

# House Bill 3376

Sponsored by Representative HELFRICH

## 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 809.510, 811.182, 813.010, 813.130, 813.131, 813.210, 813.300, 813.410, 813.602 and  
4 830.510.

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

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

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

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

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

13 (c) Is under the influence of any combination of intoxicating liquor, cannabis, psilocybin, a  
14 controlled substance and an inhalant; or

15 (d) Within two hours after driving a vehicle, and without consuming alcohol in the intervening  
16 time period, has *[0.08]* **0.05** percent or more by weight of alcohol in the blood of the person, as shown  
17 by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or  
18 813.150.

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

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

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

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

**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 any combination:

2 (A) Driving while under the influence of intoxicants in violation of this section.

3 (B) The statutory counterpart to this section in another jurisdiction.

4 (C) A driving under the influence of intoxicants offense in another jurisdiction that involved the  
5 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor,  
6 cannabis, psilocybin, a controlled substance, an inhalant or any combination thereof.

7 (D) A driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a  
8 boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol con-  
9 tent.

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

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

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

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

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

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

24 (B) For a person who, within two hours after driving a vehicle, and without consuming alcohol  
25 in the intervening time period, has 0.15 percent or more by weight of alcohol in the blood of the  
26 person, as shown by chemical analysis of the breath or blood of the person made under ORS 813.100,  
27 813.140 or 813.150, a minimum of \$2,000.

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

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

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

33 **SECTION 2.** ORS 809.510, as amended by section 106, chapter 630, Oregon Laws 2021, is  
34 amended to read:

35 809.510. (1) Except as otherwise provided by ORS 809.510 to 809.545, the Department of Trans-  
36 portation shall suspend the commercial driving privileges of a person for a period of one year when  
37 the department receives:

38 (a) A record of conviction under ORS 811.700 or 811.705 of failure to perform the duties of a  
39 driver.

40 (b) A record of conviction of a crime punishable as a felony involving the operation of a motor  
41 vehicle.

42 (c) A record of conviction for driving a commercial motor vehicle while, as a result of prior vi-  
43 olations committed while operating a commercial motor vehicle, the commercial driving privileges  
44 of the driver were suspended.

45 (d) A record of conviction of assault in the first degree, or any degree of criminally negligent

1 homicide, manslaughter or murder, if the conviction results from the operation of a commercial  
2 motor vehicle.

3 (e) A record of conviction of aggravated vehicular homicide or aggravated driving while sus-  
4 pended or revoked.

5 (f) A record of conviction for driving while under the influence of intoxicants under ORS  
6 813.010.

7 (g) A record of diversion under ORS 813.230.

8 (2) The department shall suspend the commercial driving privileges of a person for a period of  
9 three years if the department receives a record of a conviction under subsection (1) of this section  
10 and the person was driving a commercial motor vehicle containing a hazardous material at the time  
11 of the offense.

12 (3) The department shall suspend the commercial driving privileges of a person for a period of  
13 one year if the department receives a report from a police officer pursuant to ORS 813.120 that the  
14 person was driving a commercial motor vehicle and submitted to a breath or blood test and the level  
15 of alcohol in the person's blood was 0.04 percent or more by weight of alcohol in the blood of the  
16 person as shown by chemical analysis of the breath or blood. The department shall suspend the  
17 commercial driving privileges of the person for a period of three years if the person was driving a  
18 commercial motor vehicle containing a hazardous material at the time of the offense.

19 (4) The department shall suspend the commercial driving privileges of a person for a period of  
20 one year if the department receives a report from a police officer pursuant to ORS 813.120 that the  
21 person was driving a motor vehicle and submitted to a breath or blood test and the level of alcohol  
22 in the person's blood was [0.08] **0.05** percent or more by weight of alcohol in the blood of the person  
23 as shown by chemical analysis of the breath or blood.

24 (5) The department shall suspend the commercial driving privileges of a person for a period of  
25 three years if the department receives a report from a police officer pursuant to ORS 813.120 that  
26 the person was driving a motor vehicle and refused to submit to a test under ORS 813.100. The de-  
27 partment shall suspend the commercial driving privileges of the person for a period of five years if  
28 the person was driving a commercial motor vehicle containing a hazardous material at the time of  
29 the offense.

