

House Bill 3132

Sponsored by Representative NOBLE (at the request of Governor's Advisory Committee on DUII)

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 driving while under influence of intoxicants or offense of operating boat while under influence of intoxicants if person drives vehicle or boat and has 0.05 percent or more by weight of alcohol in person's blood.

A BILL FOR AN ACT

1
2 Relating to offenses committed while under the influence of intoxicants; creating new provisions; and
3 amending ORS 811.182, 813.010, 813.130, 813.131, 813.210, 813.300, 813.410, 813.602 and 830.510.

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

5 **SECTION 1.** ORS 813.010 is amended to read:

6 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if
7 the person drives a vehicle while the person:

8 (a) Has [*0.08*] **0.05** percent or more by weight of alcohol in the blood of the person as shown by
9 chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

10 (b) Is under the influence of intoxicating liquor, cannabis, a controlled substance or an inhalant;
11 or

12 (c) Is under the influence of any combination of intoxicating liquor, cannabis, a controlled sub-
13 stance and an inhalant.

14 (2) A person may not be convicted of driving while under the influence of intoxicants on the
15 basis of being under the influence of a controlled substance or an inhalant unless the fact that the
16 person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory
17 instrument and is either proved at trial or is admitted by the person through a guilty plea.

18 (3) A person convicted of the offense described in this section is subject to ORS 813.020 in ad-
19 dition to this section.

20 (4) Except as provided in subsection (5) of this section, the offense described in this section,
21 driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon
22 any premises open to the public.

23 (5)(a) Driving while under the influence of intoxicants is a Class C felony if the current offense
24 was committed in a motor vehicle and the person has, at least three times in the 10 years prior to
25 the date of the current offense, been convicted of, or been found to be within the jurisdiction of the
26 juvenile court for an act that if committed by an adult would be, any of the following offenses in
27 any combination:

28 (A) Driving while under the influence of intoxicants in violation of:

29 (i) This section; or

30 (ii) The statutory counterpart to this section in another jurisdiction.

31 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the

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 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor,
 2 cannabis, a controlled substance, an inhalant or any combination thereof.

3 (C) A driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a
 4 boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol con-
 5 tent.

6 (b) For the purposes of paragraph (a) of this subsection, a conviction or adjudication for a
 7 driving offense in another jurisdiction based solely on a person under 21 years of age having a blood
 8 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a
 9 person 21 years of age or older does not constitute a prior conviction or adjudication.

10 (6) In addition to any other sentence that may be imposed, the court shall impose one or more
 11 of the following fines on a person convicted of driving while under the influence of intoxicants as
 12 follows:

13 (a) For a person's first conviction, a minimum of \$1,000.

14 (b) For a person's second conviction, a minimum of \$1,500.

15 (c) For a person's third or subsequent conviction, a minimum of \$2,000 if the person is not sen-
 16 tenced to a term of imprisonment.

17 (d) For a person who drives a vehicle while the person has 0.15 percent or more by weight of
 18 alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the per-
 19 son made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.

20 (7) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on a
 21 person convicted of driving while under the influence of intoxicants if:

22 (a) The current offense was committed in a motor vehicle; and

23 (b) There was a passenger in the motor vehicle who was under 18 years of age and was at least
 24 three years younger than the person driving the motor vehicle.

25 **SECTION 2.** ORS 811.182 is amended to read:

26 811.182. (1) A person commits the offense of criminal driving while suspended or revoked if the
 27 person violates ORS 811.175 and the suspension or revocation is one described in this section, or if
 28 the hardship permit violated is based upon a suspension or revocation described in subsection (3)
 29 or (4) of this section.

30 (2) Affirmative defenses to the offense described in this section are established under ORS
 31 811.180.

32 (3) The offense described in this section, criminal driving while suspended or revoked, is a Class
 33 B felony if the suspension or revocation resulted from any degree of murder, manslaughter,
 34 criminally negligent homicide or assault resulting from the operation of a motor vehicle, if the sus-
 35 pension or revocation resulted from aggravated vehicular homicide or aggravated driving while
 36 suspended or revoked or if the revocation resulted from a conviction for felony driving while under
 37 the influence of intoxicants.

