

A-Engrossed
House Bill 2638

Ordered by the House March 10
Including House Amendments dated March 10

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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.

Modifies laws related to ignition interlock devices.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to ignition interlock devices; creating new provisions; amending ORS 813.200, 813.600, 813.602, 813.603, 813.630, 813.635 and 813.645; and prescribing an effective date.

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

ON AND AFTER JULY 1, 2018

SECTION 1. Sections 2 to 6 and 10 of this 2017 Act and ORS 813.630, 813.635 and 813.645 are added to and made a part of ORS chapter 813.

SECTION 2. Definitions. As used in ORS chapter 813:

(1) **"Ignition interlock device technician" means an individual employed by a service center to install, service, repair, monitor, maintain, calibrate or remove ignition interlock devices.**

(2) **"Negative report" includes a report of tampering with an ignition interlock device, unauthorized removal of an ignition interlock device, lockout or a test violation recorded by an ignition interlock device.**

(3) **"Service center" means a private entity that installs, services, repairs, monitors, maintains, calibrates and removes ignition interlock devices in this state.**

(4) **"Test violation" means:**

(a) **For a person who is required to use an ignition interlock device as a condition of a driving while under the influence of intoxicants diversion agreement:**

(A) **An attempt to start a vehicle while the person has a blood alcohol content higher than 0.00 percent by weight unless a subsequent test performed within 10 minutes registers a blood alcohol content of 0.00 percent by weight and a digital image confirms that the same person provided both samples; or**

(B) **Failure to pass a random retest due to a blood alcohol content of over 0.00 percent by weight unless a subsequent test performed within 10 minutes registers a blood alcohol content of 0.00 by weight and a digital image confirms that the same person provided both**

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 samples;

2 (b) For a person who is required to use an ignition interlock device and is not subject to
3 a driving while under the influence of intoxicants diversion agreement:

4 (A) An attempt to start a vehicle while the person has a blood alcohol level of 0.04 per-
5 cent by weight or higher unless a subsequent test performed within 10 minutes registers a
6 blood alcohol content lower than 0.04 percent by weight and a digital image confirms that the
7 same person provided both samples; or

8 (B) Failure to pass a random retest due to a blood alcohol content of 0.02 percent by
9 weight or higher unless a subsequent test performed within 10 minutes registers a blood al-
10 cohol content lower than 0.02 percent by weight and a digital image confirms that the same
11 person provided both samples; or

12 (c) For any person required to use an ignition interlock device, a failure to take a random
13 retest.

14 **SECTION 3. Service center certification.** (1) A person may not establish a service center
15 without first obtaining a certificate from the Department of Transportation.

16 (2) A person may apply to the department for a service center certificate under this
17 section. The application shall be in such form as may be specified by the department.

18 (3) The department may issue a certificate if the person:

19 (a) Meets all of the requirements established by this section and the rules adopted by the
20 department;

21 (b) Agrees to provide testimony relating to any aspect of the installation, service, repair,
22 monitoring, maintenance, calibration, use, removal or performance of the ignition interlock
23 device at any criminal proceeding or administrative hearing;

24 (c) Utilizes ignition interlock device technicians who meet the minimum standards for
25 qualification as a technician established by the department by rule and who undergo a
26 criminal background check under section 4 of this 2017 Act;

27 (d) Provides service centers statewide, as defined by the department by rule;

28 (e) Provides 24-hour telephone assistance to customers; and

29 (f) Pays all required fees.

30 (4) The department may adopt rules establishing additional requirements for issuance
31 and renewal of certificates under this section.

32 (5) The department may refuse to issue or renew or may suspend or revoke any certif-
33 icate issued under this section in any case where the department finds that the applicant or
34 certificate holder has violated or failed to comply with any rules adopted under this section.

35 (6) The department by rule shall establish fees for applications for and issuance and re-
36 newal of certificates under this section. The fees shall be in an amount adequate to pay all
37 administrative costs incurred by the department in administering sections 2 to 6 of this 2017
38 Act. The fees shall be designed to cover the costs to the department for issuing or renewing
39 certificates under this section.

