

Senate Bill 810

Sponsored by Senator MONROE (at the request of Multnomah County District Attorney, Michael D. Schrunk)

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**.

Clarifies meaning of statutory counterpart for purposes of statutes relating to 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 defendant has
23 been convicted of driving while under the influence of intoxicants [*in violation of this section or its*
24 *statutory counterpart in another jurisdiction*] at least three times in the 10 years prior to the date
25 of the current offense and the current offense was committed in a motor vehicle. [*For purposes of*
26 *this subsection, a prior conviction for boating while under the influence of intoxicants in violation of*
27 *ORS 830.325 or its statutory counterpart in another jurisdiction, or for prohibited operation of an air-*
28 *craft in violation of ORS 837.080 (1)(a) or its statutory counterpart in another jurisdiction, shall be*
29 *considered a prior conviction of driving while under the influence of intoxicants.*]

30 (b) **In addition to a prior conviction under this section, the following are considered prior**
31 **convictions of driving while under the influence of intoxicants for the purposes of this sub-**

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 **section:**

2 **(A) A conviction for operating a boat while under the influence of intoxicants in violation**
 3 **of ORS 830.325;**

4 **(B) A conviction for prohibited operation of an aircraft in violation of ORS 837.080 (1)(a);**

5 **(C) A conviction in another jurisdiction of an offense involving the use of alcohol, a**
 6 **controlled substance, an inhalant or any combination thereof while operating a vehicle in**
 7 **that jurisdiction; or**

8 **(D) A conviction in another jurisdiction of an offense involving the use of alcohol, a**
 9 **controlled substance, an inhalant or any combination thereof while operating a boat or air-**
 10 **craft in that jurisdiction.**

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

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

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

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

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

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

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

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

23 809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving
 24 privileges be permanently revoked if the person is convicted of any degree of murder or of
 25 manslaughter in the first degree and the court finds that the person intentionally used a motor ve-
 26 hicle as a dangerous weapon resulting in the death of the victim.

27 *[(b) The court shall order that a person's driving privileges be permanently revoked if the person*
 28 *is convicted of felony driving while under the influence of intoxicants in violation of ORS 813.010 or*
 29 *if the person is convicted of misdemeanor driving while under the influence of intoxicants in violation*
 30 *of ORS 813.010 or its statutory counterpart in any other jurisdiction for a third or subsequent time.]*

31 **(b) The court shall order that a person's driving privileges be permanently revoked if the**
 32 **person:**

33 **(A) Has been convicted of felony driving while under the influence of intoxicants in vio-**
 34 **lation of ORS 813.010; or**

35 **(B) Has been convicted for a third or subsequent time of misdemeanor driving while un-**
 36 **der the influence of intoxicants under ORS 813.010 or an offense in another jurisdiction in-**
 37 **volving the use of alcohol, a controlled substance, an inhalant or any combination thereof**
 38 **while operating a vehicle in that jurisdiction.**

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

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

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

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

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

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

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

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

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

12 (e) Any other relevant factors.

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

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

17 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
 18 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
 19 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been
 20 convicted of:

21 (a) Driving while under the influence of intoxicants in violation of ORS 813.010, or *[its statutory*
 22 *counterpart in another jurisdiction]* **an offense in another jurisdiction involving the use of alco-**
 23 **hol, a controlled substance, an inhalant or any combination thereof while operating a vehicle**
 24 **in that jurisdiction;** or

25 (b) Murder, manslaughter, criminally negligent homicide or assault that resulted from the oper-
 26 ation of a motor vehicle in this state or in another jurisdiction.

27 (2) All seizure and forfeiture proceedings under this section shall be conducted in accordance
 28 with ORS chapter 475A.

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

30 813.215. A defendant is eligible for diversion if:

31 (1) The defendant had no charge of an offense of driving while under the influence of intoxicants
 32 *[or its statutory counterpart in any jurisdiction]* **in violation of ORS 813.010 or an offense in an-**
 33 **other jurisdiction involving the use of alcohol, a controlled substance, an inhalant or any**
 34 **combination thereof while operating a vehicle in that jurisdiction,** other than the charge for the
 35 present offense, pending on the date the defendant filed the petition for a driving while under the
 36 influence of intoxicants diversion agreement;

37 (2) The defendant has not been convicted of an offense described in subsection (1) of this section
 38 within the period beginning 10 years before the date of the commission of the present offense and
 39 ending on the date the defendant filed the petition for a driving while under the influence of
 40 intoxicants diversion agreement;

41 (3) The defendant was not participating in a driving while under the influence of intoxicants
 42 diversion program or in any similar alcohol or drug rehabilitation program, other than a program
 43 entered into as a result of the charge for the present offense, in this state or in any other jurisdic-
 44 tion on the date the defendant filed the petition for a driving while under the influence of
 45 intoxicants diversion agreement;

1 (4) The defendant did not participate in a diversion or rehabilitation program described in sub-
 2 section (3) of this section, other than a program entered into as a result of the charge for the
 3 present offense, within the period beginning 10 years before the date of the commission of the
 4 present offense and ending on the date the defendant filed the petition for a driving while under the
 5 influence of intoxicants diversion agreement;

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

10 (6) The defendant has not been convicted of an offense described in subsection (5) of this section
 11 within the period beginning 10 years before the date of the commission of the present offense and
 12 ending on the date the defendant filed the petition for a driving while under the influence of
 13 intoxicants diversion agreement;

14 (7) The defendant did not have a commercial driver license at the time of the offense;

15 (8) The defendant was not operating a commercial motor vehicle at the time of the offense; and

16 (9) The present driving while under the influence of intoxicants offense did not involve an ac-
 17 cident resulting in:

18 (a) Death of any person other than the defendant; or

19 (b) Physical injury as defined in ORS 161.015 to any person other than the defendant.

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

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

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

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

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

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

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

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

39 (7) Shall deny the petition for a driving while under the influence of intoxicants diversion
 40 agreement if the defendant was charged with or convicted of an offense of driving while under the
 41 influence of intoxicants **in violation of ORS 813.010**, or *[its statutory counterpart in any*
 42 *jurisdiction]* **of an offense in another jurisdiction involving the use of alcohol, a controlled**
 43 **substance, an inhalant or any combination thereof while operating a vehicle in that juris-**
 44 **isdiction**, after the date the defendant filed the petition.

45 (8) Shall deny the petition for a driving while under the influence of intoxicants diversion

1 agreement if the defendant participated in a driving while under the influence of intoxicants diver-
 2 sion program or in any similar alcohol or drug rehabilitation program, other than a program entered
 3 into as a result of the charge for the present offense, in this state or in any other jurisdiction after
 4 the date the defendant filed the petition.

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

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

10 813.430. This section establishes circumstances under which ORS 813.420 requires an increase
 11 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase
 12 in the time before the Department of Transportation may issue a hardship permit. A person is sub-
 13 ject to an increase in suspension time under this section if any of the following apply:

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

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

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

20 (b) The person was convicted of driving under the influence of intoxicants in violation of ORS
 21 813.010 **or a municipal ordinance, or convicted of an offense in another jurisdiction involving**
 22 **the use of alcohol, a controlled substance, an inhalant or any combination thereof while op-**
 23 **erating a vehicle in that jurisdiction** [*or its statutory counterpart in another jurisdiction or a mu-*
 24 *nicipal ordinance*].

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

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