38 (4) The offense described in this section, criminal driving while suspended or revoked, is a Class
 39 A misdemeanor if the suspension or revocation is any of the following:

40 (a) A suspension under ORS 809.411 (2) resulting from commission by the driver of any degree
 41 of recklessly endangering another person, menacing or criminal mischief, resulting from the opera-
 42 tion of a motor vehicle.

43 (b) A suspension under ORS 813.410 resulting from refusal to take a test prescribed in ORS
 44 813.100 or for taking a breath or blood test the result of which discloses a blood alcohol content
 45 of:

1 (A) [0.08] **0.05** percent or more by weight if the person was not driving a commercial motor ve-
2 hicle;

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) A suspension of commercial driving privileges under ORS 809.510 resulting from failure to
6 perform the duties of a driver under ORS 811.700.

7 (d) A suspension of commercial driving privileges under ORS 809.510 (6) where the person's
8 commercial driving privileges have been suspended or revoked by the other jurisdiction for failure
9 of or refusal to take a chemical test to determine the alcoholic content of the person's blood under
10 a statute that is substantially similar to ORS 813.100.

11 (e) A suspension of commercial driving privileges under ORS 809.520.

12 (f) A revocation resulting from habitual offender status under ORS 809.640.

13 (g) A suspension resulting from any crime punishable as a felony with proof of a material ele-
14 ment involving the operation of a motor vehicle, other than a crime described in subsection (3) of
15 this section.

16 (h) A suspension for failure to perform the duties of a driver under ORS 811.705.

17 (i) A suspension for reckless driving under ORS 811.140.

18 (j) A suspension for fleeing or attempting to elude a police officer under ORS 811.540.

19 (k) A suspension or revocation resulting from misdemeanor driving while under the influence
20 of intoxicants under ORS 813.010.

21 (L) A suspension for use of a motor vehicle in the commission of a crime punishable as a felony.

22 (5) In addition to any other sentence that may be imposed, if a person is convicted of the offense
23 described in this section and the underlying suspension resulted from driving while under the influ-
24 ence of intoxicants, the court shall impose a minimum fine of at least \$1,000 if it is the person's first
25 conviction for criminal driving while suspended or revoked and a minimum fine of at least \$2,000 if
26 it is the person's second or subsequent conviction.

27 (6)(a) The Oregon Criminal Justice Commission shall classify a violation of this section that is
28 a felony as crime category 4 of the rules of the commission.

29 (b) Notwithstanding paragraph (a) of this subsection, the commission shall classify a violation
30 of this section that is a felony as crime category 6 of the rules of the commission, if the suspension
31 or revocation resulted from:

32 (A) Any degree of murder, manslaughter or criminally negligent homicide or an assault that
33 causes serious physical injury, resulting from the operation of a motor vehicle; or

34 (B) Aggravated vehicular homicide or aggravated driving while suspended or revoked.

35 **SECTION 3.** ORS 813.130 is amended to read:

36 813.130. This section establishes the requirements for information about rights and consequences
37 for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and
38 consequences:

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

42 (2) Except as provided in subsection (3) of this section, the information about rights and conse-
43 quences shall be substantially as follows:

44 (a) Driving under the influence of intoxicants is a crime in Oregon, and the person is subject
45 to criminal penalties if a test under ORS 813.100 shows that the person is under the influence of

1 intoxicants. If the person fails a test, evidence of the failure may also be offered against the person.

2 (b) The person will fail a test under ORS 813.100 for purposes of criminal penalties if the test
 3 discloses a blood alcohol content of [0.08] **0.05** percent or more by weight of alcohol in the blood
 4 of the person as shown by chemical analysis of the breath or blood. The person will fail a test for
 5 purposes of the Motorist Implied Consent Law if the test discloses a blood alcohol content of:

6 (A) [0.08] **0.05** percent or more by weight of alcohol in the blood of the person as shown by
 7 chemical analysis of the breath or blood if the person was not driving a commercial motor vehicle;

8 (B) 0.04 percent or more by weight of alcohol in the blood of the person as shown by chemical
 9 analysis of the breath or blood if the person was driving a commercial motor vehicle; or

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

11 (c) If the person fails a test under ORS 813.100, the person's driving privileges will be suspended.
 12 The outcome of a criminal charge for driving under the influence of intoxicants will not affect the
 13 suspension.

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

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

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

25 (g) If the person is issued a temporary driving permit under ORS 813.100, the information pro-
 26 vided to the person shall include the number of hours before the driving permit will be effective and
 27 the number of days the permit will be effective.

