

Minority Report
B-Engrossed
House Bill 3624

Ordered by the Senate February 22
Including House Amendments dated February 19 and Senate Minority
Report Amendments dated February 22

Sponsored by nonconcurring members of the Senate Committee on Rules and Executive Appointments: Senators
ATKINSON, FERRIOLI

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.

[Directs Department of Transportation to annually report to Legislative Assembly and describe effects of implementation of chapter _____, Oregon Laws 2008 (Enrolled Senate Bill 1080).]

[Sunsets January 2, 2014.]

[Declares emergency, effective on passage.]

Permits police officer to confiscate registration card and to mark registration plate with sticker if driver is arrested for or issued citation for driving while suspended or revoked or for vehicle operating without driving privileges.

A BILL FOR AN ACT

Relating to documents issued by Department of Transportation.

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

SECTION 1. Sections 2 to 11 of this 2008 Act are added to and made a part of the Oregon Vehicle Code.

SECTION 2. (1) If the driver of a vehicle is arrested for or issued a citation for driving a motor vehicle while the driving privileges of the driver are suspended or revoked in violation of ORS 811.182 or for vehicle operating without driving privileges in violation of ORS 807.010 (1), a police officer may confiscate a registration card for a vehicle if the card is located in the vehicle and may mark each registration plate of the vehicle with a sticker in accordance with procedures prescribed by rule by the Department of Transportation.

(2) The stickers described in subsection (1) of this section shall be clearly distinguishable from registration stickers issued by this state.

(3) Upon the confiscation of a registration card or the marking of plates under subsection (1) of this section, the officer shall issue the driver a temporary registration card that expires 60 days after the date of the arrest or the date the citation was issued. The department shall provide police officers with temporary registration cards for issuance as required under this section.

(4) The officer confiscating the registration card under subsection (1) of this section shall provide the driver with written notice of the circumstances under which the Department of Transportation may cancel the vehicle registration. The notice shall be on a form prepared and provided by the department and shall contain the information required by section 5 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 this 2008 Act.

2 (5) Within a period of time determined by the department by rule, the officer shall report
3 action taken under this section to the department and shall deliver to the department the
4 confiscated registration card and a report of action taken under this section.

5 **SECTION 3.** A police officer who sees a vehicle with registration plates marked as pro-
6 vided in section 2 of this 2008 Act being operated on a highway or on premises open to the
7 public may stop the vehicle for the sole purpose of ascertaining whether the driver is oper-
8 ating the vehicle in violation of ORS 807.010 (1) or 811.182. Nothing in this section prohibits
9 the arrest or citation of a person for an offense if the officer has probable cause to believe
10 the person has committed the offense.

11 **SECTION 4.** (1) Upon receipt of a report from a police officer of action taken under sec-
12 tion 2 of this 2008 Act, the Department of Transportation shall:

13 (a) Determine from the department's records whether the driving privileges of the driver
14 were suspended or revoked for violation of ORS 811.182 or whether the driver was operating
15 the vehicle without driving privileges in violation of ORS 807.010 (1) at the time of the arrest
16 or citation under section 2 of this 2008 Act; and

17 (b) Determine whether the driver was an owner of the vehicle that the driver was driving
18 at the time of the arrest or citation under section 2 of this 2008 Act.

19 (2) If both conditions of subsection (1) of this section are met, the department shall
20 cancel the registration of the vehicle. Cancellation shall take effect 60 days after an arrest
21 is made or a citation is issued under section 2 of this 2008 Act. Cancellation shall remain in
22 effect until the driving privileges of the driver have been restored or have been established
23 and the driver submits a valid application and pays all required fees for registration of the
24 vehicle, including the restoration fee under section 10 of this 2008 Act, or until another per-
25 son who is qualified to do so registers the vehicle.

26 (3) Cancellation of registration under subsection (2) of this section does not affect the
27 right of any person to transfer or acquire title to, or any interest in, the vehicle or the right
28 of any other person to become the registered owner of the vehicle.

29 (4) If the records of the department show that the driving privileges of the driver were
30 suspended or revoked for violation of ORS 811.182 or that the driver was operating the ve-
31 hicle without driving privileges in violation of ORS 807.010 (1) but the driver was not an
32 owner of the vehicle at the time the registration plates were marked under section 2 of this
33 2008 Act, the department shall promptly notify the registered owner by first class mail at the
34 address shown on the records of the department of the action taken under section 2 of this
35 2008 Act. The department may not cancel the registration of a vehicle if the driver who was
36 arrested or issued a citation under section 2 of this 2008 Act was not an owner of the vehicle
37 at the time of the arrest or citation. Upon payment by the registered owner of the replace-
38 ment sticker fee and the restoration fee required under section 10 of this 2008 Act, if appli-
39 cable, the department shall issue replacement stickers and shall either return the
40 confiscated registration card to a registered owner notified under this subsection or issue a
41 new card without cost to the owner. The replacement stickers may be used by the registered
42 owner to replace the stickers placed on the registration plates under section 2 of this 2008
43 Act.

