the license or permit will be taken immediately and, unless the person does  
10 not currently have full valid driving privileges, a temporary driving permit will be issued to the  
11 person.

12 (e) If the person refuses a test under ORS 813.100, the person will not be eligible for a hardship  
13 permit for at least 90 days, and possibly for one year, depending on the person's driving record. The  
14 person may possibly qualify for a hardship permit in 30 days if the person fails a test, depending on  
15 the person's driving record.

16 (f) If the person refuses a breath **or blood** test under ORS 813.100, **or refuses a urine test**  
17 **under ORS 813.131**, the person is subject to a fine of at least \$500 and not more than \$1,000.

18 (g) After taking a test under ORS 813.100, the person will have a reasonable opportunity, upon  
19 request, for an additional chemical test for blood alcohol content to be performed at the person's  
20 own expense by a qualified individual of the person's choosing.

21 (h) The person has a right to a hearing to challenge the validity of the suspension before the  
22 suspension becomes effective. The person must make a written request to the department for such  
23 a hearing. If the person wins at the hearing, the person's driving privileges will not be suspended.  
24 If the person loses at the hearing, the suspension will remain in effect during any court review of  
25 the hearing.

26 (i) The following times:

27 (A) If the person is issued a temporary driving permit under ORS 813.100, the number of hours  
28 before the driving permit will be effective and the number of days the permit will be effective.

29 (B) The number of days within which a person must request a hearing under ORS 813.410.

30 (C) The number of days within which a hearing under ORS 813.410 will be held.

31 (3) If the person is driving a commercial motor vehicle, the information about rights and con-  
32 sequences shall include, in addition to the provisions of subsection (2) of this section, substantially  
33 the following:

34 (a) If the person refuses a test under ORS 813.100 or submits to a breath or blood test and the  
35 level of alcohol in the person's blood is 0.04 percent or more by weight, the person's commercial  
36 driver license or right to apply for a commercial driver license will be suspended and no hardship  
37 permit authorizing the person to drive a commercial motor vehicle will be issued. The suspension  
38 will be substantially longer if the person refuses a test.

39 (b) The suspension of the person's commercial driver license or right to apply for a commercial  
40 driver license will be for the person's lifetime if the person refuses a test under ORS 813.100 or  
41 submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or  
42 more by weight and:

43 (A) The person previously has been convicted of failure to perform the duties of a driver;

44 (B) The person previously has been convicted of a crime punishable as a felony and the person  
45 was driving a motor vehicle at the time the offense was committed;

1 (C) The person previously has been convicted of driving a commercial motor vehicle while the  
2 person's commercial driver license or right to apply for a commercial driver license was suspended  
3 or revoked;

4 (D) The person previously has been convicted of any degree of murder, manslaughter or  
5 criminally negligent homicide resulting from the operation of a commercial motor vehicle or assault  
6 in the first degree resulting from the operation of a commercial motor vehicle;

7 (E) The person previously has been convicted of driving while under the influence of intoxicants;

8 (F) The person's commercial driver license previously has been suspended or revoked for refusal  
9 to submit to, or failure of, a breath or blood test under ORS 813.100; or

10 (G) The person's right to apply for a commercial driver license previously has been suspended  
11 or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting  
12 from the operation of a commercial motor vehicle.

13 (4) Nothing in this section prohibits the department from providing additional information con-  
14 cerning rights and consequences that the department considers convenient or appropriate.

15