

Senate Bill 246

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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**.

Creates offense of operating motor vehicle while using mobile communication device. Punishes by maximum fine of \$180 or maximum fine of \$720 if person causes property damage or bodily injury. Punishes by maximum imprisonment of one year, maximum fine of \$6,250, or both, if person causes serious bodily injury or death. Imposes suspension of driving privileges upon conviction of misdemeanor.

Subjects person convicted of operating motor vehicle while using mobile communication device to increased financial responsibility requirements and to future responsibility filing requirements.

Limits recovery of noneconomic damages in action for injury or death arising out of operation of motor vehicle if plaintiff was using mobile communication device at time death or injury occurred.

Takes effect December 31, 2007.

A BILL FOR AN ACT

1
2 Relating to use of mobile communication device while operating motor vehicle; creating new pro-
3 visions; amending ORS 31.715, 806.075, 809.411, 811.230 and 811.235 and section 5, chapter 1071,
4 Oregon Laws 1999; repealing ORS 801.038; and prescribing an effective date.

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

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

8 **SECTION 2. (1) As used in this section:**

9 (a) **"Emergency personnel" means persons who provide emergency medical, firefighting**
10 **or law enforcement services.**

11 (b) **"Mobile communication device" means a wireless, two-way communication device that**
12 **enables a person in a motor vehicle to talk with another person who is not in the vehicle.**

13 (2) **A person commits the offense of operating a motor vehicle while using a mobile**
14 **communication device if the person, while operating a motor vehicle on a highway, uses a**
15 **mobile communication device.**

16 (3) **This section does not apply to:**

17 (a) **A person who is acting in an emergency and communicating with emergency person-**
18 **nel by using a mobile communication device; or**

19 (b) **Emergency personnel acting in an emergency.**

20 (4) **A person convicted of violating this section is subject to financial responsibility re-**
21 **quirements and future responsibility filing requirements described in ORS 806.075.**

22 (5) **Except as provided in subsections (6) and (7) of this section, the offense described in**
23 **this section, operating a motor vehicle while using a mobile communication device, is a Class**
24 **C traffic violation.**

25 (6) **Operating a motor vehicle while using a mobile communication device is a Class A**

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 **traffic violation if commission of the offense results in damage to the property of another**
 2 **or bodily injury to another.**

3 **(7) Operating a motor vehicle while using a mobile communication device is a Class A**
 4 **misdemeanor if commission of the offense results in serious bodily injury to another or death**
 5 **of another.**

6 **(8) In addition to any other penalty, a person convicted of operating a motor vehicle while**
 7 **using a mobile communication device is subject to suspension of driving privileges as pro-**
 8 **vided in ORS 809.411.**

9 **SECTION 3.** ORS 806.075 is amended to read:

10 806.075. Notwithstanding any other provision of this chapter, a person convicted of driving un-
 11 der the influence of intoxicants under ORS 813.010 **or of operating a motor vehicle while using**
 12 **a mobile communication device under section 2 of this 2007 Act** is subject to the following re-
 13 quirements for the method of complying with and the amounts needed to meet financial responsibil-
 14 ity requirements and for the duration of future responsibility filings:

15 (1) The person must have a certificate or certificates of insurance that meet the requirements
 16 of ORS 806.270 except that the certificate or certificates must show that the person is covered by
 17 insurance that provides at least:

18 (a) \$50,000 because of bodily injury to or death of one person in any one accident;

19 (b) Subject to that limit for one person, \$100,000 because of bodily injury to or death of two or
 20 more persons in any one accident; and

21 (c) \$10,000 because of injury to or destruction of the property of others in any one accident.

22 (2) The person must maintain future responsibility filings showing insurance coverage in the
 23 amounts specified in subsection (1) of this section for a period of three years from the date that the
 24 first filing is required.

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

26 809.411. (1)(a) Upon receipt of a record of conviction for an offense described in this section, the
 27 Department of Transportation shall suspend the driving privileges of the person convicted.

