

A-Engrossed
Senate Bill 536

Ordered by the Senate May 11
Including Senate Amendments dated May 11

Sponsored by Senator PROZANSKI (at the request of Mike Arnold)

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.

Classifies driving while under influence of intoxicants as Class C felony when person has prior conviction of felony driving while under influence of intoxicants in this state or any other jurisdiction.

Prohibits defendant charged with driving while under influence of intoxicants from participating in diversion program if defendant has prior felony for driving while under influence of intoxicants in this state or another jurisdiction.

Clarifies phrase "statutory counterpart" for purposes of driving while under influence of intoxicants.

A BILL FOR AN ACT

1
2 Relating to driving while under the influence of intoxicants; amending ORS 809.235, 809.730, 813.010,
3 813.215, 813.220 and 813.430.

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)(a) Driving while under the influence of intoxicants is a Class C felony if **the current of-**
23 **fense was committed in a motor vehicle and** the defendant has been convicted, **at least three**
24 **times in the 10 years prior to the date of the current offense, of:**

25 (A) Driving while under the influence of intoxicants in violation of:

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 (i) This section; or

2 (ii) [Its] **The** statutory counterpart to **this section** in another jurisdiction;

3 **(B) A driving offense in another jurisdiction that involves the impaired driving of a ve-**
4 **hicle, an aircraft or a boat due to the use of intoxicating liquor, a controlled substance, an**
5 **inhalant or any combination thereof; or**

6 **(C) A driving offense in another jurisdiction that involves operating a vehicle, an aircraft**
7 **or a boat while having a blood alcohol content above that jurisdiction's permissible blood al-**
8 **cohol content.** [at least three times in the 10 years prior to the date of the current offense and the
9 current offense was committed in a motor vehicle. For purposes of this subsection, a prior conviction
10 for boating while under the influence of intoxicants in violation of ORS 830.325 or its statutory
11 counterpart in another jurisdiction, or for prohibited operation of an aircraft in violation of ORS
12 837.080 (1)(a) or its statutory counterpart in another jurisdiction, shall be considered a prior conviction
13 of driving while under the influence of intoxicants.]

14 **(b) Driving while under the influence of intoxicants is a Class C felony if the current of-**
15 **fense was committed in a motor vehicle and the defendant has been convicted, at any time**
16 **prior to the commission of the current offense, of felony driving while under the influence**
17 **of intoxicants in violation of:**

18 **(A) This section; or**

19 **(B) The statutory counterpart to this section in another jurisdiction.**

20 **(c) For the purposes of paragraphs (a) and (b) of this subsection, a conviction for a**
21 **driving offense in another jurisdiction based solely on a person under 21 years of age with a**
22 **blood alcohol content that is lower than the permissible blood alcohol content in that juris-**
23 **isdiction for a person 21 years of age or older does not constitute a prior conviction.**

24 (6) In addition to any other sentence that may be imposed, the court shall impose a fine on a
25 person convicted of driving while under the influence of intoxicants as follows:

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

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

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

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

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

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

35 **SECTION 2.** ORS 809.235 is amended to read:

36 809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving
37 privileges be permanently revoked if the person is convicted of any degree of murder or of
38 manslaughter in the first degree and the court finds that the person intentionally used a motor ve-
39 hicle as a dangerous weapon resulting in the death of the victim.

40 (b) The court shall order that a person's driving privileges be permanently revoked if the person
41 is convicted of felony driving while under the influence of intoxicants in violation of ORS 813.010
42 or if the person is convicted **for a third or subsequent time** of:

43 **(A) [misdemeanor] Driving while under the influence of intoxicants in violation of:**

44 **(i) ORS 813.010; or**

45 **(ii) [Its] The** statutory counterpart to **ORS 813.010** in any other jurisdiction; [for a third or

1 *subsequent time]*

2 **(B) A driving offense in any other jurisdiction that involves the impaired driving of a**
3 **vehicle, an aircraft or a boat due to the use of intoxicating liquor, a controlled substance,**
4 **an inhalant or any combination thereof; or**

