

B-Engrossed
House Bill 3314

Ordered by the Senate June 6
Including House Amendments dated May 8 and Senate Amendments dated
June 6

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

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.

[Creates offense of infliction of serious physical injury or death to vulnerable user of public way. Punishes by fine of \$12,500.]

[Creates driver improvement agreement. Establishes fee for filing petition to participate in driver improvement agreement and requires defendant to pay specified amount to agency or organization providing driver improvement program.]

[Creates Driver Improvement Program Fund. Continuously appropriates moneys in fund to Department of Transportation to pay expenses and costs related to driver improvement program.]

Increases penalty for offense of careless driving if commission of offense contributed to serious physical injury or death of vulnerable user of public way. Requires person committing offense to complete traffic safety course and perform 100 to 200 hours of community service related to driver improvement. Directs court to impose, but suspend on condition that person complete safety course and community service requirements, fine of up to \$12,500, suspend person's driving privileges and set hearing date up to one year from date of sentencing to determine person's compliance with requirements.

Requires police officer issuing citation for offense of careless driving to note on citation if cited offense contributed to serious physical injury or death of vulnerable user of public way. Requires defendant who has been issued citation to make first appearance by personally appearing in court at time indicated in summons.

A BILL FOR AN ACT

1
2 Relating to vehicular contact with vulnerable user of a public way; creating new provisions; and
3 amending ORS 41.905, 153.061, 153.090, 153.099, 809.411 and 811.135.

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

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

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

10 (1) **A farm tractor or implement of husbandry without an enclosed shell;**

11 (2) **A skateboard;**

12 (3) **Roller skates;**

13 (4) **In-line skates;**

14 (5) **A scooter; or**

15 (6) **A bicycle.**

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

17 811.135. (1) A person commits the offense of careless driving if the person drives any vehicle
18 upon a highway or other premises described in this section in a manner that endangers or would

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 be likely to endanger any person or property.

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

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

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

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

11 (B) **Perform between 100 to 200 hours of community service, notwithstanding ORS**
12 **137.129. The community service must include activities related to driver improvement and**
13 **providing public education on traffic safety;**

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

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

17 (B) **A suspension of driving privileges as provided in ORS 809.411; and**

18 (c) **Set a hearing date up to one year from the date of sentencing.**

19 (4) **At the hearing described in subsection (3)(c) of this section, the court shall:**

20 (a) **If the person has successfully completed the requirements described in subsection**
21 **(3)(a) of this section, dismiss the penalties imposed under subsection (3)(b) of this section;**
22 **or**

23 (b) **If the person has not successfully completed the requirements described in subsection**
24 **(3)(a) of this section:**

25 (A) **Grant the person an extension based on good cause shown; or**

26 (B) **Impose the penalties under subsection (3)(b) of this section.**

27 (5) **The police officer issuing the citation for an offense under this section shall note on**
28 **the citation if the cited offense contributed to the serious physical injury or death of a vul-**
29 **nerable user of a public way.**

30 **SECTION 4.** ORS 809.411 is amended to read:

31 809.411. (1)(a) Upon receipt of a record of conviction for an offense described in this section, the
32 Department of Transportation shall suspend the driving privileges of the person convicted.

33 (b) A person is entitled to administrative review under ORS 809.440 of a suspension under this
34 section.

35 (c) Except as otherwise provided in subsections (7), (8), (9), [and] (10) **and (11)** of this section,
36 the suspension shall be for the period of time described in Schedule I of ORS 809.428, except that
37 the department may not reinstate driving privileges of any person whose privileges are suspended
38 under this section until the person complies with future responsibility filings.

39 (2) The department shall take action under subsection (1) of this section upon receipt of a record
40 of conviction of any degree of recklessly endangering another person, menacing or criminal mischief
41 resulting from the operation of a motor vehicle.

42 (3) The department shall take action under subsection (1) of this section upon receipt of a record
43 of conviction of reckless driving under ORS 811.140.

44 (4) The department shall take action under subsection (1) of this section upon receipt of a record
45 of conviction of failure to perform duties of a driver when property is damaged under ORS 811.700.

1 (5) The department shall take action under subsection (1) of this section upon receipt of a record
2 of conviction of fleeing or attempting to elude a police officer under ORS 811.540.

3 (6) The department shall take action under subsection (1) of this section upon receipt of a record
4 of conviction of reckless endangerment of highway workers under ORS 811.231 (1).

5 (7) The department shall take action under subsection (1) of this section upon receipt of a record
6 of conviction of theft under ORS 164.043, 164.045 or 164.055 when the theft was of gasoline. A sus-
7 pension under this subsection shall continue for a period of six months from the date of suspension.

8 (8) The department shall take action under subsection (1) of this section upon receipt of a record
9 of conviction of criminal trespass under ORS 164.245 that involves the operation of a motor vehicle.
10 A suspension under this subsection shall continue for a period of six months from the date of sus-
11 pension.

12 (9) The department shall take action under subsection (1) of this section upon receipt of a record
13 of conviction of an offense described in ORS 809.310. A suspension under this subsection shall con-
14 tinue for a period of one year from the date of the suspension.

15 (10)(a) The department shall take action under subsection (1) of this section upon receipt of a
16 record of conviction of assault in the second, third or fourth degree resulting from the operation of
17 a motor vehicle.

18 (b) A person who is convicted of assault in the second degree and whose driving privileges are
19 suspended under this subsection may apply for reinstatement of driving privileges eight years from
20 the date the person is released from incarceration for the conviction, if the sentence includes
21 incarceration. If the sentence for the conviction does not include incarceration, the person may ap-
22 ply for reinstatement of driving privileges eight years from the date the department suspended the
23 privileges under this subsection.

