

Senate Bill 1094

Sponsored by Senator WINTERS; Senators FERRIOLI, G GEORGE, L GEORGE, NELSON, STARR, WHITSETT, Representative FLORES (Presession filed.)

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**.

Directs 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.

Creates offense of removal of special stickers. Punishes by maximum fine of \$180.

Creates offense of knowingly furnishing motor vehicle to person who is not authorized to drive. Punishes by maximum fine of \$720.

Increases maximum penalty for vehicle operating without driving privileges.

Increases maximum penalty for driving while suspended or revoked.

A BILL FOR AN ACT

1
2 Relating to transportation; creating new provisions; and amending ORS 807.010, 810.530 and 811.175.

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

4 **SECTION 1. Sections 2 to 12 of this 2008 Act are added to and made a part of the Oregon**
5 **Vehicle Code.**

6 **SECTION 2. (1) A police officer, as defined in ORS 801.395, shall confiscate a registration**
7 **card for a vehicle if the card is located in the vehicle and shall mark each registration plate**
8 **of the vehicle with a sticker in accordance with procedures prescribed by rule by the De-**
9 **partment of Transportation if the driver of the vehicle is arrested for or issued a citation for**
10 **driving a motor vehicle while the driver's license is suspended or revoked in violation of ORS**
11 **811.175 or 811.182.**

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

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

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

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

27 **SECTION 3. A police officer who sees a vehicle with registration plates marked as pro-**
28 **vided in section 2 of this 2008 Act being operated on a highway or on premises open to the**

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 public may stop the vehicle for the sole purpose of ascertaining whether the driver is oper-
2 ating the vehicle in violation of ORS 811.175 or 811.182. Nothing in this section prohibits the
3 arrest or citation of a person for an offense if the officer has probable cause to believe the
4 person has committed the offense.

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

7 (a) Determine from the department's records whether the driving privileges of the driver
8 were suspended or revoked for violation of ORS 811.175 or 811.182 at the time of the arrest
9 or citation under section 2 of this 2008 Act; and

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

12 (2) If both conditions of subsection (1) of this section are met, the department shall
13 cancel the registration of the vehicle. Cancellation shall take effect 60 days after an arrest
14 is made or a citation is issued under section 2 of this 2008 Act. Cancellation shall remain in
15 effect until the driving privileges of the driver have been restored and the driver submits a
16 valid application and pays all required fees for registration of the vehicle, including the res-
17 toration fee under section 10 of this 2008 Act, or until another person who is qualified to do
18 so registers the vehicle.

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

22 (4) If the records of the department show that the driving privileges of the driver were
23 suspended or revoked for violation of ORS 811.175 or 811.182 but the driver was not an owner
24 of the vehicle at the time the registration plates were marked under section 2 of this 2008
25 Act, the department shall promptly notify the registered owner by first class mail at the
26 address shown on the records of the department of the action taken under section 2 of this
27 2008 Act. The department may not cancel the registration of a vehicle if the driver who was
28 arrested or issued a citation under section 2 of this 2008 Act was not an owner of the vehicle
29 at the time of the arrest or citation. Upon payment by the registered owner of the replace-
30 ment sticker fee and the restoration fee required under section 10 of this 2008 Act, if appli-
31 cable, the department shall issue replacement stickers and shall either return the
32 confiscated registration card to a registered owner notified under this subsection or issue a
33 new card without cost to the owner. The replacement stickers may be used by the registered
34 owner to replace the stickers placed on the registration plates under section 2 of this 2008
35 Act.

36 (5) If the records of the department show that the driving privileges of the driver were
37 not suspended or revoked for violation of ORS 811.175 or 811.182, the department shall notify
38 a registered owner of the vehicle that the registration will not be canceled and shall issue
39 replacement stickers at no cost to the registered owner. The stickers and the confiscated
40 registration card, or a new registration card if the department determines that issuing a new
41 card is more convenient, shall be provided to the registered owner as soon as possible after
42 the determination is made under this subsection.

43 (6) If the driver of a vehicle that had plates marked under section 2 of this 2008 Act
44 produces a driver license, driver permit or other evidence of a grant of driving privileges that
45 is valid at the time it is produced, the department may not cancel the registration of the

1 vehicle and, upon payment by the registered owner of the replacement sticker fee and the
2 restoration fee required under section 10 of this 2008 Act, the department shall issue re-
3 placement stickers for the vehicle and shall either return the confiscated registration card
4 or issue a new registration card at no cost to the owner of the vehicle.

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

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

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

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

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

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

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

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

23 **SECTION 6.** A hearing on cancellation of registration as described in section 4 of this
24 2008 Act is subject to all of the following:

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

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

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

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

35 (5) A person who requests a hearing as provided in section 5 of this 2008 Act and who
36 fails, without just cause, to appear in person or through an attorney waives the right to a
37 hearing. If the person waives the right to a hearing under this subsection, the department
38 is not required to make any showing at the hearing.