5 **(C) A driving offense in any other jurisdiction that involves operating a vehicle, an air-**
6 **craft or a boat while having a blood alcohol content above that jurisdiction's permissible**
7 **blood alcohol content.**

8 **(c) For the purposes of paragraph (b) of this subsection, a conviction for a driving offense**
9 **in any other jurisdiction based solely on a person under 21 years of age with a blood alcohol**
10 **content that is lower than the permissible blood alcohol content in that jurisdiction for a**
11 **person 21 years of age or older does not constitute a prior conviction.**

12 (2)(a) A person whose driving privileges are revoked as described in subsection (1) of this sec-
13 tion may file a petition in the circuit court of the county in which the person resides for an order
14 restoring the person's driving privileges. A petition may be filed under this subsection no sooner
15 than 10 years after the person is:

16 (A) Released on parole or post-prison supervision; or

17 (B) Sentenced to probation if the probation is not revoked and the person is thereafter dis-
18 charged without the imposition of a sentence of imprisonment.

19 (b) The district attorney of the county in which the person resides shall be named and served
20 as the respondent in the petition.

21 (3) The court shall hold a hearing on a petition filed in accordance with subsection (2) of this
22 section. In determining whether to grant the petition, the court shall consider:

23 (a) The nature of the offense for which driving privileges were revoked.

24 (b) The degree of violence involved in the offense.

25 (c) Other criminal and relevant noncriminal behavior of the petitioner both before and after the
26 conviction that resulted in the revocation.

27 (d) The recommendation of the person's parole officer, which shall be based in part on a psy-
28 chological evaluation ordered by the court to determine whether the person is presently a threat to
29 the safety of the public.

30 (e) Any other relevant factors.

31 (4) If, after a hearing described in subsection (3) of this section, the court is satisfied by clear
32 and convincing evidence that the petitioner is rehabilitated and that the petitioner does not pose a
33 threat to the safety of the public, the court shall order the petitioner's driving privileges restored.

34 **SECTION 3.** ORS 809.730 is amended to read:

35 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
36 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
37 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been
38 convicted of:

39 (a) Driving while under the influence of intoxicants in violation of:

40 **(A)** ORS 813.010[.]; or

41 **(B)** [*Its*] **The** statutory counterpart to **ORS 813.010** in another jurisdiction; [*or*]

42 **(b) A driving offense in another jurisdiction that involves the impaired driving of a vehi-**
43 **cle, an aircraft or a boat due to the use of intoxicating liquor, a controlled substance, an**
44 **inhalant or any combination thereof;**

45 **(c) A driving offense in another jurisdiction that involves operating a vehicle, an aircraft**

1 **or a boat while having a blood alcohol content above that jurisdiction's permissible blood al-**
2 **cohol content; or**

3 [(b)] (d) Murder, manslaughter, criminally negligent homicide or assault that resulted from the
4 operation of a motor vehicle in this state or in another jurisdiction.

5 **(2) For the purposes of subsection (1) of this section, a conviction for a driving offense**
6 **in another jurisdiction based solely on a person under 21 years of age with a blood alcohol**
7 **content that is lower than the permissible blood alcohol content in that jurisdiction for a**
8 **person 21 years of age or older does not constitute a prior conviction.**

9 [(2)] (3) All seizure and forfeiture proceedings under this section shall be conducted in accord-
10 ance with ORS chapter 475A.

