

House Bill 2561

Sponsored by Representative BARKER; Representatives BOONE, CLEM, C EDWARDS, D EDWARDS, SCHAUFLEER, WITT, Senator MONNES ANDERSON

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**.

Imposes minimum fine of \$2,500 and mandatory imprisonment for person convicted of driving while under influence of intoxicants if person had 0.20 percent or more by weight of alcohol in blood of person at time of offense.

A BILL FOR AN ACT

1
2 Relating to penalties for driving while under the influence of intoxicants; creating new provisions;
3 and amending ORS 813.010, 813.020 and 813.030.

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 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, a controlled substance or an inhalant; or

11 (c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled
12 substance.

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

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

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

22 (5) Driving while under the influence of intoxicants is a Class C felony if the defendant has been
23 convicted of driving while under the influence of intoxicants in violation of this section or its stat-
24 utory counterpart in another jurisdiction at least three times in the 10 years prior to the date of the
25 current offense and the current offense was committed in a motor vehicle. For purposes of this
26 subsection, a prior conviction for boating while under the influence of intoxicants in violation of
27 ORS 830.325 or its statutory counterpart in another jurisdiction, or for prohibited operation of an
28 aircraft in violation of ORS 837.080 (1)(a) or its statutory counterpart in another jurisdiction, shall
29 be considered a prior conviction of driving while under the influence of intoxicants.

30 (6) In addition to any other sentence that may be imposed, the court shall impose [*a fine*] **one**

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 **or more of the following fines** on a person convicted of driving while under the influence of
 2 intoxicants [*as follows*]:

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

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

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

7 **(d) For a person who drives a vehicle while the person has 0.20 percent or more by weight**
 8 **of alcohol in the blood of the person as shown by chemical analysis of the breath or blood**
 9 **of the person made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,500.**

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

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

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

15 **SECTION 2.** ORS 813.020 is amended to read:

16 813.020. (1) When a person is convicted of driving while under the influence of intoxicants in
 17 violation of ORS 813.010, a court shall comply with the following in addition to any fine or other
 18 penalty imposed upon the person under ORS 813.010:

19 [(1)] (a) The court shall require the person to:

20 [(a)] (A) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed
 21 under ORS 813.010; and

22 [(b)] (B) Complete a screening interview and a treatment program as provided in ORS 813.021.

23 [(2)] (b) The court must impose and not suspend execution of a sentence requiring the person
 24 either to serve at least 48 hours' imprisonment, which shall be served consecutively unless justice
 25 requires otherwise, or to perform community service for times specified by the court under ORS
 26 137.129. For purposes of this [*subsection*] **paragraph**:

27 [(a)] (A) A court may provide for the imprisonment to be served in jail, minimum security fa-
 28 cilities or inpatient rehabilitation or treatment centers.

29 [(b)] (B) Whenever the judge provides for the mandatory imprisonment to be served other than
 30 consecutively, the judgment must specifically so provide and the judge must state the reasons in
 31 writing.

32 [(3)] (c) In a county that has a victim impact program a court may require the person to attend
 33 a victim impact treatment session. If the court requires attendance under this [*section*] **paragraph**,
 34 the court may require the defendant to pay a reasonable fee to the victim impact program to offset
 35 the cost of the defendant's participation. The fee shall be established for each county by the victim
 36 impact panel coordinator and steering committee of that county and shall be not less than \$5 or
 37 more than \$50.

38 **(2)(a) In lieu of a sentence of imprisonment or community service under subsection (1)(b)**
 39 **of this section, when a person is convicted of driving while under the influence of intoxicants**
 40 **in violation of ORS 813.010 and the amount of alcohol in the person's blood at the time of the**
 41 **offense was 0.20 percent or more by weight as shown by chemical analysis of the breath or**
 42 **blood of the person made under ORS 813.100, 813.140 or 813.150, a court shall impose a sen-**
 43 **tence of imprisonment, which shall be served consecutively unless justice requires otherwise,**
 44 **of at least:**

45 (A) Seven days; or

1 **(B) Sixty days if the defendant has been convicted of driving while under the influence**
2 **of intoxicants in violation of ORS 813.010 or its statutory counterpart in another jurisdiction**
3 **within five years prior to the date of the current offense.**

4 **(b) For purposes of this subsection:**

5 **(A) A court may provide for the imprisonment to be served in jail, minimum security**
6 **facilities or inpatient rehabilitation or treatment centers.**

7 **(B) Whenever the judge provides for the mandatory imprisonment to be served other**
8 **than consecutively, the judgment must specifically so provide and the judge must state the**
9 **reasons in writing.**

10 **SECTION 3.** ORS 813.030 is amended to read:

11 813.030. The fee required by ORS 471.432 and 813.020 (1)(a) shall be in the amount of \$130, ex-
12 cept that the court may waive all or part of the fee in cases involving indigent defendants. The court
13 may make provision for payment of the fee on an installment basis. The fee shall be ordered paid
14 as follows:

15 (1) \$105 to be credited and distributed under ORS 137.295 as an obligation payable to the state;
16 and

17 (2) \$25 to be paid to the Director of Human Services for deposit in the Intoxicated Driver Pro-
18 gram Fund created by ORS 813.270.

19 **SECTION 4.** **The amendments to ORS 813.010 and 813.020 by sections 1 and 2 of this 2007**
20 **Act apply to offenses of driving while under the influence of intoxicants committed on or**
21 **after the effective date of this 2007 Act.**