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

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

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

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

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

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

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

45 **(7) The department shall take action under subsection (1) of this section upon receipt of**

1 **a record of conviction of operating a motor vehicle while using a mobile communication de-**
 2 **vice under section 2 (7) of this 2007 Act.**

3 [(7)] (8) The department shall take action under subsection (1) of this section upon receipt of a
 4 record of conviction of theft under ORS 164.043, 164.045 or 164.055 when the theft was of gasoline.
 5 A suspension under this subsection shall continue for a period of six months from the date of sus-
 6 pension.

7 [(8)] (9) The department shall take action under subsection (1) of this section upon receipt of a
 8 record of conviction of criminal trespass under ORS 164.245 that involves the operation of a motor
 9 vehicle. A suspension under this subsection shall continue for a period of six months from the date
 10 of suspension.

11 [(9)] (10) The department shall take action under subsection (1) of this section upon receipt of
 12 a record of conviction of an offense described in ORS 809.310. A suspension under this subsection
 13 shall continue for a period of one year from the date of the suspension.

14 [(10)(a)] (11)(a) The department shall take action under subsection (1) of this section upon re-
 15 ceipt of a record of conviction of assault in the second, third or fourth degree resulting from the
 16 operation of a motor vehicle.

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

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

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

35 **SECTION 5.** ORS 811.230 is amended to read:

36 811.230. (1) As used in ORS 811.230, 811.231, 811.232 and 811.233:

37 (a) "Flagger" means a person who controls the movement of vehicular traffic through con-
 38 struction projects using sign, hand or flag signals.

39 (b) "Highway work zone" means an area identified by advance warning where road construction,
 40 repair or maintenance work is being done by highway workers on or adjacent to a highway, re-
 41 gardless of whether or not highway workers are actually present. As used in this paragraph, "road
 42 construction, repair or maintenance work" includes, but is not limited to, the setting up and dis-
 43 mantling of advance warning systems.

44 (c) "Highway worker" means an employee of a government agency, private contractor or utility
 45 company working in a highway work zone.

1 (2)(a) The base fine amount for a person charged with an offense that is listed in subsection
 2 (3)(a) or (b) of this section and that is committed in a highway work zone shall be the amount es-
 3 tablished under ORS 153.125 to 153.145 based on the foundation amount calculated under ORS
 4 153.131. The minimum fine for a person convicted of an offense that is listed in subsection (3)(a) or
 5 (b) of this section and that is committed in a highway work zone is the base fine amount so calcu-
 6 lated.

7 (b) The minimum fine for a person convicted of a misdemeanor offense that is listed in sub-
 8 section (3)(c) to [(g)] (h) of this section and that is committed in a highway work zone is 20 percent
 9 of the maximum fine established for the offense.

10 (c) The minimum fine for a person convicted of a felony offense that is listed in subsection [(3)(c)
 11 to (g)] (3)(d) to (h) of this section and that is committed in a highway work zone is two percent of
 12 the maximum fine established for the offense.

13 (3) This section applies to the following offenses if committed in a highway work zone:

14 (a) Class A or Class B traffic violations.

15 (b) Class C or Class D traffic violations related to exceeding a legal speed.

16 (c) **Operating a motor vehicle while using a mobile communication device, as described**
 17 **in section 2 (7) of this 2007 Act.**

18 [(c)] (d) Reckless driving, as defined in ORS 811.140.

19 [(d)] (e) Driving while under the influence of intoxicants, as defined in ORS 813.010.

20 [(e)] (f) Failure to perform the duties of a driver involved in an accident or collision, as de-
 21 scribed in ORS 811.700 or 811.705.

22 [(f)] (g) Criminal driving while suspended or revoked, as defined in ORS 811.182.

23 [(g)] (h) Fleeing or attempting to elude a police officer, as defined in ORS 811.540.

24 (4) A court shall not waive, reduce or suspend the base fine amount or minimum fine required
 25 by this section.

26 (5) When a highway work zone is created, the agency, contractor or company responsible for the
 27 work may post signs designed to give motorists notice of the provisions of this section.

