

House Bill 2562

Sponsored by Representative BARKER; Representatives BOONE, BRUUN, D EDWARDS, SCHAUFLEER, WITT, Senator MONNES ANDERSON (at the request of Anne and Bruce Pratt, Crime Victims United)

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 refusal to take test for intoxicants if person refuses to submit to blood test or to take urine test if requested to do so under implied consent law. Provides that offense is punishable by fine of at least \$500 and not more than \$1,000.

Provides that all fines collected for offense of refusal to take test for intoxicants that are distributed to state be used by Department of State Police for enforcement of laws concerning driving while under influence of intoxicants, whether or not resulting from citations issued by state police.

A BILL FOR AN ACT

1
2 Relating to implied consent; creating new provisions; and amending ORS 153.630, 813.095 and
3 813.130.

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

5 **SECTION 1.** ORS 813.095 is amended to read:

6 813.095. (1) A person commits the offense of refusal to take a [*breath*] test **for intoxicants** if the
7 person refuses to:

8 (a) Take a breath test when requested to do so in accordance with the provisions of ORS
9 813.100[.];

10 (b) **Submit to a blood test when requested to do so in accordance with the provisions of**
11 **ORS 813.100; or**

12 (c) **Take a urine test when requested to do so in accordance with the provisions of ORS**
13 **813.131 and 813.132.**

14 (2) The offense described in this section, refusal to take a [*breath*] test **for intoxicants**, is a
15 traffic offense punishable by a fine of at least \$500 and not more than \$1,000. The fine described in
16 this section is in addition to any other consequence prescribed by law for refusal to take a
17 [*breath*] test **for intoxicants**.

18 **SECTION 2.** ORS 813.130 is amended to read:

19 813.130. This section establishes the requirements for information about rights and consequences
20 for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and
21 consequences:

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

25 (2) The information about rights and consequences shall be substantially as follows:

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

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 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 percent or more by weight. The person will fail a test for
4 purposes of the Motorist Implied Consent Law if the test discloses a blood alcohol content of:

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

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

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

8 (c) If the person refuses or fails a test under ORS 813.100, the person's driving privileges will
9 be suspended. The outcome of a criminal charge for driving under the influence of intoxicants will
10 not affect the suspension. The suspension will be substantially longer if the person refuses a test.

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

15 (e) If the person refuses a test under ORS 813.100, the person will not be eligible for a hardship
16 permit for at least 90 days, and possibly for one year, depending on the person's driving record. The
17 person may possibly qualify for a hardship permit in 30 days if the person fails a test, depending on
18 the person's driving record.

19 (f) If the person refuses a breath **or blood** test under ORS 813.100, **or refuses to take a urine**
20 **test under ORS 813.131 and 813.132**, the person is subject to a fine of at least \$500 and not more
21 than \$1,000.

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

25 (h) The person has a right to a hearing to challenge the validity of the suspension before the
26 suspension becomes effective. The person must make a written request to the department for such
27 a hearing. If the person wins at the hearing, the person's driving privileges will not be suspended.
28 If the person loses at the hearing, the suspension will remain in effect during any court review of
29 the hearing.

30 *[(i) The following times:]*

31 *[(A)]* (i) If the person is issued a temporary driving permit under ORS 813.100, the number of
32 hours before the driving permit will be effective and the number of days the permit will be effective.

33 *[(B)]* (j) The number of days within which a person must request a hearing under ORS 813.410.

34 *[(C)]* (k) The number of days within which a hearing under ORS 813.410 will be held.

35 (3) If the person is driving a commercial motor vehicle, the information about rights and con-
36 sequences shall include, in addition to the provisions of subsection (2) of this section, substantially
37 the following:

38 (a) If the person refuses a test under ORS 813.100 or submits to a breath or blood test and the
39 level of alcohol in the person's blood is 0.04 percent or more by weight, the person's commercial
40 driver license or right to apply for a commercial driver license will be suspended and no hardship
41 permit authorizing the person to drive a commercial motor vehicle will be issued. The suspension
42 will be substantially longer if the person refuses a test.

43 (b) The suspension of the person's commercial driver license or right to apply for a commercial
44 driver license will be for the person's lifetime if the person refuses a test under ORS 813.100 or
45 submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or

1 more by weight and:

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

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

5 (C) The person previously has been convicted of driving a commercial motor vehicle while the
6 person's commercial driver license or right to apply for a commercial driver license was suspended
7 or revoked;

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

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

12 (F) The person's commercial driver license previously has been suspended or revoked for refusal
13 to submit to, or failure of, a breath or blood test under ORS 813.100; or

14 (G) The person's right to apply for a commercial driver license previously has been suspended
15 or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting
16 from the operation of a commercial motor vehicle.