40 (7) Certificates issued under this section are subject to the following:

41 (a) A certificate shall expire two years from the date of issuance unless renewed ac-
42 cording to the rules of the department.

43 (b) The department may not issue or renew a certificate to a service center until the fee
44 for issuance or renewal of the certificate under this section is paid.

45 (c) A fee for a certificate may not be refunded in the event any certificate is refused,

1 suspended or revoked.

2 (8) The department may adopt rules for the implementation and administration of
3 sections 2 to 6 of this 2017 Act.

4 **SECTION 4. Criminal background check.** (1) A service center shall conduct a criminal
5 background check before hiring or contracting with an individual as an ignition interlock
6 device technician to determine whether the individual has been convicted of the following:

7 (a) Driving while under the influence of intoxicants in violation of ORS 813.010 or the
8 statutory counterpart in another jurisdiction; or

9 (b) A criminal offense involving fraud, forgery or theft in any jurisdiction.

10 (2) The Department of Transportation shall prescribe by rule the process for conducting
11 a criminal background check.

12 (3) If the criminal background check conducted by a service center reveals that the in-
13 dividual who is the subject of the criminal background check has been convicted of any of
14 the crimes described in subsection (1) of this section the service center may not employ the
15 individual as an ignition interlock device technician.

16 **SECTION 5. Complaint process.** The Department of Transportation shall adopt a proce-
17 dure for a person to file a complaint with the department concerning a service center's
18 failure to comply with a requirement of sections 2 to 6 of this 2017 Act. The department
19 shall:

20 (1) Provide a response to the complainant no later than 14 days after the date the com-
21 plaint is filed;

22 (2) Complete an investigation of the complaint no later than 90 days after the date the
23 complaint is filed; and

24 (3) Provide a written report of the results of the investigation to the service center and
25 to the complainant.

26 **SECTION 6. Ignition Interlock Device Management Fund.** (1) The Ignition Interlock De-
27 vice Management Fund is established in the State Treasury, separate and distinct from the
28 General Fund. Interest earned by the Ignition Interlock Device Management Fund shall be
29 credited to the fund.

30 (2) Moneys in the Ignition Interlock Device Management Fund consist of:

31 (a) Fees collected under section 3 of this 2017 Act for issuance or renewal of service
32 center certificates under section 3 of this 2017 Act;

33 (b) Amounts appropriated or otherwise transferred to the fund by the Legislative As-
34 ssembly;

35 (c) Interest and other earnings on moneys in the fund; and

36 (d) Other amounts deposited in the fund from any source.

37 (3) Moneys in the fund are continuously appropriated to the Department of Transporta-
38 tion for the purpose of fulfilling the department's duties, functions and powers related to
39 specifying requirements for ignition interlock devices as required under ORS 813.600 and
40 carrying out the regulatory functions of the department relating to service centers, as de-
41 scribed in sections 2 to 6 of this 2017 Act.

42 **SECTION 7.** ORS 813.600 is amended to read:

43 813.600. (1) The Department of Transportation, in consultation with the Transportation Safety
44 Committee, shall establish a program for the use of ignition interlock devices by persons convicted
45 of driving while under the influence of intoxicants and granted hardship permits under ORS 807.240

1 and by persons who have entered into a driving while under the influence of intoxicants diversion
2 agreement.

3 (2) The department shall adopt rules that specify requirements for ignition interlock devices that
4 may be used and shall publish a list of devices that meet the requirements. The list may include
5 devices that:

6 (a) Do not impede the safe operation of the vehicle;

7 (b) Have the fewest opportunities to be bypassed;

8 (c) Correlate well with established measures of alcohol impairment;

9 (d) Work accurately and reliably in an unsupervised environment;

10 (e) Require a deep lung breath sample or other accurate measure of blood alcohol content
11 equivalence;

12 (f) Resist tampering and give evidence if tampering is attempted;

13 (g) Are difficult to circumvent, and require premeditation to do so;