28 (h) The information provided to the person shall include the number of days within which a
 29 person must request a hearing under ORS 813.410.

30 (i) The information provided to the person shall include the number of days within which a
 31 hearing under ORS 813.410 will be held.

32 (j) The person may possibly qualify for a hardship permit in 30 days if the person fails a test,
 33 depending on the person's driving record.

34 (k) If the person is driving a commercial motor vehicle, and takes a breath or blood test under
 35 ORS 813.100 after being informed of the rights and consequences under paragraphs (a) to (j) of this
 36 subsection, the following additional information shall be provided:

37 (A) If the level of alcohol in the person's blood is 0.04 percent or more by weight of alcohol in
 38 the blood of the person as shown by chemical analysis of the breath or blood, the person's com-
 39 mercial driving privileges or right to apply for commercial driving privileges will be suspended and
 40 no hardship permit authorizing the person to drive a commercial motor vehicle will be issued.

41 (B) The suspension of the person's commercial driving privileges or right to apply for commer-
 42 cial driving privileges will be for the person's lifetime if the person takes a breath or blood test and
 43 the level of alcohol in the person's blood is 0.04 percent or more by weight of alcohol in the blood
 44 of the person as shown by chemical analysis of the breath or blood and:

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

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

3 (iii) The person previously has been convicted of driving a commercial motor vehicle while the
4 person's commercial driving privileges or right to apply for commercial driving privileges was sus-
5 pended or revoked for offenses committed while operating a commercial motor vehicle;

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

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

10 (vi) The person's commercial driving privileges previously have been suspended or revoked for
11 refusal to submit to, or failure of, a breath or blood test under ORS 813.100; or

12 (vii) The person's right to apply for commercial driving privileges previously has been suspended
13 or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting
14 from the operation of a commercial motor vehicle.

15 (3) A person who refuses to submit to a chemical test after being informed of the rights and
16 consequences in subsection (2) of this section shall be provided additional information, substantially
17 as follows:

18 (a) If the person refuses to provide consent to a breath or blood test, and is thereafter requested
19 to provide only physical cooperation to submit to a breath or blood test, and the person refuses to
20 physically submit to a test, evidence of that refusal may be offered against the person.

21 (b) If the person refuses to submit to a test under ORS 813.100, the person's driving privileges
22 will be suspended. The outcome of a criminal charge for driving under the influence of intoxicants
23 will not affect the suspension. The suspension will be substantially longer if a person refuses a test.

24 (c) If the person refuses to submit to a breath test under ORS 813.100 and has an Oregon driver
25 license or permit, the license or permit will be taken immediately and, unless the person does not
26 currently have full valid driving privileges, a temporary driving permit will be issued to the person.

27 (d) If the person refuses to submit to a test under ORS 813.100, the person is not eligible for a
28 hardship permit for at least 90 days, and possibly for three years, depending on the following factors
29 set forth in ORS 813.430:

30 (A) Whether the person is presently participating in a driving while under the influence of
31 intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program
32 in this or another jurisdiction; or

33 (B) Whether within the five years preceding the date of arrest any of the following occurred:

34 (i) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replace-
35 ment Part) became effective;

36 (ii) The person was convicted of driving while under the influence of intoxicants in violation of
37 ORS 813.010 or the statutory counterpart to ORS 813.010 in another jurisdiction, as described in
38 ORS 813.430;

39 (iii) The person was convicted of driving while under the influence of intoxicants in violation
40 of a municipal ordinance in this state or another jurisdiction, as described in ORS 813.430; or

41 (iv) The person commenced participating in a driving while under the influence of intoxicants
42 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or
43 another jurisdiction, as described in ORS 813.430.

44 (e) If the person refuses to submit to a breath test under ORS 813.100, or refuses to provide a
45 urine sample under ORS 813.131 and 813.132, the person is subject to a fine of at least \$500 and not

1 more than \$1,000.

2 (f) The person has a right to a hearing to challenge the validity of the suspension before the
 3 suspension becomes effective. The person must make a written request to the department for such
 4 a hearing. If the person wins at the hearing, the person's driving privileges will not be suspended.
 5 If the person loses at the hearing, the suspension will remain in effect during any court review of
 6 the hearing.

