

**Enrolled**  
**House Bill 3314**

Sponsored by COMMITTEE ON JUDICIARY (at the request of Bicycle Transportation Alliance)

CHAPTER .....

AN ACT

Relating to vehicular contact with vulnerable user of a public way; creating new provisions; and amending ORS 41.905, 153.061, 153.090, 153.099, 809.280 and 811.135.

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

**SECTION 1. Section 2 of this 2007 Act is added to and made a part of the Oregon Vehicle Code.**

**SECTION 2. “Vulnerable user of a public way” means a pedestrian, a highway worker, a person riding an animal or a person operating any of the following on a public way, crosswalk or shoulder of the highway:**

- (1) A farm tractor or implement of husbandry without an enclosed shell;**
- (2) A skateboard;**
- (3) Roller skates;**
- (4) In-line skates;**
- (5) A scooter; or**
- (6) A bicycle.**

**SECTION 3. ORS 811.135 is amended to read:**

**811.135. (1) A person commits the offense of careless driving if the person drives any vehicle upon a highway or other premises described in this section in a manner that endangers or would be likely to endanger any person or property.**

**(2) The offense described in this section, careless driving, applies on any premises open to the public and is a Class B traffic violation unless commission of the offense contributes to an accident. If commission of the offense contributes to an accident, the offense is a Class A traffic violation.**

**(3) In addition to any other penalty imposed for an offense committed under this section, if the court determines that the commission of the offense described in this section contributed to the serious physical injury or death of a vulnerable user of a public way, the court shall:**

**(a) Impose a sentence that requires the person to:**

**(A) Complete a traffic safety course; and**

**(B) Perform between 100 and 200 hours of community service, notwithstanding ORS 137.129. The community service must include activities related to driver improvement and providing public education on traffic safety;**

**(b) Impose, but suspend on the condition that the person complete the requirements of paragraph (a) of this subsection:**

**(A) A fine of up to \$12,500, notwithstanding ORS 153.018; and**

**(B) A suspension of driving privileges as provided in ORS 809.280; and**

- (c) Set a hearing date up to one year from the date of sentencing.
- (4) At the hearing described in subsection (3)(c) of this section, the court shall:
- (a) If the person has successfully completed the requirements described in subsection (3)(a) of this section, dismiss the penalties imposed under subsection (3)(b) of this section; or
- (b) If the person has not successfully completed the requirements described in subsection (3)(a) of this section:
- (A) Grant the person an extension based on good cause shown; or
- (B) Impose the penalties under subsection (3)(b) of this section.
- (5) When a court imposes a suspension under subsection (4) of this section, the court shall prepare and send to the Department of Transportation an order of suspension of driving privileges of the person. Upon receipt of an order under this subsection, the department shall take action as directed under ORS 809.280.
- (6) The police officer issuing the citation for an offense under this section shall note on the citation if the cited offense contributed to the serious physical injury or death of a vulnerable user of a public way.

**SECTION 4.** ORS 809.280 is amended to read:

809.280. (1) This section establishes the procedures the Department of Transportation shall follow when a court orders or recommends the suspension or revocation of driving privileges. This section also establishes the period of time the revocation or suspension will be effective.

(2) When a court orders a suspension of driving privileges under ORS 809.270, the department shall immediately make proper entry in its files and records and take other action as necessary to implement the order. The suspension shall remain in force until the department is notified by the court that the suspension is ended, except that, if the department is ordered to automatically restore the driving privileges upon the successful completion of a program, the department shall do so and shall notify the judge that the person has complied with the order of the judge.

(3) When a court recommends a suspension of driving privileges under ORS 809.120, the department shall impose the suspension as recommended by the court.

(4) When a court notifies the department under ORS 809.130 of an unsettled judgment, the department shall suspend and, subject to any other requirements of law, restore the driving privileges upon appropriate notification from the court under ORS 809.130, except that the department shall only impose the suspension after the department has determined that:

- (a) The judgment was rendered against the person;
- (b) The judgment has remained unsettled as described in ORS 809.470 for 60 days; and
- (c) The judgment continues to be unsettled as described in ORS 809.470.

(5) When a court notifies the department under ORS 419C.472 or 809.220 to suspend for failure to appear, the department shall suspend the driving privileges of the person for an indefinite period. The department shall terminate the suspension upon notification by the court or upon the elapse of five years from the date of suspension. A suspension under this subsection shall be placed on the defendant's driving record. The department shall not suspend any driving privileges under this subsection for a person's failure to appear on a parking, pedestrian or bicyclist offense.