14 (h) Minimize inconvenience to a sober user;

15 (i) Operate reliably over the range of automobile environments or automobile manufacturing
16 standards;

17 (j) Are manufactured by a party who is adequately insured for product liability; *[and]*

18 (k) Have a label affixed in a prominent location warning that any person tampering with, cir-
19 cumventing or otherwise misusing the device is subject to civil penalty[.]; **and**

20 **(L) If there is a test violation, record the locational coordinate information of the vehicle,**
21 **including latitude and longitude as established by a global positioning system.**

22 **(3) The department shall adopt rules for the annual testing of ignition interlock devices.**
23 **The rules shall establish standards for the devices and for the performance of the devices.**

24 **SECTION 8.** ORS 813.630 is amended to read:

25 813.630. *[(1)(a) As used in this section, "negative report" includes a report of tampering with an*
26 *ignition interlock device, unauthorized removal of an ignition interlock device, lockout or a test vio-*
27 *lation recorded by an ignition interlock device.]*

28 *[(b) The Department of Transportation may by rule further define what constitutes a test*
29 *violation.]*

30 *[(2)]* **(1)** This section applies only to a person who has had an ignition interlock device installed
31 as a condition of a driving while under the influence of intoxicants diversion agreement under ORS
32 813.602 (3).

33 *[(3)]* **(2)** After an ignition interlock device is installed, the *[provider]* **service center** that in-
34 stalled the device shall notify:

35 (a) The court that required the device to be installed or the court's designee, including but not
36 limited to an agency or organization certified by the Oregon Health Authority under ORS 813.025;
37 and

38 (b) The district attorney or city prosecutor.

39 *[(4)]* **(3)** Notice of the installation must be given within seven business days of installing the
40 ignition interlock device.

41 *[(5)]* **(4)** Each time a *[provider]* **service center** has access to an ignition interlock device that
42 the *[provider]* **service center** installed, the *[provider]* **service center** shall download all reports re-
43 corded on the device. If the *[provider]* **service center** downloads a negative report, the *[provider]*
44 **service center** shall submit the negative report, in a form prescribed by rule by the department, to:

45 (a) The court that required the device to be installed or the court's designee, including but not

1 limited to an agency or organization certified by the Oregon Health Authority under ORS 813.025;
2 *[and]*

3 (b) The district attorney or city prosecutor[.]; **and**

4 (c) **The Department of State Police.**

5 *[(6)]* (5) The *[provider]* **service center** shall submit a negative report as provided in subsection
6 *[(5)]* (4) of this section within seven business days of downloading the report.

7 **SECTION 9.** ORS 813.200 is amended to read:

8 813.200. (1) The court shall inform at arraignment a defendant charged with the offense of
9 driving while under the influence of intoxicants as defined in ORS 813.010 or a city ordinance con-
10 forming thereto that a diversion agreement may be available if the defendant meets the criteria set
11 out in ORS 813.215 and files with the court a petition for a driving while under the influence of
12 intoxicants diversion agreement.

13 (2) The petition forms for a driving while under the influence of intoxicants diversion agreement
14 shall be available to a defendant at the court.

15 (3) The form of the petition for a driving while under the influence of intoxicants diversion
16 agreement and the information and blanks contained therein shall be determined by the Supreme
17 Court under ORS 1.525. The petition forms made available to a defendant by any city or state court
18 shall conform to the requirements adopted by the Supreme Court.

19 (4) In addition to any other information required by the Supreme Court to be contained in a
20 petition for a driving while under the influence of intoxicants diversion agreement, the petition shall
21 include:

22 (a) A plea of guilty or no contest to the charge of driving while under the influence of
23 intoxicants signed by the defendant;

24 (b) An agreement by the defendant to complete at an agency or organization designated by the
25 city or state court a screening interview to determine the possible existence and degree of an al-
26 cohol or drug abuse problem;

27 (c) An agreement by the defendant to complete, at defendant's own expense based on defendant's
28 ability to pay, the program of treatment:

29 (A) Indicated as necessary by the screening interview; **or**

30 (B) **If ordered by the court under section 10 of this 2017 Act after the court receives at**
31 **least two negative reports;**

32 (d) Except as provided in subsection (5) of this section, an agreement by the defendant to not
33 use intoxicants during the diversion period and to comply fully with the laws of this state designed
34 to discourage the use of intoxicants;

35 (e) A notice to the defendant that the diversion agreement will be considered to be violated if
36 the court receives notice that the defendant at any time during the diversion period committed the
37 offense of driving while under the influence of intoxicants or committed a violation of ORS 811.170;

38 (f) An agreement by the defendant to keep the court advised of the defendant's current mailing
39 address at all times during the diversion period;

40 (g) A waiver by the defendant of any former jeopardy rights under the federal and state Con-
41 stitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any other of-
42 fenses based upon the same criminal episode;

43 (h) A sworn statement, as defined in ORS 162.055, by the defendant certifying that the defendant
44 meets the criteria set out in ORS 813.215 to be eligible to enter into the driving while under the
45 influence of intoxicants diversion agreement;

1 (i) An agreement by the defendant to pay court-appointed attorney fees as determined by the
2 court; and

3 (j) An agreement by the defendant to pay restitution if ordered by the court under ORS 137.108.

4 (5) A person may use intoxicants during the diversion period if:

5 (a) The person consumes sacramental wine given or provided as part of a religious rite or ser-
6 vice;

7 (b) The person has a valid prescription for a substance and the person takes the substance as
8 directed; or

9 (c) The person is using a nonprescription drug, as defined in ORS 689.005, in accordance with
10 the directions for use that are printed on the label for that nonprescription drug.

11 **SECTION 10. Diversion agreement; additional treatment following negative reports. In**
12 **addition to any other requirement to participate in an alcohol or drug treatment program**
13 **required by law, if a court receives at least two negative reports, a court may order that the**
14 **defendant complete, at the defendant's own expense based on the defendant's ability to pay,**
15 **an alcohol or drug treatment program.**

16 **SECTION 11.** ORS 813.602 is amended to read:

17 813.602. (1) Subject to subsection (2) of this section, when a person is convicted of driving while
18 under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, the De-
19 partment of Transportation, in addition to any other requirement, shall require that the person have
20 installed and be using an approved ignition interlock device in any vehicle operated by the person:

21 (a) Before the person is eligible for a hardship permit. The requirement is a condition of the
22 hardship permit for the duration of the hardship permit.

23 (b) For a first conviction, for one year after the ending date of the suspension or revocation
24 caused by the conviction. Violation of the condition imposed under this paragraph is a Class A
25 traffic violation.

26 (c) For a second or subsequent conviction, for two years after the ending date of the suspension
27 or revocation caused by the conviction. Violation of the condition imposed under this paragraph is
28 a Class A traffic violation.

29 (2) When a person is convicted of a crime or multiple crimes as described in this subsection, the
30 department, in addition to any other requirement, shall require that the person have installed and
31 be using an approved ignition interlock device in any vehicle operated by the person for five years
32 after the ending date of the longest running suspension or revocation caused by any of the con-
33 victions. Violation of the condition imposed under this subsection is a Class A traffic violation. A
34 person is subject to this subsection when the person is convicted of:

35 (a) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal
36 ordinance and any of the following crimes as part of the same criminal episode:

37 (A) Any degree of murder.

38 (B) Manslaughter in the first or second degree.

39 (C) Criminally negligent homicide.

40 (D) Assault in the first degree.

41 (b) Aggravated vehicular homicide.

42 (c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal
43 ordinance and the person's driving privileges are revoked under ORS 809.235 (1)(b) and later ordered
44 restored under ORS 809.235 (4).