28 **SECTION 6.** ORS 811.235 is amended to read:

29 811.235. (1)(a) If signs authorized by ORS 810.245 are posted, the base fine amount for a person
 30 charged with an offense that is listed in subsection (2)(a) or (b) of this section and that is committed
 31 in a school zone shall be the amount established under ORS 153.125 to 153.145 based on the foun-
 32 dation amount calculated under ORS 153.131. The minimum fine for a person convicted of an offense
 33 that is listed in subsection (2)(a) or (b) of this section and that is committed in a school zone is the
 34 base fine amount so calculated.

35 (b) If signs authorized by ORS 810.245 are posted, the minimum fine for a person convicted of
 36 a misdemeanor offense that is listed in subsection (2)(c) to [(g)] (h) of this section and that is com-
 37 mitted in a school zone is 20 percent of the maximum fine established for the offense.

38 (c) If signs authorized by ORS 810.245 are posted, the minimum fine for a person convicted of
 39 a felony offense that is listed in subsection [(2)(c) to (g)] (2)(d) to (h) of this section and that is
 40 committed in a school zone is two percent of the maximum fine established for the offense.

41 (2) This section applies to the following offenses if committed in a school zone:

42 (a) Class A or Class B traffic violations.

43 (b) Class C or Class D traffic violations related to exceeding a legal speed.

44 (c) **Operating a motor vehicle while using a mobile communication device, as described**
 45 **in section 2 (7) of this 2007 Act.**

1 [(c)] (d) Reckless driving, as defined in ORS 811.140.

2 [(d)] (e) Driving while under the influence of intoxicants, as defined in ORS 813.010.

3 [(e)] (f) Failure to perform the duties of a driver involved in an accident or collision, as de-
4 scribed in ORS 811.700 or 811.705.

5 [(f)] (g) Criminal driving while suspended or revoked, as defined in ORS 811.182.

6 [(g)] (h) Fleeing or attempting to elude a police officer, as defined in ORS 811.540.

7 (3) A court shall not waive, reduce or suspend the base fine amount or minimum fine required
8 by this section.

9 (4) For purposes of this section, a traffic offense occurs in a school zone if the offense occurs
10 while the motor vehicle is in a school zone, notice of the school zone is indicated plainly by traffic
11 control devices conforming to the requirements established under ORS 810.200 and posted under
12 authority granted by ORS 810.210 and:

13 (a) Children are present as described in ORS 811.124; or

14 (b) A flashing light used as a traffic control device and operated under ORS 811.106 indicates
15 that children may be arriving at or leaving school.

16 **SECTION 7.** Section 5, chapter 1071, Oregon Laws 1999, as amended by section 5a, chapter
17 1071, Oregon Laws 1999, section 1, chapter 421, Oregon Laws 2001, and section 3, chapter 100,
18 Oregon Laws 2003, is amended to read:

19 **Sec. 5.** (1) In order to determine the effect of increasing fines in safety corridors, the Depart-
20 ment of Transportation shall post signs in safety corridors chosen by the department indicating that
21 fines for traffic offenses committed in those safety corridors will be doubled.

22 (2)(a) The base fine amount for a person charged with an offense that is listed in subsection
23 (3)(a) or (b) of this section and that is committed in a safety corridor chosen by the department
24 under subsection (1) of this section shall be the amount established under ORS 153.125 to 153.145,
25 based on the foundation amount calculated under ORS 153.131. The minimum fine for a person con-
26 victed of an offense that is listed in subsection (3)(a) or (b) of this section and that is committed in
27 a safety corridor is the base fine amount so calculated.

28 (b) The minimum fine for a person convicted of a misdemeanor offense that is listed in sub-
29 section (3)(c) to [(g)] (h) of this section and that is committed in a safety corridor is 20 percent of
30 the maximum fine established for the offense.

31 (c) The minimum fine for a person convicted of a felony offense that is listed in subsection [(3)(c)
32 to (g)] (3)(d) to (h) of this section and that is committed in a safety corridor is two percent of the
33 maximum fine established for the offense.

34 (3) This section applies to the following offenses if committed in the designated safety corridors:

35 (a) Class A or Class B traffic violations.

36 (b) Class C or Class D traffic violations related to exceeding a legal speed.

37 (c) **Operating a motor vehicle while using a mobile communication device, as described**
38 **in section 2 (7) of this 2007 Act.**

39 [(c)] (d) Reckless driving, as defined in ORS 811.140.

