

A-Engrossed
House Bill 3176

Ordered by the House April 20
Including House Amendments dated April 20

Sponsored by Representative HOLVEY; Representative NOBLE

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.

Permits chief administrative law judge to require implied consent hearing to be conducted by telephone or other two-way communication device if judge determines that meeting in person poses significant risk to health or safety.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to administrative hearings; creating new provisions; amending ORS 813.410; and declaring
3 an emergency.

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

5 **SECTION 1.** ORS 813.410 is amended to read:

6 813.410. (1) If the Department of Transportation receives from a police officer a report that is
7 in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of
8 the person in this state on the 30th day after the date of arrest or, if the report indicates that the
9 person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described
10 under this section, the department determines that the suspension would not be valid as described
11 in this section. A suspension of driving privileges imposed under this subsection shall be for a period
12 of time established under ORS 813.420.

13 (2) If the department receives from a police officer a report under ORS 813.120 and the person
14 holds commercial driving privileges and the person was driving a motor vehicle or commercial motor
15 vehicle and refused to submit to a test under ORS 813.100 or the person was driving a commercial
16 motor vehicle and submitted to a breath or blood test and the person's blood, as shown by the test,
17 had 0.04 percent or more by weight of alcohol, the department shall suspend the person's commercial
18 driving privileges on the 30th day after the date of arrest or, if the report indicates that the person
19 failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described under
20 this section, the department determines that the suspension would not be valid as described in this
21 section. A commercial driving privileges suspension imposed under this subsection shall be for a
22 period of time established under ORS 809.510 or 809.520.

23 (3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days
24 from the date the department sends notice of suspension, the department receives a request for a
25 hearing from a person whose driving privileges or commercial driving privileges the department
26 proposes to suspend under this section, the department shall provide a hearing in accordance with
27 this section. The person shall request a hearing in the form and manner prescribed by the depart-

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 ment by rule. Except as otherwise provided under this section, a hearing held by the department
2 under this section is subject to the provisions for contested cases, other than appeal provisions,
3 under ORS chapter 183. The applicable appeal provisions are as provided under ORS 813.450 and
4 section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS 809.430, the department is not
5 required to give any notice of intent to suspend or suspension in addition to that provided under
6 ORS 813.100.

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

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

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

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

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

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

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

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

28 **(5) Subject to subsection (6) of this section:**

29 (a) A person or a police officer may request that a hearing required by this section be conducted
30 in person.

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

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

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

40 **(6) The chief administrative law judge may require that a hearing required by this section**
41 **be conducted by telephone or other two-way electronic communication device when the judge**
42 **determines that a hearing conducted in person would pose a significant risk to health or**
43 **safety, including risks associated with travel to the hearing location.**

44 ~~[(6)]~~ (7) This subsection shall be narrowly construed so as to effect the legislative purpose of
45 limiting the scope of hearings under this section. The scope of a hearing under this section shall

1 be limited to whether the suspension is valid as described in this subsection. A suspension under this
2 section is valid if all of the following requirements have been met:

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

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

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

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

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

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

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

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

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

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

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

23 [(7)] (8) A suspension imposed under this section shall remain in effect pending any appeal or
24 remand of a final order issued under this section and there shall be no stay of the suspension
25 pending appeal or remand.

26 [(8)] (9) Unless a person fails, without just cause, to appear personally or through an attorney
27 at a hearing requested under this section, a person shall have the right to appeal any final order
28 by the department after a hearing under this section by filing a petition. The following apply to this
29 subsection:

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

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

36 **SECTION 2. The amendments to ORS 813.410 by section 1 of this 2021 Act apply to re-**
37 **quests for in-person hearings made before, on or after the effective date of this 2021 Act.**

38 **SECTION 3. This 2021 Act being necessary for the immediate preservation of the public**
39 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
40 **on its passage.**