45 (3)(a) Except as provided in paragraph (c) of this subsection, as a condition of a driving while

1 under the influence of intoxicants diversion agreement:

2 (A) The court shall require that an approved ignition interlock device be installed and used in
3 any vehicle operated by the person during the period of the agreement when the person has driving
4 privileges if:

5 (i) The person submitted to a chemical test of the person's breath or blood as required under
6 ORS 813.100 and the test disclosed a blood alcohol content of 0.08 percent or more by weight;

7 (ii) The person refused to submit to a chemical test of the person's breath or blood; or

8 (iii) The person submitted to a chemical test of the person's breath, blood or urine as required
9 under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content of more than 0.00 per-
10 cent by weight but less than 0.08 percent by weight and disclosed the presence of a controlled sub-
11 stance or an inhalant.

12 (B) The court may require that an approved ignition interlock device be installed and used in
13 any vehicle operated by the person during the period of the agreement when the person has driving
14 privileges if the person submitted to a chemical test of the person's breath, blood or urine as re-
15 quired under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content below 0.08 per-
16 cent by weight.

17 (b) In addition to any action taken under ORS 813.255, violation of the condition imposed under
18 this subsection is a Class A traffic violation.

19 (c) A court may exempt a person from the condition in a diversion agreement to have installed
20 and be using an ignition interlock device if the court determines that the person meets the re-
21 quirements for a medical exemption in accordance with rules adopted by the department under this
22 section. A person granted a medical exemption under this paragraph shall carry proof of the medical
23 exemption with the person while operating any vehicle.

24 (4) The department shall adopt rules permitting medical exemptions from the requirements of
25 installation and use of an ignition interlock device under this section.

26 (5) When a person is required to install an ignition interlock device under subsection (2) of this
27 section, the [provider of] **service center providing** the device shall provide notice of any installa-
28 tion or removal of the device or any tampering with the device to:

29 (a) The supervising court or to the court's designee, including but not limited to an agency or
30 organization certified by the Oregon Health Authority under ORS 813.025; and

31 (b) The district attorney or the city prosecutor.

32 **SECTION 12.** ORS 813.603 is amended to read:

33 813.603. (1) Except as provided in subsection (2) of this section, if an ignition interlock device
34 is ordered or required under ORS 813.602, the person so ordered or required shall pay to the [pro-
35 vider] **service center** the reasonable costs of leasing, installing and maintaining the device. A pay-
36 ment schedule may be established for the person by the Department of Transportation.

37 (2) The department may waive, in whole or in part, or defer the person's responsibility to pay
38 all or part of the costs under subsection (1) of this section if the person meets the criteria for
39 indigence established for waiving or deferring such costs under subsection (3) of this section. If the
40 person's responsibility for costs is waived, then notwithstanding ORS 813.270, the costs described in
41 subsection (1) of this section must be paid from the Intoxicated Driver Program Fund.

42 (3) The department, by rule, shall establish criteria and procedures for qualification to waive
43 or defer costs described under subsection (1) of this section for indigence. The criteria must be
44 consistent with the standards for indigence adopted by the federal government for purposes of the
45 Supplemental Nutrition Assistance Program.

1 **SECTION 13.** ORS 813.635 is amended to read:

2 813.635. [(1)(a) As used in this section, “negative report” includes a report of tampering with an
3 ignition interlock device, unauthorized removal of an ignition interlock device, lockout or a test vio-
4 lation recorded by an ignition interlock device.]

5 [(b) The Department of Transportation may by rule further define what constitutes a test
6 violation.]

7 [(2)] (1) Notwithstanding ORS 813.602 (1)(b) or (c), (2) or (3), the requirement to have an ignition
8 interlock device installed in a vehicle continues until the person submits to the Department of
9 **Transportation** a certificate from the ignition interlock device [provider] **service center** stating
10 that the device did not record a negative report for the last 90 consecutive days of the required
11 installation period. The department shall remove the ignition interlock device requirement from the
12 person’s driving record as soon as practicable after the department receives the certificate.

13 [(3)] (2) If there is a negative report during the last 90 consecutive days, the person shall con-
14 tinue to use an ignition interlock device beyond the period required under ORS 813.602 (1)(b) or (c),
15 (2) or (3) until the person submits a certificate, in a form prescribed by rule by the department, to
16 the department from the ignition interlock device [provider] **service center** stating that the device
17 has not recorded a negative report for 90 consecutive days, beginning on the date of the most recent
18 negative report.