24 (c) A person who is convicted of assault in the third degree and whose driving privileges are
25 suspended under this subsection may apply for reinstatement of driving privileges five years from
26 the date the person is released from incarceration for the conviction, if the sentence includes
27 incarceration. If the sentence for the conviction does not include incarceration, the person may ap-
28 ply for reinstatement of driving privileges five years from the date the department suspended the
29 privileges under this subsection.

30 (d) A person who is convicted of assault in the fourth degree and whose driving privileges are
31 suspended under this subsection may apply for reinstatement of driving privileges one year from the
32 date the person is released from incarceration for the conviction, if the sentence includes
33 incarceration. If the sentence for the conviction does not include incarceration, the person may ap-
34 ply for reinstatement of driving privileges one year from the date the department suspended the
35 privileges under this subsection.

36 **(11) The department shall take action under subsection (1) of this section upon receipt**
37 **of a record of conviction for careless driving under ORS 811.135. A suspension under this**
38 **subsection is for the period of time described in Schedule II of ORS 809.428.**

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

40 153.061. (1) **Except as provided in subsection (2) of this section,** a defendant who has been
41 issued a violation citation must either:

42 (a) Make a first appearance by personally appearing in court at the time indicated in the sum-
43 mons; or

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

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

5 [(2)] **(3)** A defendant who has been issued a violation citation may make a first appearance in
6 the matter before the time indicated in the summons by one of the following means:

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

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

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

19 [(3)] **(4)** The court may require that a defendant requesting a trial under subsection [(2)(a)] **(3)(a)**
20 of this section deposit the base fine specified under ORS 153.125 to 153.145 or such other amount
21 as the court determines appropriate if the defendant has failed to appear in any court on one or
22 more other charges in the past. If the defendant does not deposit the amount specified by the court,
23 the defendant must personally appear in court at the time indicated in the summons. The amount
24 deposited by the defendant may be applied against any fine imposed by the court, and any amount
25 not so applied shall be refunded to the defendant at the conclusion of the proceedings.

26 [(4)] **(5)** If the defendant personally appears in court at the time indicated in the summons and
27 enters a plea of guilty, the judge shall consider any statement in explanation or mitigation made by
28 the defendant.

29 [(5)] **(6)** The court may require a defendant to appear personally in any case, or may require that
30 all defendants appear in specified categories of cases.

31 [(6)] **(7)** If a defendant has entered a no contest plea or guilty plea in the manner provided in
32 subsection [(2)(b) or (c)] **(3)(b) or (c)** of this section, and the court determines that the base fine
33 amount is not adequate by reason of previous convictions of the defendant, the nature of the offense
34 charged or other circumstances, the court may require that a trial be held unless an additional fine
35 amount is paid by the defendant before a specified date. Notice of an additional fine amount under
36 this subsection may be given to the defendant by mail. In no event may the court require a total fine
37 amount in excess of the maximum fine established for the violation by statute.

38 [(7)] **(8)** If a defendant fails to make a first appearance on a citation for a traffic violation, as
39 defined by ORS 801.557, fails to make a first appearance on a citation for a violation of ORS 471.430,
40 or fails to appear at any other subsequent time set for trial or other appearance, the driving privi-
41 leges of the defendant are subject to suspension under ORS 809.220.

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

43 41.905. (1) A judgment of conviction or acquittal of a person charged with a traffic offense is
44 not admissible in the trial of a subsequent civil action arising out of the same accident or occur-
45 rence to prove or negate the facts upon which such judgment was rendered.

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

4 (3) Evidence that a person has entered a plea of no contest in the manner described in ORS
5 153.061 [(2)(b)] **(3)(b)** to a charge of a traffic offense shall not be admitted as evidence in the trial
6 of a subsequent civil action arising out of the same accident or occurrence.

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

8 153.090. (1) Judgments entered under this chapter may include:

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

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

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

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

15 (e) Any other provision authorized by law.

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

26 (3) If a trial is held in a violation proceeding, or a default judgment is entered against the de-
27 fendant under ORS 153.102, the court may impose any fine within the statutory limits for the vio-
28 lation. If a defendant pleads no contest under ORS 153.061 [(2)(b)] **(3)(b)**, or pleads guilty under ORS
29 153.061 [(2)(c)] **(3)(c)**, and the court accepts the plea and enters judgment against the defendant, the
30 amount of the fine imposed against the defendant by the court may not exceed the amount of the
31 base fine established for the violation under ORS 153.125 to 153.145.

32 (4) A judge may suspend operation of any part of a judgment entered under this chapter upon
33 condition that the defendant pay the nonsuspended portion of a fine within a specified period of
34 time. If the defendant fails to pay the nonsuspended portion of the fine within the specified period
35 of time, the suspended portion of the judgment becomes operative without further proceedings by the
36 court and the suspended portion of the fine becomes immediately due and payable.

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

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

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

1 not apply to parking violations.

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

3 153.099. (1) If a trial is held in a violation proceeding, the court shall enter a judgment based
4 on the evidence presented at the trial.

5 (2) If the defendant appears and enters a plea of no contest in the manner described in ORS
6 153.061 [(2)(b)] **(3)(b)**, and a trial is not otherwise required by the court or by law, the court shall
7 make a decision based on the citation, the statement filed by the defendant and any other informa-
8 tion or materials submitted to the court.

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

12