11 **SECTION 4.** ORS 813.215 is amended to read:

12 813.215. (1) A defendant is eligible for diversion if:

13 [(1)] (a) **On the date the defendant filed the petition for a driving while under the influ-**
14 **ence of intoxicants diversion agreement,** the defendant had no charge [of], **other than the**
15 **charge for the present offense, pending for:**

16 (A) An offense of driving while under the influence of intoxicants **in violation of:**

17 (i) **ORS 813.010;** or

18 (ii) [Its] **The** statutory counterpart to **ORS 813.010** in any **other** jurisdiction[, *other than the*
19 *charge for the present offense, pending on the date the defendant filed the petition for a driving while*
20 *under the influence of intoxicants diversion agreement*];

21 **(B) A driving offense in any other jurisdiction that involves the impaired driving of a**
22 **vehicle, an aircraft or a boat due to the use of intoxicating liquor, a controlled substance,**
23 **an inhalant or any combination thereof; or**

24 **(C) A driving offense in any other jurisdiction that involves operating a vehicle, an air-**
25 **craft or a boat while having a blood alcohol content above that jurisdiction's permissible**
26 **blood alcohol content;**

27 [(2)] (b) The defendant has not been convicted of an offense described in **paragraph (a) of this**
28 subsection [(1) of this section] within the period beginning 10 years before the date of the commission
29 of the present offense and ending on the date the defendant filed the petition for a driving while
30 under the influence of intoxicants diversion agreement;

31 [(3)] (c) The defendant was not participating in a driving while under the influence of
32 intoxicants diversion program or in any similar alcohol or drug rehabilitation program, other than
33 a program entered into as a result of the charge for the present offense, in this state or in any other
34 jurisdiction on the date the defendant filed the petition for a driving while under the influence of
35 intoxicants diversion agreement;

36 [(4)] (d) The defendant did not participate in a diversion or rehabilitation program described in
37 **paragraph (c) of this** subsection [(3) of this section], other than a program entered into as a result
38 of the charge for the present offense, within the period beginning 10 years before the date of the
39 commission of the present offense and ending on the date the defendant filed the petition for a
40 driving while under the influence of intoxicants diversion agreement;

41 [(5)] (e) The defendant had no charge of an offense of murder, manslaughter, criminally negligent
42 homicide or assault that resulted from the operation of a motor vehicle pending in this state or in
43 any other jurisdiction on the date the defendant filed the petition for a driving while under the in-
44 fluence of intoxicants diversion agreement;

45 [(6)] (f) The defendant has not been convicted of an offense described in **paragraph (e) of this**

1 subsection [(5) of this section] within the period beginning 10 years before the date of the commission
2 of the present offense and ending on the date the defendant filed the petition for a driving while
3 under the influence of intoxicants diversion agreement;

4 [(7)] (g) The defendant did not have a commercial driver license at the time of the offense;

5 [(8)] (h) The defendant was not operating a commercial motor vehicle at the time of the offense;
6 [and]

7 [(9)] (i) The present driving while under the influence of intoxicants offense did not involve an
8 accident resulting in:

9 [(a)] (A) Death of any person other than the defendant; or

10 [(b)] (B) Physical injury as defined in ORS 161.015 to any person other than the defendant[.];
11 **and**

12 (j) **The defendant has not been convicted of felony driving while under the influence of**
13 **intoxicants in violation of ORS 813.010 or its statutory counterpart in another jurisdiction.**

14 (2) **For the purposes of subsection (1)(a) of this section, a conviction for a driving offense**
15 **in any other jurisdiction based solely on a person under 21 years of age with a blood alcohol**
16 **content that is lower than the permissible blood alcohol content in that jurisdiction for a**
17 **person 21 years of age or older does not constitute a prior conviction.**

18 **SECTION 5.** ORS 813.220 is amended to read:

19 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request
20 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether
21 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-
22 ment. In making a determination under this section, the court:

23 (1) Shall consider whether the diversion will be of benefit to the defendant and the community.

24 (2) May take into consideration whether there was an early recognition by the defendant during
25 the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug
26 dependency would be beneficial.

27 (3) May take into consideration whether there is a probability that the defendant will cooperate
28 with the diagnostic assessment and treatment agencies.

29 (4) May take into consideration whether the defendant will observe the restrictions contained
30 in the diversion agreement.