19 [(4)] (3) This section does not apply to a defendant who is granted an order to vacate the re-
20 quirement to install an ignition interlock device under ORS 813.645.

21 **SECTION 14.** ORS 813.645 is amended to read:

22 813.645. [(1)(a) As used in this section, “negative report” includes a report of tampering with an
23 ignition interlock device, unauthorized removal of an ignition interlock device, lockout or a test vio-
24 lation recorded by an ignition interlock device.]

25 [(b) The Department of Transportation may by rule further define what constitutes a test
26 violation.]

27 [(2)] (1) A defendant may apply by motion to the court in which a driving while under the in-
28 fluence of intoxicants diversion agreement described in ORS 813.230 was entered for an order va-
29 cating the requirement to install and use an ignition interlock device if the defendant:

30 (a) Has complied with the condition of the diversion agreement described in ORS 813.602 (3) for
31 at least six consecutive months and provides a certificate to the court from the ignition interlock
32 device [provider] **service center** stating that the device has not recorded a negative report; and

33 (b) The defendant has entered into and is in compliance with any treatment program that the
34 person is required to participate in as a condition of diversion.

35 [(3)] (2) The defendant shall cause to be served on the district attorney or city prosecutor a copy
36 of the motion for an order vacating the requirement to install and use an ignition interlock device
37 under ORS 813.602 (3). The copy of the motion shall be served on the district attorney or city
38 prosecutor at the time the motion is filed with the court. The district attorney or city prosecutor
39 may contest the motion.

40 [(4)] (3) The court shall hold a hearing [on a petition filed in accordance with subsection [(2)]
41 (1) of this section. In determining whether to grant the petition, the court shall consider:

42 (a) The nature of the underlying crime for which driving privileges were suspended.

43 (b) The blood alcohol content of the defendant at the time of the arrest.

44 (c) Any other relevant factors.

45 [(5)] (4) The court may vacate a defendant’s requirement to install and use an ignition interlock

1 device under ORS 813.602 (3) if, after a hearing described in subsection [(4)] (3) of this section, the
2 court finds by a preponderance of the evidence that the petitioner:

3 (a) Has complied with the condition of the diversion agreement described in ORS 813.602 (3) for
4 at least six consecutive months with no negative reports; and

5 (b) Has entered into and is in compliance with any treatment program required as a condition
6 of diversion.

7 [(6)] (5) When a court vacates a defendant's requirement to install and use an ignition interlock
8 device under ORS 813.602 (3), the court shall notify the Department of Transportation.

9
10 **ON AND AFTER JULY 1, 2019**

11
12 **SECTION 15.** Section 3 of this 2017 Act is amended to read:

13 **Sec. 3.** (1) A person may not establish a service center without first obtaining a certificate from
14 the [Department of Transportation] **Department of State Police**.

15 (2) A person may apply to the department for a service center certificate under this section. The
16 application shall be in such form as may be specified by the department.

17 (3) The department may issue a certificate if the person:

18 (a) Meets all of the requirements established by this section and the rules adopted by the de-
19 partment;

20 (b) Agrees to provide testimony relating to any aspect of the installation, service, repair, moni-
21 toring, maintenance, calibration, use, removal or performance of the ignition interlock device at any
22 criminal proceeding or administrative hearing;

23 (c) Utilizes ignition interlock device technicians who meet the minimum standards for quali-
24 fication as a technician established by the department by rule and who undergo a criminal back-
25 ground check under section 4 of this 2017 Act;

26 (d) Provides service centers statewide, as defined by the department by rule;

27 (e) Provides 24-hour telephone assistance to customers; and

28 (f) Pays all required fees.

29 (4) The department may adopt rules establishing additional requirements for issuance and re-
30 newal of certificates under this section.