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

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

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

11 (j) The person may possibly qualify for a hardship permit in 30 days if the person fails a test,
 12 depending on the person's driving record.

13 (k) If the person is driving a commercial motor vehicle, further information as follows:

14 (A) If the person refuses to submit to a test under ORS 813.100, the person's commercial driving
 15 privileges or right to apply for commercial driving privileges will be suspended and no hardship
 16 permit authorizing the person to drive a commercial motor vehicle will be issued. The suspension
 17 will be substantially longer if the person refuses the test.

18 (B) The suspension of the person's commercial driving privileges or right to apply for commer-
 19 cial driving privileges will be for the person's lifetime if the person refuses to submit to a test under
 20 ORS 813.100 and:

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

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

24 (iii) The person previously has been convicted of driving a commercial motor vehicle while the
 25 person's commercial driving privileges or right to apply for commercial driving privileges was sus-
 26 pended or revoked for offenses committed while operating a commercial motor vehicle;

27 (iv) The person previously has been convicted of any degree of murder, manslaughter or
 28 criminally negligent homicide resulting from the operation of a commercial motor vehicle or assault
 29 in the first degree resulting from the operation of a commercial motor vehicle;

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

31 (vi) The person's commercial driving privileges previously have been suspended or revoked for
 32 refusal to submit to, or failure of, a breath or blood test under ORS 813.100; or

33 (vii) The person's right to apply for commercial driving privileges previously has been suspended
 34 or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting
 35 from the operation of a commercial motor vehicle.

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

38 **SECTION 4.** ORS 813.131 is amended to read:

39 813.131. (1) A person may be asked to provide a urine sample under ORS 813.140 or subsection
 40 (2) of this section.

41 (2) Any person who operates a motor vehicle upon premises open to the public or the highways
 42 of this state shall be deemed to have given consent, subject to the Motorist Implied Consent Law,
 43 to a chemical test of the person's urine for the purpose of determining the presence of cannabis, a
 44 controlled substance or an inhalant in the person's body if the person is arrested for driving while
 45 under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance and ei-

1 ther:

2 (a) The person takes the breath test described in ORS 813.100 and the test discloses a blood
3 alcohol content of less than [0.08] **0.05** percent; or

4 (b) The person is involved in an accident resulting in injury or property damage. A urine test
5 may be requested under this paragraph regardless of whether a breath test has been requested and
6 regardless of the results of a breath test, if one is taken.

7 (3) A police officer may not request a urine test unless the officer is certified by the Department
8 of Public Safety Standards and Training as having completed at least eight hours of training in re-
9 cognition of drug impaired driving and the officer has a reasonable suspicion that the person ar-
10 rested has been driving while under the influence of cannabis, a controlled substance, an inhalant
11 or any combination of cannabis, a controlled substance, an inhalant and intoxicating liquor.

12 (4) A person asked to give a urine sample shall be given privacy and may not be observed by
13 a police officer when producing the sample.

14 (5)(a) At the trial of any civil or criminal action, suit or proceeding arising out of the acts
15 committed by a person driving a motor vehicle while under the influence of intoxicants, a valid
16 chemical analysis of a person's urine is admissible as evidence and may be used with other evidence,
17 if any, to determine whether the person was driving while under the influence of intoxicants.

18 (b) A chemical analysis of a person's urine is valid if analysis is performed in an accredited or
19 licensed toxicology laboratory.

20 **SECTION 5.** ORS 813.210 is amended to read:

21 813.210. (1) After an accusatory instrument has been filed charging the defendant with the of-
22 fense of driving while under the influence of intoxicants, a defendant may file with the court a pe-
23 tition for a driving while under the influence of intoxicants diversion agreement described in ORS
24 813.200. The petition:

25 (a) Must be filed within 30 days after the date of the defendant's first appearance on the sum-
26 mons, unless a later filing date is allowed by the court upon a showing of good cause. For purposes
27 of this paragraph, the filing of a demurrer, a motion to suppress or a motion for an omnibus hearing
28 does not constitute good cause.

29 (b) Notwithstanding paragraph (a) of this subsection, may not be filed after entry of a guilty plea
30 or a no contest plea or after commencement of any trial on the charge whether or not a new trial
31 or retrial is ordered for any reason.