(6) When a court sends the department a license or otherwise notifies the department under ORS 810.310, the department shall suspend the driving privileges of the person for an indefinite period. The department shall terminate the suspension ordered under this section upon notification by the court or upon the lapse of five years from the date of suspension, whichever comes first.

(7) In addition to any other authority to suspend driving privileges under the vehicle code, the department shall suspend all driving privileges of any person upon receipt of an order of denial of driving privileges under ORS 809.260. The suspension shall be imposed without hearing. The driving privileges of the person shall be suspended as provided in the following:

(a) Upon receipt of the first order denying driving privileges, the department shall impose a suspension for one year, or until the person so suspended reaches 17 years of age, whichever is longer.

(b) Upon receipt of a second or subsequent order denying driving privileges, the department shall suspend for one year or until the person reaches 18 years of age, whichever is longer.

(8) If the department receives notice from a court that it has withdrawn an order issued under ORS 809.260, the department shall immediately reinstate any driving privileges that have been suspended under subsection (7) of this section because of the issuance of the order.

(9) When a court orders suspension of driving privileges under ORS 165.805 or 471.430, the department shall impose the suspension as ordered by the court.

(10) When a court orders a suspension of driving privileges under ORS 809.265, the department shall immediately suspend all driving privileges of the person. Upon receipt of an order suspending driving privileges, the department shall impose a suspension for six months.

(11) When a court orders revocation of driving privileges as provided in ORS 809.235, the department shall impose the revocation as ordered. The revocation shall remain in effect until the department is notified by a court that the person's driving privileges have been ordered restored.

(12) When a court orders suspension of driving privileges under ORS 811.109, the department shall impose the suspension as ordered by the court.

**(13) When a court orders suspension of driving privileges under ORS 811.135, the department shall immediately suspend all driving privileges of the person for one year.**

**SECTION 5.** ORS 153.061 is amended to read:

153.061. (1) **Except as provided in subsection (2) of this section,** a defendant who has been issued a violation citation must either:

(a) Make a first appearance by personally appearing in court at the time indicated in the summons; or

(b) Make a first appearance in the manner provided in subsection [(2)] (3) of this section before the time indicated in the summons.

**(2) If a defendant has been issued a violation citation for careless driving under ORS 811.135 on which a police officer noted that a vulnerable user of a public way suffered serious physical injury or death, the defendant must make a first appearance by personally appearing in court at the time indicated in the summons.**

[(2)] (3) A defendant who has been issued a violation citation may make a first appearance in the matter before the time indicated in the summons by one of the following means:

(a) The defendant may submit to the court a written or oral request for a trial.

(b) The defendant may enter a plea of no contest by delivering to the court the summons, a check or money order in the amount of the base fine set forth in the summons, and a statement of matters in explanation or mitigation of the violation charged. The delivery of a statement of matters in explanation or mitigation under the provisions of this paragraph constitutes a waiver of trial and consent to the entry of a judgment forfeiting the base fine based on the statement and any other testimony or written statements that may be presented to the court by the citing officer or other witnesses.

(c) The defendant may execute the appearance, waiver of trial and plea of guilty that appears on the summons and deliver the summons and a check or money order in the amount of the base fine set forth in the summons to the court. The defendant may attach a statement of matters in explanation or mitigation of the violation.

[(3)] (4) The court may require that a defendant requesting a trial under subsection [(2)(a)] (3)(a) of this section deposit the base fine specified under ORS 153.125 to 153.145 or such other amount as the court determines appropriate if the defendant has failed to appear in any court on one or more other charges in the past. If the defendant does not deposit the amount specified by the court, the defendant must personally appear in court at the time indicated in the summons. The amount deposited by the defendant may be applied against any fine imposed by the court, and any amount not so applied shall be refunded to the defendant at the conclusion of the proceedings.

[(4)] (5) If the defendant personally appears in court at the time indicated in the summons and enters a plea of guilty, the judge shall consider any statement in explanation or mitigation made by the defendant.

[(5)] (6) The court may require a defendant to appear personally in any case, or may require that all defendants appear in specified categories of cases.

[(6)] (7) If a defendant has entered a no contest plea or guilty plea in the manner provided in subsection [(2)(b) or (c)] (3)(b) or (c) of this section, and the court determines that the base fine amount is not adequate by reason of previous convictions of the defendant, the nature of the offense charged or other circumstances, the court may require that a trial be held unless an additional fine amount is paid by the defendant before a specified date. Notice of an additional fine amount under this subsection may be given to the defendant by mail. In no event may the court require a total fine amount in excess of the maximum fine established for the violation by statute.