31 (5) The department may refuse to issue or renew or may suspend or revoke any certificate is-
32 sued under this section in any case where the department finds that the applicant or certificate
33 holder has violated or failed to comply with any rules adopted under this section.

34 (6) The department by rule shall establish fees for applications for and issuance and renewal of
35 certificates under this section. The fees shall be in an amount adequate to pay all administrative
36 costs incurred by the department in administering sections 2 to 6 of this 2017 Act. The fees shall
37 be designed to cover the costs to the department for issuing or renewing certificates under this
38 section.

39 (7) Certificates issued under this section are subject to the following:

40 (a) A certificate shall expire two years from the date of issuance unless renewed according to
41 the rules of the department.

42 (b) The department may not issue or renew a certificate to a service center until the fee for
43 issuance or renewal of the certificate under this section is paid.

44 (c) A fee for a certificate may not be refunded in the event any certificate is refused, suspended
45 or revoked.

1 (8) The department may adopt rules for the implementation and administration of sections 2 to
2 6 of this 2017 Act.

3 **SECTION 16.** Section 4 of this 2017 Act is amended to read:

4 **Sec. 4.** (1) A service center shall conduct a criminal background check before hiring or con-
5 tracting with an individual as an ignition interlock device technician to determine whether the in-
6 dividual has been convicted of the following:

7 (a) Driving while under the influence of intoxicants in violation of ORS 813.010 or the statutory
8 counterpart in another jurisdiction; or

9 (b) A criminal offense involving fraud, forgery or theft in any jurisdiction.

10 (2) The [*Department of Transportation*] **Department of State Police** shall prescribe by rule the
11 process for conducting a criminal background check.

12 (3) If the criminal background check conducted by a service center reveals that the individual
13 who is the subject of the criminal background check has been convicted of any of the crimes de-
14 scribed in subsection (1) of this section the service center may not employ the individual as an ig-
15 nition interlock device technician.

16 **SECTION 17.** Section 5 of this 2017 Act is amended to read:

17 **Sec. 5.** The [*Department of Transportation*] **Department of State Police** shall adopt a procedure
18 for a person to file a complaint with the department concerning a service center's failure to comply
19 with a requirement of sections 2 to 6 of this 2017 Act. The department shall:

20 (1) Provide a response to the complainant no later than 14 days after the date the complaint is
21 filed;

22 (2) Complete an investigation of the complaint no later than 90 days after the date the complaint
23 is filed; and

24 (3) Provide a written report of the results of the investigation to the service center and to the
25 complainant.

26 **SECTION 18.** Section 6 of this 2017 Act is amended to read:

27 **Sec. 6.** (1) The Ignition Interlock Device Management Fund is established in the State Treasury,
28 separate and distinct from the General Fund. Interest earned by the Ignition Interlock Device
29 Management Fund shall be credited to the fund.

30 (2) Moneys in the Ignition Interlock Device Management Fund consist of:

31 (a) Fees collected under section 3 of this 2017 Act for issuance or renewal of service center
32 certificates under section 3 of this 2017 Act;

33 (b) Amounts appropriated or otherwise transferred to the fund by the Legislative Assembly;

34 (c) Interest and other earnings on moneys in the fund; and

35 (d) Other amounts deposited in the fund from any source.

36 (3) Moneys in the fund are continuously appropriated to:

37 (a) The Department of Transportation for the purpose of fulfilling the department's duties,
38 functions and powers related to specifying requirements for ignition interlock devices as required
39 under ORS 813.600; and

40 (b) **The Department of State Police for the purpose of** carrying out the regulatory functions
41 of the department relating to service centers, as described in sections 2 to 6 of this 2017 Act.

42 **SECTION 19.** ORS 813.600, as amended by section 7 of this 2017 Act, is amended to read:

43 813.600. (1) The [*Department of Transportation*] **Department of State Police**, in consultation
44 with the Transportation Safety Committee, shall establish a program for the use of ignition interlock
45 devices by persons convicted of driving while under the influence of intoxicants and granted hard-

1 ship permits under ORS 807.240 and by persons who have entered into a driving while under the
2 influence of intoxicants diversion agreement.