32 (c) Notwithstanding paragraph (a) of this subsection, may be filed up to 14 days after the date
33 the prosecuting attorney sends the laboratory test results of the defendant's urine or blood sample
34 analysis to the defendant's attorney or, if the defendant is unrepresented, the defendant, if:

35 (A) The accusatory instrument alleges that the defendant was driving under the influence of
36 intoxicants and alleges that at the time the conduct occurred the defendant was under the influence
37 of a controlled substance or an inhalant;

38 (B) The defendant has not received notice of what the defendant's blood alcohol content was at
39 the time the conduct occurred or if at the time the conduct occurred the defendant had less than
40 [0.08] **0.05** percent by weight of alcohol in the blood; and

41 (C) A police officer obtained a urine or blood sample from the defendant.

42 (2) The defendant shall pay to the court, at the time of filing a petition for a driving while under
43 the influence of intoxicants diversion agreement, a filing fee established under ORS 813.240. The
44 court may make provision for payment of the filing fee by the defendant on an installment basis.
45 The court may waive all or part of the filing fee in cases involving indigent defendants. The filing

1 fee paid to the court under this subsection shall be retained by the court if the petition is allowed.
 2 The filing fee shall be distributed as provided by ORS 813.240.

3 (3) The defendant shall pay to the agency or organization providing the screening interview, at
 4 the time the petition is allowed, the fee required by ORS 813.240 (3).

5 (4)(a) Unless otherwise provided under paragraph (b) of this subsection, the defendant shall pay
 6 to the court any court-appointed attorney fees agreed to under ORS 813.200 (4)(i). Payments shall
 7 be made prior to the end of the diversion period on a schedule determined by the court.

8 (b) The court may waive all or part of the court-appointed attorney fees agreed to under ORS
 9 813.200 (4)(i).

10 (5) The defendant shall begin paying to the court any restitution ordered under ORS 137.108.
 11 Payments shall be made during the diversion period on a schedule determined by the court.

12 (6) The defendant shall cause a copy of the petition for a driving while under the influence of
 13 intoxicants diversion agreement to be served upon the district attorney or city attorney. The district
 14 attorney or city attorney may file with the court, within 15 days after the date of service, a written
 15 objection to the petition and a request for a hearing.

16 **SECTION 6.** ORS 813.300 is amended to read:

17 813.300. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts
 18 committed by a person driving a motor vehicle while under the influence of intoxicants, if the
 19 amount of alcohol in the person's blood at the time alleged is less than [0.08] **0.05** percent by weight
 20 of alcohol as shown by chemical analysis of the person's breath or blood, it is indirect evidence that
 21 may be used with other evidence, if any, to determine whether or not the person was then under the
 22 influence of intoxicants.

23 (2) Not less than [0.08] **0.05** percent by weight of alcohol in a person's blood constitutes being
 24 under the influence of intoxicating liquor.

25 (3) Notwithstanding subsection (2) of this section, for purposes of the Motorist Implied Consent
 26 Law as defined in ORS 801.010, for a person who is under 21 years of age, any amount of alcohol
 27 in the blood constitutes being under the influence of intoxicating liquor.

28 (4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100
 29 milliliters of blood or based upon grams of alcohol per 210 liters of breath.

30 **SECTION 7.** ORS 813.410 is amended to read:

31 813.410. (1) If the Department of Transportation receives from a police officer a report that is
 32 in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of
 33 the person in this state on the 30th day after the date of arrest or, if the report indicates that the
 34 person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described
 35 under this section, the department determines that the suspension would not be valid as described
 36 in this section. A suspension of driving privileges imposed under this subsection shall be for a period
 37 of time established under ORS 813.420.

38 (2) If the department receives from a police officer a report under ORS 813.120 and the person
 39 holds commercial driving privileges and the person was driving a motor vehicle or commercial motor
 40 vehicle and refused to submit to a test under ORS 813.100 or the person was driving a commercial
 41 motor vehicle and submitted to a breath or blood test and the person's blood, as shown by the test,
 42 had 0.04 percent or more by weight of alcohol, the department shall suspend the person's commercial
 43 driving privileges on the 30th day after the date of arrest or, if the report indicates that the person
 44 failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described under
 45 this section, the department determines that the suspension would not be valid as described in this

1 section. A commercial driving privileges suspension imposed under this subsection shall be for a
2 period of time established under ORS 809.510 or 809.520.