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

19 **SECTION 3.** ORS 153.630 is amended to read:

20 153.630. (1) Costs and one-half of all fines collected in traffic offense cases by any court having
21 jurisdiction of the traffic offense shall be paid as follows:

22 (a) If collected in a circuit court, to be credited and distributed under ORS 137.293 and 137.295,
23 as a monetary obligation payable to the state.

24 (b) If collected in a justice court, to be credited and distributed under ORS 137.293 and 137.295
25 to the treasurer of the county in which the offense occurred, as a monetary obligation payable to
26 the county.

27 (c) If collected in a municipal court, to be credited and distributed under ORS 137.293 and
28 137.295 to the city treasurer, as a monetary obligation payable to the city.

29 (2) The other half of such fines shall be paid as follows:

30 (a) If resulting from prosecutions initiated by or from arrests or complaints made by a member
31 of the Oregon State Police, to be credited and distributed under ORS 137.293 and 137.295, as a
32 monetary obligation payable to the state.

33 (b) If resulting from prosecutions initiated by or from arrests or complaints made by a motor
34 carrier enforcement officer, to be credited and distributed under ORS 137.293 and 137.295, as a
35 monetary obligation payable to the state.

36 (c) If resulting from prosecutions initiated by or from arrests or complaints made by a city police
37 officer, including a city marshal or a member of the police of a city or municipal or quasi-municipal
38 corporation, to be credited and distributed under ORS 137.293 and 137.295:

39 (A) To the treasurer of the city or municipal or quasi-municipal corporation by which such po-
40 lice officer is employed, as a monetary obligation to that political subdivision of the state if the of-
41 fense occurred within the boundaries of the city or municipal or quasi-municipal corporation; or

42 (B) As a monetary obligation payable to the state if the offense occurred outside the boundaries
43 of the city or municipal or quasi-municipal corporation.

44 (d) If resulting from prosecutions initiated by or from arrests or complaints made by a sheriff,
45 deputy sheriff or county weighmaster, to be credited and distributed under ORS 137.293 and 137.295

1 to the treasurer of the county in which the offense occurred, as a monetary obligation payable to
 2 that county and to be credited to the general fund of that county.

3 (e) If resulting from prosecutions for parking in a winter recreation parking location, to be
 4 credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the
 5 state.

6 (f) In other cases, to be credited and distributed under ORS 137.293 and 137.295, as a monetary
 7 obligation to the same entity to which payment is made of the half provided for in subsection (1)
 8 of this section.

9 (3) If provisions of subsection (2)(b) or (e) of this section are applicable, and if the fine or penalty
 10 imposed is remitted, suspended or stayed, or the offender against whom the fine or penalty was
 11 levied or imposed serves time in jail in lieu of paying the fine or penalty or a part thereof, the
 12 committing judge or magistrate shall certify the facts thereof in writing to the State Court Admin-
 13 istrator in the case of a circuit court or the Department of Revenue in the case of a justice or
 14 municipal court not later than the 10th day of the month next following the month in which the fine
 15 was remitted or penalty suspended. If any part of the fine is thereafter paid, it shall be remitted to
 16 the judge or magistrate who imposed the fine or penalty, who shall distribute it as provided in
 17 subsections (1) and (2) of this section.

18 (4) If a fine is subject to division between two entities under this section and a sentence to pay
 19 a fine is imposed by the court, any remittance, suspension or stay of the fine portion of the sentence
 20 must be attributed on an equal basis to both of the entities entitled to a share of the fine.

21 (5) Distribution of fines and costs collected in a justice or municipal court under this section
 22 must be made not later than the last day of the month immediately following the month in which
 23 the fines and costs are collected.

24 (6) All fines collected as a result of citations issued [*by a member of the Oregon State Police*] for
 25 a violation of ORS 813.095 and credited and distributed to the state under subsections (1)(a) and
 26 (2)(a) of this section shall be deposited in the State Police Account established in ORS 181.175 to
 27 be used by the Department of State Police for the enforcement of laws concerning driving while
 28 under the influence of intoxicants.

29 **SECTION 4. The amendments to ORS 153.630 by section 3 of this 2007 Act apply to cita-**
 30 **tions issued on or after the effective date of this 2007 Act.**

31