3 (2) The department shall adopt rules that specify requirements for ignition interlock devices that
4 may be used and shall publish a list of devices that meet the requirements. The list may include
5 devices that:

6 (a) Do not impede the safe operation of the vehicle;

7 (b) Have the fewest opportunities to be bypassed;

8 (c) Correlate well with established measures of alcohol impairment;

9 (d) Work accurately and reliably in an unsupervised environment;

10 (e) Require a deep lung breath sample or other accurate measure of blood alcohol content
11 equivalence;

12 (f) Resist tampering and give evidence if tampering is attempted;

13 (g) Are difficult to circumvent, and require premeditation to do so;

14 (h) Minimize inconvenience to a sober user;

15 (i) Operate reliably over the range of automobile environments or automobile manufacturing
16 standards;

17 (j) Are manufactured by a party who is adequately insured for product liability;

18 (k) Have a label affixed in a prominent location warning that any person tampering with, cir-
19 cumventing or otherwise misusing the device is subject to civil penalty; and

20 (L) If there is a test violation, record the locational coordinate information of the vehicle, in-
21 cluding latitude and longitude as established by a global positioning system.

22 (3) The department shall adopt rules for the annual testing of ignition interlock devices. The
23 rules shall establish standards for the devices and for the performance of the devices.

24 **SECTION 20.** ORS 813.603, as amended by section 12 of this 2017 Act, is amended to read:

25 813.603. (1) Except as provided in subsection (2) of this section, if an ignition interlock device
26 is ordered or required under ORS 813.602, the person so ordered or required shall pay to the service
27 center the reasonable costs of leasing, installing and maintaining the device. A payment schedule
28 may be established for the person by the *[Department of Transportation]* **Department of State Po-**
29 **lice, in consultation with the Transportation Safety Committee.**

30 (2) The department may waive, in whole or in part, or defer the person's responsibility to pay
31 all or part of the costs under subsection (1) of this section if the person meets the criteria for
32 indigence established for waiving or deferring such costs under subsection (3) of this section. If the
33 person's responsibility for costs is waived, then notwithstanding ORS 813.270, the costs described in
34 subsection (1) of this section must be paid from the Intoxicated Driver Program Fund.

35 (3) The department, by rule, shall establish criteria and procedures for qualification to waive
36 or defer costs described under subsection (1) of this section for indigence. The criteria must be
37 consistent with the standards for indigence adopted by the federal government for purposes of the
38 Supplemental Nutrition Assistance Program.

39
40 **CAPTIONS**

41
42 **SECTION 21.** **The unit and section captions used in this 2017 Act are provided only for**
43 **the convenience of the reader and do not become part of the statutory law of this state or**
44 **express any legislative intent in the enactment of this 2017 Act.**

OPERATIVE DATES

SECTION 22. (1) Sections 2 to 6 and 10 of this 2017 Act and the amendments to ORS 813.200, 813.600, 813.602, 813.603, 813.630, 813.635 and 813.645 by sections 7 to 9 and 11 to 14 of this 2017 Act become operative on July 1, 2018.

(2) The Department of Transportation may adopt rules and take any other actions before the operative date specified in subsection (1) of this section that are necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers that sections 2 to 6 and 10 of this 2017 Act and the amendments to ORS 813.200, 813.600, 813.602, 813.603, 813.630, 813.635 and 813.645 by sections 7 to 9 and 11 to 14 of this 2017 Act confer on the department.

SECTION 23. (1) The amendments to sections 3 to 6 of this 2017 Act and ORS 813.600 and 813.603 by sections 15 to 20 of this 2017 Act become operative on July 1, 2019.

(2) The Department of State Police may adopt rules and take any other actions before the operative date specified in subsection (1) of this section that are necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers that the amendments to sections 3 to 6 of this 2017 Act and ORS 813.600 and 813.603 by sections 15 to 20 of this 2017 Act confer on the department.

EFFECTIVE DATE

SECTION 24. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.