[(7)] (8) If a defendant fails to make a first appearance on a citation for a traffic violation, as defined by ORS 801.557, fails to make a first appearance on a citation for a violation of ORS 471.430, or fails to appear at any other subsequent time set for trial or other appearance, the driving privileges of the defendant are subject to suspension under ORS 809.220.

**SECTION 6.** ORS 41.905 is amended to read:

41.905. (1) A judgment of conviction or acquittal of a person charged with a traffic offense is not admissible in the trial of a subsequent civil action arising out of the same accident or occurrence to prove or negate the facts upon which such judgment was rendered.

(2) A plea of guilty by a person to a traffic offense may be admitted as evidence in the trial of a subsequent civil action arising out of the same accident or occurrence as an admission of the person entering the plea, and for no other purpose.

(3) Evidence that a person has entered a plea of no contest in the manner described in ORS 153.061 [(2)(b)] (3)(b) to a charge of a traffic offense shall not be admitted as evidence in the trial of a subsequent civil action arising out of the same accident or occurrence.

**SECTION 7.** ORS 153.090 is amended to read:

153.090. (1) Judgments entered under this chapter may include:

(a) Imposition of a sentence to pay a fine;

(b) Costs, assessments and restitution authorized by law;

(c) A requirement that the fine, costs, assessments and restitution, if any, be paid out of any base fine;

(d) Remission of any balance of a base fine to the defendant or to any other person designated by the defendant; and

(e) Any other provision authorized by law.

(2) Notwithstanding ORS 137.106, if the court orders restitution in a default judgment entered under ORS 153.102, a defendant may allege an inability to pay the full amount of monetary sanctions imposed, including restitution, and request a hearing to determine whether the defendant is unable to pay or to establish a payment schedule by filing a written request with the court within one year after the entry of the judgment. The court shall set a hearing on the issue of the defendant's ability to pay upon receipt of the request and shall give notice to the district attorney. The district attorney shall give notice to the victim of the date, time and place of the hearing. The court may determine a payment schedule for monetary sanctions imposed, including restitution ordered under this subsection, if the defendant establishes at the hearing that the defendant is unable to pay the ordered restitution in full.

(3) If a trial is held in a violation proceeding, or a default judgment is entered against the defendant under ORS 153.102, the court may impose any fine within the statutory limits for the violation. If a defendant pleads no contest under ORS 153.061 [(2)(b)] (3)(b), or pleads guilty under ORS 153.061 [(2)(c)] (3)(c), and the court accepts the plea and enters judgment against the defendant, the amount of the fine imposed against the defendant by the court may not exceed the amount of the base fine established for the violation under ORS 153.125 to 153.145.

(4) A judge may suspend operation of any part of a judgment entered under this chapter upon condition that the defendant pay the nonsuspended portion of a fine within a specified period of time. If the defendant fails to pay the nonsuspended portion of the fine within the specified period

of time, the suspended portion of the judgment becomes operative without further proceedings by the court and the suspended portion of the fine becomes immediately due and payable.

(5) The court may not recommend a suspension of the defendant's driving privileges unless a trial has been required. The failure of the defendant to appear at the trial does not prevent the court from recommending suspension of the defendant's driving privileges.

(6) Entry of a default judgment under ORS 153.102 does not preclude the arrest and prosecution of the defendant for the crime of failure to appear in a violation proceeding under ORS 153.992.

(7) If a person holds a commercial driver license, a court may not defer entry of a judgment or allow an individual to enter into a diversion program that would prevent a conviction for a traffic offense from appearing on the driving record of the holder. This subsection applies to all traffic offenses, whether committed while driving a motor vehicle or a commercial motor vehicle, but does not apply to parking violations.

**SECTION 8.** ORS 153.099 is amended to read:

153.099. (1) If a trial is held in a violation proceeding, the court shall enter a judgment based on the evidence presented at the trial.

(2) If the defendant appears and enters a plea of no contest in the manner described in ORS 153.061 [(2)(b)] **(3)(b)**, and a trial is not otherwise required by the court or by law, the court shall make a decision based on the citation, the statement filed by the defendant and any other information or materials submitted to the court.

(3) If the defendant enters a plea of guilty in the manner described in ORS 153.061 [(2)(c)] **(3)(c)**, a trial is not otherwise required by the court or by law and the court accepts the plea of guilty, judgment shall be entered against the defendant based on the violation citation.

**Passed by House May 11, 2007**

**Received by Governor:**

**Repassed by House June 20, 2007**

.....M.,....., 2007

**Approved:**

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Chief Clerk of House

.....M.,....., 2007

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Speaker of House

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Governor

**Passed by Senate June 18, 2007**

**Filed in Office of Secretary of State:**

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President of Senate

.....M.,....., 2007

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Secretary of State