40 [(d)] (e) Driving while under the influence of intoxicants, as defined in ORS 813.010.

41 [(e)] (f) Failure to perform the duties of a driver involved in an accident or collision, as de-
42 scribed in ORS 811.700 or 811.705.

43 [(f)] (g) Criminal driving while suspended or revoked, as defined in ORS 811.182.

44 [(g)] (h) Fleeing or attempting to elude a police officer, as defined in ORS 811.540.

45 (4) A court may not waive, reduce or suspend the base fine amount or minimum fine required

1 by this section.

2 **SECTION 8.** ORS 31.715 is amended to read:

3 31.715. (1) Except as provided in this section, a plaintiff may not recover noneconomic damages,
4 as defined in ORS 31.710, in any action for injury or death arising out of the operation of a motor
5 vehicle if the plaintiff was in violation of ORS 806.010 or 813.010 **or section 2 of this 2007 Act** at
6 the time the act or omission causing the death or injury occurred. A claim for noneconomic damages
7 shall not be considered by the jury if the jury determines that the limitation on liability established
8 by this section applies to the claim for noneconomic damages.

9 (2) For the purpose of the limitation on liability established by this section, a person is conclu-
10 sively presumed to have been in violation of ORS 806.010 or 813.010 **or section 2 of this 2007 Act**
11 if the person is convicted [*in a criminal proceeding of one or both*] **of one or more** of those offenses.
12 If the person has not been convicted of violating ORS 806.010 or 813.010 **or section 2 of this 2007**
13 **Act**, the defendant in the civil action may establish in the civil action, by a preponderance of the
14 evidence, that the plaintiff was in violation of ORS 806.010 or 813.010 **or section 2 of this 2007**
15 **Act** at the time the act or omission causing the death or injury occurred.

16 (3) The court shall abate a civil action upon the motion of any defendant in the civil action
17 against whom a plaintiff has asserted a claim for noneconomic damages if the defendant alleges that
18 the claim of the plaintiff is subject to the limitation on liability established by this section and:

19 (a) A criminal proceeding for a violation of ORS 813.010 **or section 2 (7) of this 2007 Act** has
20 been commenced against the plaintiff in the civil action at the time the motion is made; or

21 (b) The district attorney for the county in which the conduct occurred informs the court at the
22 time the motion is made that criminal proceedings for a violation of ORS 813.010 **or section 2 (7)**
23 **of this 2007 Act** will be commenced against the plaintiff in the civil action.

24 (4) The court may order that only the claim that is subject to the limitation on liability estab-
25 lished by this section be abated under subsection (3) of this section. An abatement under subsection
26 (3) of this section shall remain in effect until the conclusion of the criminal proceedings.

27 (5) The limitation on liability established by this section does not apply if:

28 (a) The defendant in the civil action was also in violation of ORS 806.010 or 813.010 **or section**
29 **2 of this 2007 Act** at the time the act or omission causing the death or injury occurred;

30 (b) The death or injury resulted from acts or omissions of the defendant that constituted an in-
31 tentional tort;

32 (c) The defendant was engaged in conduct that would constitute a violation of ORS 811.140 at
33 the time the act or omission causing the death or injury occurred; or

34 (d) The defendant was engaged in conduct that would constitute a felony at the time the act or
35 omission causing the death or injury occurred.

36 (6) The limitation on liability established by this section based on a violation of ORS 806.010
37 does not apply if the plaintiff in the civil action was insured under a motor vehicle liability insur-
38 ance policy within 180 days before the act or omission occurred, and the plaintiff has not operated
39 a motor vehicle in violation of ORS 806.010 within the one-year period immediately preceding the
40 date on which coverage under the motor vehicle liability insurance policy lapsed.

41 **SECTION 9.** The amendments to ORS 31.715 by section 8 of this 2007 Act apply to causes
42 of action arising on or after the effective date of this 2007 Act.

43 **SECTION 10.** ORS 801.038 is repealed.

44 **SECTION 11.** This 2007 Act takes effect on December 31, 2007.

45