30 (6) The department shall suspend the commercial driving privileges of a person if the department  
31 receives a notice of a conviction in another jurisdiction of an offense that, if committed in this state,  
32 would be grounds for the suspension of the person's commercial driving privileges. The period of  
33 suspension under this subsection shall be the same as would be imposed on the person if the con-  
34 viction were for an offense committed in this state. For the purposes of this subsection,  
35 "conviction" means an unvacated adjudication of guilt, a determination that a person has violated  
36 or failed to comply with the law in a court of original jurisdiction or in an authorized administrative  
37 tribunal, entry into a diversion program, an unvacated forfeiture of bail or collateral deposited to  
38 secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court,  
39 the payment of a fine or court cost or the violation of a condition of release without bail, regardless  
40 of whether or not the penalty is rebated, suspended or probated.

41 (7) The department shall suspend the commercial driving privileges of a person in this state if  
42 the department receives a notice from another jurisdiction that the person has had commercial  
43 driving privileges suspended or revoked in another jurisdiction for reasons that would be grounds  
44 for suspension of the person's commercial driving privileges in this state. The period of suspension  
45 under this subsection is the same as would be imposed on the person if the violation were committed

1 in this state.

2 (8) If the department receives a record, report or notice under this section for a person who does  
 3 not hold commercial driving privileges in this state, the department shall suspend the person's right  
 4 to apply for commercial driving privileges as provided in ORS 809.540 (1).

5 (9) A suspension imposed under this section is consecutive to any other suspension imposed  
 6 under ORS 809.525, 809.530 or 809.535 if the suspensions do not arise out of the same incident.

7 **SECTION 3.** ORS 811.182, as amended by section 113, chapter 630, Oregon Laws 2021, is  
 8 amended to read:

9 811.182. (1) A person commits the offense of criminal driving while suspended or revoked if the  
 10 person violates ORS 811.175 and the suspension or revocation is one described in this section, or if  
 11 the hardship permit violated is based upon a suspension or revocation described in subsection (3)  
 12 or (4) of this section.

13 (2) Affirmative defenses to the offense described in this section are established under ORS  
 14 811.180.

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

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

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

26 (b) A suspension under ORS 813.410 resulting from refusal to take a test prescribed in ORS  
 27 813.100 or for taking a breath or blood test the result of which discloses a blood alcohol content  
 28 of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **SECTION 4.** ORS 813.130, as amended by section 117, chapter 630, Oregon Laws 2021, is  
19 amended to read:

20 813.130. (1) For the purposes of ORS 813.100 and 813.410, the information about rights and conse-  
21 quences shall be substantially in the form prepared by the Department of Transportation. The  
22 department may establish any form it determines appropriate and convenient.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (i) The person previously has been convicted of failure to perform the duties of a driver while  
 27 holding commercial driving privileges or while driving a commercial motor vehicle;

28 (ii) The person previously has been convicted of a crime punishable as a felony and the person  
 29 was driving a motor vehicle while holding commercial driving privileges at the time the offense was  
 30 committed;

31 (iii) The person previously has been convicted of a crime punishable as a felony and the person  
 32 was driving a commercial motor vehicle;

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

36 (v) The person previously has been convicted of any degree of murder, manslaughter or  
 37 criminally negligent homicide resulting from the operation of a commercial motor vehicle or assault  
 38 in the first degree resulting from the operation of a commercial motor vehicle;

39 (vi) The person previously has been convicted of aggravated vehicular homicide while holding  
 40 commercial driving privileges or while driving a commercial motor vehicle;

41 (vii) The person previously has been convicted of aggravated driving while suspended or revoked  
 42 while holding commercial driving privileges or while driving a commercial motor vehicle;

43 (viii) The person previously has been convicted of driving while under the influence of  
 44 intoxicants while holding commercial driving privileges or while driving a commercial motor vehicle;

45 (ix) The person's commercial driving privileges previously have been suspended under ORS

1 809.510 for a diversion agreement entered into under ORS 813.230 with respect to conduct that oc-  
2 curred while the person held commercial driving privileges;

3 (x) The person's commercial driving privileges previously have been suspended or revoked for  
4 refusal to submit to, or failure of, a breath or blood test under ORS 813.100 for conduct that oc-  
5 curred while the person held commercial driving privileges or was operating a commercial motor  
6 vehicle; or

7 (xi) The person's right to apply for commercial driving privileges previously has been suspended  
8 or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting  
9 from the operation of a commercial motor vehicle or resulting from the operation of a motor vehicle  
10 while holding commercial driving privileges.

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

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

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

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

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

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

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

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

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

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

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

40 (e) If the person refuses to submit to a breath test under ORS 813.100, or refuses to provide a  
41 urine sample under ORS 813.131 and 813.132, the person is subject to a fine of at least \$500 and not  
42 more than \$1,000.