3 (3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days
4 from the date the department sends notice of suspension, the department receives a request for a
5 hearing from a person whose driving privileges or commercial driving privileges the department
6 proposes to suspend under this section, the department shall provide a hearing in accordance with
7 this section. The person shall request a hearing in the form and manner prescribed by the depart-
8 ment by rule. Except as otherwise provided under this section, a hearing held by the department
9 under this section is subject to the provisions for contested cases, other than appeal provisions,
10 under ORS chapter 183. The applicable appeal provisions are as provided under ORS 813.450 and
11 section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS 809.430, the department is not
12 required to give any notice of intent to suspend or suspension in addition to that provided under
13 ORS 813.100.

14 (4) Except as provided in subsection (5) of this section, a hearing required by this section is
15 subject to all of the following:

16 (a) The hearing shall be conducted by an administrative law judge assigned from the Office of
17 Administrative Hearings established under ORS 183.605.

18 (b) The administrative law judge shall conduct the hearing by telephone or other two-way elec-
19 tronic communication device.

20 (c) The department may authorize the administrative law judge to issue a final order in any
21 case.

22 (d) A person who requests a hearing under this section and who fails, without just cause, to
23 appear personally or through an attorney waives the right to a hearing. If a person waives a right
24 to a hearing under this paragraph, the department is not required to make any showing at hearing.

25 (e) Except as provided in ORS 813.440 or upon remand under ORS 813.450, the department shall
26 hold the hearing and issue a final order within 30 days of the date of the arrest or, if the person fails
27 a blood test, within 60 days from the date the department received the report of the failure.

28 (f) In connection with the hearing, the department or its authorized representative may admin-
29 ister oaths and shall issue subpoenas for the appearance of witnesses by telephone or other two-way
30 electronic communication device at the hearing requested by the person or the department and the
31 production of relevant documents.

32 (g) The hearing shall be recorded by whatever means may be determined by the department and
33 shall include testimony and exhibits, if any. The record of the proceedings may not be transcribed
34 unless requested by a party to the proceeding.

35 (5)(a) A person or a police officer may request that a hearing required by this section be con-
36 ducted in person.

37 (b) The department, by rule, shall establish the manner and time limitation requirements by
38 which a person or a police officer may request that a hearing be conducted in person.

39 (c) Unless there is an agreement between the person and the department that the hearing be
40 conducted elsewhere, a hearing requested under this subsection shall be held either in the county
41 where the alleged offense occurred or at any place within 100 miles of the place where the offense
42 is alleged to have occurred, as established by the department by rule.

43 (d) In connection with the hearing, the department or its authorized representative may admin-
44 ister oaths and shall issue subpoenas for the attendance of witnesses at the hearing requested under
45 this subsection by the person and the production of relevant documents.

1 (6) This subsection shall be narrowly construed so as to effect the legislative purpose of limiting
 2 the scope of hearings under this section. The scope of a hearing under this section shall be limited
 3 to whether the suspension is valid as described in this subsection. A suspension under this section
 4 is valid if all of the following requirements have been met:

5 (a) The person, at the time the person was requested to submit to a test under ORS 813.100,
 6 was under arrest for driving while under the influence of intoxicants in violation of ORS 813.010 or
 7 a municipal ordinance.

8 (b) The police had reasonable grounds to believe, at the time the request was made, that the
 9 person arrested had been driving under the influence of intoxicants in violation of ORS 813.010 or
 10 of a municipal ordinance.

11 (c) The person refused a test under ORS 813.100, or took a breath or blood test and the test
 12 disclosed that the level of alcohol in the person's blood at the time of the test was:

13 (A) ~~[0.08]~~ **0.05** percent or more by weight if the person was not driving a commercial motor ve-
 14 hicle;

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

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

17 (d) If the report under ORS 813.120 indicates that the person was driving a commercial motor
 18 vehicle, the vehicle was in fact a commercial motor vehicle as defined in ORS 801.208.

19 (e) The person had been informed under ORS 813.100 of rights and consequences as described
 20 under ORS 813.130.

21 (f) The person was given written notice required under ORS 813.100.

22 (g) If the person arrested submitted to a test under ORS 813.100, the person administering the
 23 test was qualified to administer the test under ORS 813.160.

24 (h) If the person arrested submitted to a test under ORS 813.100, the methods, procedures and
 25 equipment used in the test complied with requirements under ORS 813.160.