31 (5) May take into consideration whether the offense was committed in a motor vehicle and
32 whether there was a passenger in the motor vehicle who was under 18 years of age and at least
33 three years younger than the defendant.

34 (6) Shall deny the petition for a driving while under the influence of intoxicants diversion
35 agreement if the defendant failed to appear at an arraignment on the present offense without good
36 cause.

37 (7) Shall deny the petition for a driving while under the influence of intoxicants diversion
38 agreement if, **after the date the defendant filed the petition**, the defendant was charged with or
39 convicted of:

40 (a) An offense of driving while under the influence of intoxicants **in violation of:**

41 (A) **ORS 813.010**; or

42 (B) *[Its]* **The statutory counterpart to ORS 813.010** in any **other** jurisdiction; *[after the date the*
43 *defendant filed the petition]*

44 (b) **A driving offense in any other jurisdiction that involves the impaired driving of a ve-**
45 **hicle, an aircraft or a boat due to the use of intoxicating liquor, a controlled substance, an**

1 **inhalant or any combination thereof; or**

2 **(c) A driving offense in any other jurisdiction that involves operating a vehicle, an air-**
3 **craft or a boat while having a blood alcohol content above that jurisdiction's permissible**
4 **blood alcohol content.**

5 (8) Shall deny the petition for a driving while under the influence of intoxicants diversion
6 agreement if the defendant participated in a driving while under the influence of intoxicants diver-
7 sion program or in any similar alcohol or drug rehabilitation program, other than a program entered
8 into as a result of the charge for the present offense, in this state or in any other jurisdiction after
9 the date the defendant filed the petition.

10 (9) Shall deny the petition for a driving while under the influence of intoxicants diversion
11 agreement if the defendant was charged with or convicted of an offense of murder, manslaughter,
12 criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this
13 state or in any other jurisdiction after the date the defendant filed the petition.

14 **(10) For the purposes of subsection (7) of this section, may not consider a conviction for**
15 **a driving offense in any other jurisdiction based solely on a person under 21 years of age with**
16 **a blood alcohol content that is lower than the permissible blood alcohol content in that ju-**
17 **risdiction for a person 21 years of age or older as a prior conviction.**

18 **SECTION 6.** ORS 813.430 is amended to read:

19 813.430. This section establishes circumstances under which ORS 813.420 requires an increase
20 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase
21 in the time before the Department of Transportation may issue a hardship permit. A person is sub-
22 ject to an increase in suspension time under this section if any of the following apply:

23 (1) The person is presently participating in a driving while under the influence of intoxicants
24 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or
25 any other jurisdiction.

26 (2) Within the five years preceding the date of arrest any of the following occurred:

27 (a) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replace-
28 ment Part) became effective.

29 (b) The person was convicted of:

30 **(A) Driving while** under the influence of intoxicants in violation of:

31 **(i) ORS 813.010; [or]**

32 **(ii) [Its] The statutory counterpart to ORS 813.010** in another jurisdiction; or

33 **(iii) A municipal ordinance in this state or another state;**

34 **(B) A driving offense in another jurisdiction that involves the impaired driving of a ve-**
35 **hicle, an aircraft or a boat due to the use of intoxicating liquor, a controlled substance, an**
36 **inhalant or any combination thereof; or**

37 **(C) A driving offense in another jurisdiction that involves operating a vehicle, an aircraft**
38 **or a boat while having a blood alcohol content above that jurisdiction's permissible blood al-**
39 **cohol content.**

40 (c) The person commenced participating in a driving while under the influence of intoxicants
41 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or
42 any other jurisdiction.

43 **(3) For the purposes of subsection (2)(b) of this section, a conviction for a driving offense**
44 **in another jurisdiction based solely on a person under 21 years of age with a blood alcohol**
45 **content that is lower than the permissible blood alcohol content in that jurisdiction for a**

1 **person 21 years of age or older does not constitute a prior conviction.**

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