43 (f) The person has a right to a hearing to challenge the validity of the suspension before the  
44 suspension becomes effective. The person must make a written request to the department for such  
45 a hearing. If the person wins at the hearing, the person's driving privileges will not be suspended.

1 If the person loses at the hearing, the suspension will remain in effect during any court review of  
 2 the hearing.

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

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

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

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

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

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

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

17 (i) The person previously has been convicted of failure to perform the duties of a driver while  
 18 holding commercial driving privileges or while driving a commercial motor vehicle;

19 (ii) The person previously has been convicted of a crime punishable as a felony and the person  
 20 was driving a motor vehicle while holding commercial driving privileges at the time the offense was  
 21 committed;

22 (iii) The person previously has been convicted of a crime punishable as a felony and the person  
 23 was driving a commercial motor vehicle;

24 (iv) 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 (v) 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 (vi) The person previously has been convicted of aggravated vehicular homicide while holding  
 31 commercial driving privileges or while driving a commercial motor vehicle;

32 (vii) The person previously has been convicted of aggravated driving while suspended or revoked  
 33 while holding commercial driving privileges or while driving a commercial motor vehicle;

34 (viii) The person previously has been convicted of driving while under the influence of  
 35 intoxicants while holding commercial driving privileges or while driving a commercial motor vehicle;

36 (ix) The person's commercial driving privileges previously have been suspended under ORS  
 37 809.510 for a diversion agreement entered into under ORS 813.230 with respect to conduct that oc-  
 38 curred while the person held commercial driving privileges;

39 (x) The person's commercial driving privileges previously have been suspended or revoked for  
 40 refusal to submit to, or failure of, a breath or blood test under ORS 813.100 for conduct that oc-  
 41 curred while the person held commercial driving privileges or was operating a commercial motor  
 42 vehicle; or

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

1 while holding commercial driving privileges.

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

4 **SECTION 5.** ORS 813.131 is amended to read:

5 813.131. (1) A person may be asked to provide a urine sample under ORS 813.140 or subsection  
 6 (2) of this section.

7 (2) Any person who operates a motor vehicle upon premises open to the public or the highways  
 8 of this state shall be deemed to have given consent, subject to the Motorist Implied Consent Law,  
 9 to a chemical test of the person's urine for the purpose of determining the presence of cannabis,  
 10 psilocybin, a controlled substance or an inhalant in the person's body if the person is arrested for  
 11 driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordi-  
 12 nance and either:

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

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

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

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

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

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

32 **SECTION 6.** ORS 813.210 is amended to read:

33 813.210. (1) After an accusatory instrument has been filed charging the defendant with the of-  
 34 fense of driving while under the influence of intoxicants, a defendant may file with the court a pe-  
 35 tition for a driving while under the influence of intoxicants diversion agreement described in ORS  
 36 813.200. The petition:

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

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

44 (c) Notwithstanding paragraph (a) of this subsection, may be filed up to 14 days after the date  
 45 the prosecuting attorney sends the laboratory test results of the defendant's urine or blood sample

1 analysis to the defendant's attorney or, if the defendant is unrepresented, the defendant, if:

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

5 (B) The defendant has not received notice of what the defendant's blood alcohol content was at  
 6 the time the conduct occurred or if at the time the conduct occurred the defendant had less than  
 7 [0.08] **0.05** percent by weight of alcohol in the blood; and

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

9 (2) The defendant shall pay to the court, at the time of filing a petition for a driving while under  
 10 the influence of intoxicants diversion agreement, a filing fee established under ORS 813.240. The  
 11 court may make provision for payment of the filing fee by the defendant on an installment basis.  
 12 The court may waive all or part of the filing fee in cases involving indigent defendants. The filing  
 13 fee paid to the court under this subsection shall be retained by the court if the petition is allowed.  
 14 The filing fee shall be distributed as provided by ORS 813.240.

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

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

20 (b) The court may waive all or part of the court-appointed attorney fees agreed to under ORS  
 21 813.200 (4)(i).

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

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

28 **SECTION 7.** ORS 813.300 is amended to read:

29 813.300. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts  
 30 committed by a person driving a motor vehicle while under the influence of intoxicants, if the  
 31 amount of alcohol in the person's blood at the time alleged is less than [0.08] **0.05** percent by weight  
 32 of alcohol as shown by chemical analysis of the person's breath or blood, it is indirect evidence that  
 33 may be used with other evidence, if any, to determine whether or not the person was then under the  
 34 influence of intoxicants.