26 (7) A suspension imposed under this section shall remain in effect pending any appeal or remand
 27 of a final order issued under this section and there shall be no stay of the suspension pending appeal
 28 or remand.

29 (8) Unless a person fails, without just cause, to appear personally or through an attorney at a
 30 hearing requested under this section, a person shall have the right to appeal any final order by the
 31 department after a hearing under this section by filing a petition. The following apply to this sub-
 32 section:

33 (a) The person shall file the petition in the circuit court for the county where the person resides
 34 or, if the person does not reside in Oregon, in the circuit court of the county in which the arrest
 35 took place within 30 days after issuance of the final order of the department.

36 (b) The court upon receipt of the petition shall set the matter for hearing upon 10 days' notice
 37 to the department and the petitioner unless hearing is waived by both the department and the
 38 petitioner.

39 **SECTION 8.** ORS 813.602 is amended to read:

40 813.602. (1) Subject to subsection (2) of this section, when a person is convicted of driving while
 41 under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, the De-
 42 partment of Transportation, in addition to any other requirement, shall require that the person have
 43 installed and be using an approved ignition interlock device in any vehicle operated by the person:

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

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

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

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

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

- 15 (A) Any degree of murder.
- 16 (B) Manslaughter in the first or second degree.
- 17 (C) Criminally negligent homicide.
- 18 (D) Assault in the first degree.

19 (b) Aggravated vehicular homicide.

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

23 (3)(a) Except as provided in paragraph (c) of this subsection, as a condition of a driving while
 24 under the influence of intoxicants diversion agreement:

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

28 (i) A chemical test of the person's breath or blood disclosed a blood alcohol content of [0.08]
 29 **0.05** percent or more by weight of alcohol in the blood of the person as shown by chemical analysis
 30 of the breath or blood;

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

32 (iii) A chemical test of the person's breath, blood or urine disclosed a blood alcohol content of
 33 more than 0.00 but less than [0.08] **0.05** percent by weight of alcohol in the blood of the person as
 34 shown by chemical analysis of the breath or blood and disclosed the presence of cannabis, a con-
 35 trolled substance or an inhalant.

36 (B) The court may require that an approved ignition interlock device be installed and used in
 37 any vehicle operated by the person during the period of the agreement when the person has driving
 38 privileges if the person submitted to a chemical test of the person's breath, blood or urine and the
 39 test disclosed a blood alcohol content below [0.08] **0.05** percent by weight of alcohol in the blood
 40 of the person as shown by chemical analysis of the breath or blood.

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

43 (c) A court may exempt a person from the condition in a diversion agreement to have installed
 44 and be using an ignition interlock device if the court determines that the person meets the re-
 45 quirements for a medical exemption in accordance with rules adopted by the department under this

1 section. A person granted a medical exemption under this paragraph shall carry proof of the medical
2 exemption with the person while operating any vehicle.

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

5 (5) When a person is required to install an ignition interlock device under subsection (2) of this
6 section, the manufacturer's representative providing the device shall provide notice of any installa-
7 tion or removal of the device or any tampering with the device to:

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

10 (b) The district attorney or the city prosecutor; and

11 (c) The Oregon State Police.

12 **SECTION 9.** ORS 830.510 is amended to read:

13 830.510. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts
14 committed by a person operating a boat while under the influence of any intoxicants, if the amount
15 of alcohol in the person's blood at the time alleged is less than [0.08] **0.05** percent by weight of al-
16 cohohol and shown by chemical analysis of the person's breath or blood, it is indirect evidence that
17 may be used with other evidence, if any, to determine whether or not the person was then under the
18 influence of intoxicants.

19 (2) Not less than [0.08] **0.05** percent by weight of alcohol in a person's blood constitutes being
20 under the influence of intoxicating liquor.

21 (3) Percent by weight of alcohol in the blood shall be based on grams of alcohol per 100 milli-
22 liters of blood or based on grams of alcohol per 210 liters of breath.

23 (4) For purposes of ORS 830.505 to 830.545, "boat" means a motorboat or sailboat.

24 **SECTION 10. The amendments to ORS 811.182, 813.010, 813.130, 813.131, 813.210, 813.300,**
25 **813.410, 813.602 and 830.510 by sections 1 to 9 of this 2021 Act apply to conduct occurring on**
26 **or after the effective date of this 2021 Act.**

27