44 (5) If the records of the department show that the driving privileges of the driver were
45 not suspended or revoked for violation of ORS 811.182 or that the driver was not operating

1 the vehicle without driving privileges in violation of ORS 807.010 (1), the department shall
2 notify a registered owner of the vehicle that the registration will not be canceled and shall
3 issue replacement stickers at no cost to the registered owner. The stickers and the confis-
4 cated registration card, or a new registration card if the department determines that issuing
5 a new card is more convenient, shall be provided to the registered owner as soon as possible
6 after the determination is made under this subsection.

7 (6) If the driver of a vehicle that had plates marked under section 2 of this 2008 Act
8 produces a driver license, driver permit or other evidence of a grant of driving privileges that
9 is valid at the time it is produced, the department may not cancel the registration of the
10 vehicle and, upon payment by the registered owner of the replacement sticker fee and the
11 restoration fee required under section 10 of this 2008 Act, the department shall issue re-
12 placement stickers for the vehicle and shall either return the confiscated registration card
13 or issue a new registration card at no cost to the owner of the vehicle.

14 (7) Nothing in this section requires the department to issue a registration card or stick-
15 ers for a vehicle if registration for that vehicle has expired.

16 **SECTION 5.** (1) Notice given by a police officer under section 2 of this 2008 Act shall:

17 (a) Specify the grounds for cancellation of the registration;

18 (b) Inform the person that the registration will not be canceled if the person has a valid
19 driver license or driver permit;

20 (c) Inform the person of the procedure for obtaining replacement stickers and a regis-
21 tration card; and

22 (d) Inform the person that the person is entitled to a hearing if a written request is made
23 to the Department of Transportation within 15 days of the date the arrest is made or the
24 citation is issued.

25 (2) If a written request for a hearing is not received by the department within 15 days
26 of notification under section 2 of this 2008 Act, any cancellation of the registration by the
27 department authorized by section 4 of this 2008 Act shall become effective as provided in
28 section 4 of this 2008 Act.

29 (3) If a written request for a hearing is received by the department within 15 days of
30 notification under section 2 of this 2008 Act, the department shall hold a hearing under sec-
31 tion 6 of this 2008 Act.

32 **SECTION 6.** A hearing on cancellation of registration as described in section 4 of this
33 2008 Act is subject to all of the following:

34 (1) The hearing shall be before an administrative law judge assigned from the Office of
35 Administrative Hearings established under ORS 183.605.

36 (2) The determination by the administrative law judge at the hearing under this section
37 is a final order.

38 (3) Unless there is an agreement between the person and the Department of Transpor-
39 tation that the hearing be conducted elsewhere, the hearing shall be held either in the county
40 where the alleged offense occurred or at any place within 100 miles of the place where the
41 alleged offense occurred, as established by the department by rule.

42 (4) The person who requested the hearing shall be notified of the time and place of the
43 hearing at least 20 days prior to the scheduled date.

44 (5) A person who requests a hearing as provided in section 5 of this 2008 Act and who
45 fails, without just cause, to appear in person or through an attorney waives the right to a

1 hearing. If the person waives the right to a hearing under this subsection, the department
2 is not required to make any showing at the hearing.

3 (6) Except as provided in subsection (10) of this section, the department shall hold the
4 hearing and the administrative law judge shall issue a final order within 60 days of the date
5 of the arrest made or citation issued under section 2 of this 2008 Act.

6 (7) An authorized representative of the department may administer oaths and shall issue
7 subpoenas for the attendance of witnesses at the hearing, as requested by the person or the
8 department, and for the production of relevant documents.

9 (8) The hearing shall be recorded in a manner determined by the department by rule and
10 the record shall include any testimony and exhibits submitted. The record of the proceedings
11 may not be transcribed unless requested by a party to the proceeding. Hearing transcripts
12 shall be provided to requesting parties at cost.

13 (9) The scope of the hearing shall be limited to the determination of whether the can-
14 cellation is valid as described in this subsection. A cancellation is valid if:

15 (a) The driving privileges of the driver of the vehicle were suspended or revoked in vio-
16 lation of ORS 811.182 or the driver was operating the vehicle without driving privileges in
17 violation of ORS 807.010 (1) at the time the registration plates were marked and the driver
18 of the vehicle did not produce a driver license, driver permit or other evidence of driving
19 privileges as described in section 4 (6) of this 2008 Act;

20 (b) The driver of the vehicle was a registered owner of the vehicle at the time the reg-
21 istration plates were marked and is a registered owner of the vehicle at the time of the
22 hearing; and

23 (c) The driver of the vehicle was provided notice that met the requirements of section 2
24 (4) of this 2008 Act.