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

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

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

42 (5) ORS 813.010 (1)(d) may not be construed to limit the admissibility of any evidence of the  
 43 amount of alcohol in a person's blood as shown by chemical analysis of the person's breath or blood,  
 44 in any civil or criminal action, suit or proceeding arising out of the acts committed by the person  
 45 driving a vehicle while under the influence of intoxicants.

1        **SECTION 8.** ORS 813.410, as amended by section 118, chapter 630, Oregon Laws 2021, is  
2 amended to read:

3        813.410. (1) If the Department of Transportation receives from a police officer a report that is  
4 in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of  
5 the person in this state on the 30th day after the date of arrest or, if the report indicates that the  
6 person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described  
7 under this section, the department determines that the suspension would not be valid as described  
8 in this section. A suspension of driving privileges imposed under this subsection shall be for a period  
9 of time established under ORS 813.420.

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

20        (3) If the department receives from a police officer a report under ORS 813.120 and the person  
21 holds commercial driving privileges and the person was driving a motor vehicle that is not a com-  
22 mercial motor vehicle and submitted to a breath or blood test and the person's blood, as shown by  
23 the test, had [0.08] **0.05** percent or more by weight of alcohol, the department shall suspend the  
24 person's commercial driving privileges on the 30th day after the date of arrest or, if the report in-  
25 dicates that the person failed a blood test, on the 60th day after receipt of the report, unless, at a  
26 hearing described under this section, the department determines that the suspension would not be  
27 valid as described in this section. A commercial driving privileges suspension imposed under this  
28 subsection shall be for a period of time established under ORS 809.510 or 809.520.

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

40        (5) Except as provided in subsection (6) of this section, a hearing required by this section is  
41 subject to all of the following:

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

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

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

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

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

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

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

16 (6) Subject to subsection (7) of this section:

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

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

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

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

28 (7) The chief administrative law judge may require that a hearing required by this section be  
29 conducted by telephone or other two-way electronic communication device when the judge deter-  
30 mines that a hearing conducted in person would pose a significant risk to health or safety, including  
31 risks associated with travel to the hearing location.

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

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

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

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

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

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

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

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

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

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

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

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

12 (9) A suspension imposed under this section shall remain in effect pending any appeal or remand  
13 of a final order issued under this section and there shall be no stay of the suspension pending appeal  
14 or remand.

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

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

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

25 **SECTION 9.** ORS 813.602 is amended to read:

26 813.602. (1) Subject to subsection (2) of this section, when a person is convicted of driving while  
27 under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, the De-  
28 partment of Transportation, in addition to any other requirement, shall require that the person have  
29 installed and be using an approved ignition interlock device in any vehicle operated by the person:

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

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

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

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

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

- 1 (A) Any degree of murder.
- 2 (B) Manslaughter in the first or second degree.
- 3 (C) Criminally negligent homicide.
- 4 (D) Assault in the first degree.

5 (b) Aggravated vehicular homicide.

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

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

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

14 (i) A chemical test of the person's breath or blood disclosed a blood alcohol content of [0.08]  
15 **0.05** percent or more by weight of alcohol in the blood of the person as shown by chemical analysis  
16 of the breath or blood;

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

18 (iii) A chemical test of the person's breath, blood or urine disclosed a blood alcohol content of  
19 more than 0.00 but less than [0.08] **0.05** percent by weight of alcohol in the blood of the person as  
20 shown by chemical analysis of the breath or blood and disclosed the presence of cannabis,  
21 psilocybin, a controlled substance or an inhalant.

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

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

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

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

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

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

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

42 (c) The Oregon State Police.

43 **SECTION 10.** ORS 830.510 is amended to read:

44 830.510. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts  
45 committed by a person operating a boat while under the influence of any intoxicants, if the amount

1 of alcohol in the person's blood at the time alleged is less than [0.08] **0.05** percent by weight of al-  
2cohol and shown by chemical analysis of the person's breath or blood, it is indirect evidence that  
3may be used with other evidence, if any, to determine whether or not the person was then under the  
4influence of intoxicants.

5 (2) Not less than [0.08] **0.05** percent by weight of alcohol in a person's blood constitutes being  
6under the influence of intoxicating liquor.

7 (3) Percent by weight of alcohol in the blood shall be based on grams of alcohol per 100 milli-  
8liters of blood or based on grams of alcohol per 210 liters of breath.

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

10 **SECTION 11. The amendments to ORS 809.510, 811.182, 813.010, 813.130, 813.131, 813.210,**  
11 **813.300, 813.410, 813.602 and 830.510 by sections 1 to 10 of this 2023 Act apply to conduct oc-**  
12 **curring on or after the effective date of this 2023 Act.**

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