25 (10) If the department is unable to provide a hearing within the time required by sub-
26 section (6) of this section, the department may postpone the hearing for up to 60 additional
27 days. The department shall determine by rule what constitutes inability to provide a hearing
28 within the time required by subsection (6) of this section. If a hearing is postponed under this
29 subsection, the department shall extend the temporary registration issued under section 2
30 of this 2008 Act for an additional 60 days.

31 (11) The department may not require the police officer who took action under section 2
32 of this 2008 Act to be present at any hearing held under this section. Nothing in this sub-
33 section prohibits the department from issuing a subpoena to the police officer on behalf of
34 the person who requested the hearing.

35 **SECTION 7.** (1) Unless a person fails, without just cause, to appear in person or through
36 an attorney at a hearing under section 6 of this 2008 Act after having requested the hearing,
37 the person requesting the hearing shall have the right to appeal any final order of the de-
38 partment after the hearing by filing a petition in the circuit court for the county where the
39 person resides or, if the person does not reside in Oregon, in the circuit court of the county
40 where the arrest or citation took place within 30 days after issuance of the final order of the
41 department. Appeal shall be as provided in section 8 of this 2008 Act.

42 (2) A final order issued under section 6 of this 2008 Act shall remain in effect pending
43 any appeal or remand of the order and there shall be no stay of the cancellation pending
44 appeal or remand.

45 **SECTION 8.** (1) The petition to the circuit court appealing a final order of the Depart-

1 ment of Transportation after a hearing under section 6 of this 2008 Act shall state the nature
2 of the petitioner's interest and the grounds upon which the petitioner contends the order
3 should be reversed or remanded.

4 (2) The court shall conduct the review without a jury. Review shall be limited to the re-
5 cord of the hearing held by the department.

6 (3) Any party to the proceedings before the circuit court may appeal from the judgment
7 of the court to the Court of Appeals.

8 (4) Upon review in the circuit court or Court of Appeals, the court may affirm, reverse
9 or remand the order as follows:

10 (a) If the court finds that the department has erroneously interpreted a provision of law
11 and that a correct interpretation compels a particular action, the court shall:

12 (A) Set aside or modify the order; or

13 (B) Remand the case to the department for further action under a correct interpretation
14 of the provision of law.

15 (b) The court shall remand the order to the department if the court finds exercise of
16 discretion by the department to be:

17 (A) Outside the range of discretion delegated to the agency by law;

18 (B) Inconsistent with a department rule, an officially stated department position or a
19 prior department practice if the inconsistency is not explained by the department; or

20 (C) Otherwise in violation of a constitutional or statutory provision.

21 (c) The court shall set aside or remand the order if the court finds that the order is not
22 supported by substantial evidence in the record.

23 (5) Upon review, the court shall affirm the order of the department unless the court finds
24 a ground for setting aside, modifying or remanding the order to the department under a
25 specified provision of this section.

26 **SECTION 9.** (1) A person commits the offense of removal of special stickers if the person
27 removes stickers affixed to the registration plates of a vehicle under section 2 of this 2008
28 Act before the Department of Transportation has issued replacement stickers for the vehi-
29 cle.

30 (2) The offense described in this section, removal of special stickers, is a Class C traffic
31 violation.

32 **SECTION 10.** (1) If the registered owner of a vehicle is required to pay for replacement
33 plates or stickers or if a driver reregisters a vehicle under the provisions of section 4 of this
34 2008 Act, the Department of Transportation shall charge a restoration fee in addition to any
35 other fee charged for the transaction.

36 (2) The restoration fee charged under this section shall be an amount to be determined
37 by the department by rule, not to exceed \$5. The restoration fee is designed to recover de-
38 partment costs of the stickers used to mark vehicles and temporary registration cards issued
39 under section 2 of this 2008 Act.

40 **SECTION 11.** Nothing in section 2 of this 2008 Act authorizes the placement of stickers
41 on vehicles with out-of-state registration plates.

42 **SECTION 12.** (1) Sections 2 to 11 of this 2008 Act become operative January 1, 2011.

43 (2) The Department of Transportation may adopt rules or take any action before the
44 operative date specified in subsection (1) of this section necessary to enable the department
45 to exercise, on or after the operative date specified in subsection (1) of this section, all the

1 **duties, functions and powers conferred on the department by sections 2 to 11 of this 2008**
2 **Act.**
3 _____