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

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

45 (8) The hearing shall be recorded in a manner determined by the department by rule and

1 the record shall include any testimony and exhibits submitted. The record of the proceedings
2 may not be transcribed unless requested by a party to the proceeding. Hearing transcripts
3 shall be provided to requesting parties at cost.

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

6 (a) The driving privileges of the driver of the vehicle were suspended or revoked at the
7 time the registration plates were marked for operating the vehicle without driving privileges
8 and the driver of the vehicle did not produce a license, permit or other evidence of driving
9 privileges as described in section 4 (6) of this 2008 Act;

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

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

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

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

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

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

35 **SECTION 8.** (1) The petition to the circuit court appealing a final order of the Depart-
36 ment of Transportation after a hearing under section 6 of this 2008 Act shall state the nature
37 of the petitioner's interest and the grounds upon which the petitioner contends the order
38 should be reversed or remanded.

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

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

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

45 (a) If the court finds that the department has erroneously interpreted a provision of law

1 and that a correct interpretation compels a particular action, the court shall:

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

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

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

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

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

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

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

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

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

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

22 **SECTION 10.** (1) If the registered owner of a vehicle is required to pay for replacement
23 plates or stickers or if a driver reregisters a vehicle under the provisions of section 4 of this
24 2008 Act, the Department of Transportation shall charge a restoration fee in addition to any
25 other fee charged for the transaction.

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

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

32 **SECTION 12.** (1) An owner of a motor vehicle commits the offense of knowingly fur-
33 nishing a motor vehicle to a person who is not authorized to drive if the owner rents, leases,
34 lends or otherwise furnishes a motor vehicle to a person the owner knew, or has reason to
35 know, did not have a valid driver license or driver permit and the owner consented to the
36 operation of the vehicle by the person.

37 (2) The offense described in this section, knowingly furnishing a motor vehicle to a per-
38 son who is not authorized to drive, is a Class A traffic violation.

39 **SECTION 13.** ORS 807.010 is amended to read:

40 807.010. (1) A person commits the offense of vehicle operating without driving privileges if the
41 person operates a motor vehicle upon a highway or premises open to the public in this state and the
42 person does not have an appropriate grant of driving privileges from this state in the form of a li-
43 cense, driver permit, endorsement or statutory grant of driving privileges allowing the person to
44 engage in the particular type of operation.

45 (2) A person to whom a license or driver permit is issued commits the offense of violating license

1 restrictions if the person operates a motor vehicle in any manner that violates restrictions that are
 2 placed upon the person's driving privileges by the Department of Transportation under ORS 807.120
 3 or 807.122, by a court under ORS 809.210 or 809.270, or by the vehicle code.

4 (3) Nothing in this section is applicable to a person who is driving while suspended or revoked
 5 in violation of ORS 811.175 or 811.182. Persons who violate ORS 811.175 or 811.182 are subject to
 6 the provisions and penalties provided therein and are not subject to the penalties and provisions of
 7 this section.

8 (4) The offense described in subsection (1) of this section, vehicle operating without driving
 9 privileges, is **punishable as follows:**

10 (a) **For the first offense, as a Class B traffic violation;**

11 (b) **For the second offense, as a Class A misdemeanor; and**

12 (c) **For the third offense and subsequent offenses, as a Class A misdemeanor and the**
 13 **court shall impose a sentence requiring the person to serve at least 10 days imprisonment,**
 14 **which shall be served consecutively. The court may not suspend execution of a sentence**
 15 **unless justice requires otherwise.**

16 (5) The offense described in subsection (2) of this section, operating in violation of license re-
 17 strictions, is a Class B traffic violation.

18 **SECTION 14.** ORS 811.175 is amended to read:

19 811.175. (1) A person commits the offense of [*violation*] driving while suspended or revoked if the
 20 person does any of the following:

21 (a) Drives a motor vehicle upon a highway during a period when the person's driving privileges
 22 or right to apply for driving privileges have been suspended or revoked in this state by a court or
 23 by the Department of Transportation.

24 (b) Drives a motor vehicle outside the limitations of a probationary permit issued under ORS
 25 807.270 or a hardship driver permit issued under ORS 807.240, including any limitations placed on
 26 the permit under ORS 813.510.

27 (c) Drives a commercial motor vehicle upon a highway during a period when the person's com-
 28 mercial driver license has been suspended, regardless of whether or not the person has other driving
 29 privileges granted by this state.

30 (2) Affirmative defenses to the offense described in this section are established under ORS
 31 811.180.

32 (3) The offense described in this section is applicable upon any premises open to the public.

33 [*(4) The offense described in this section, violation driving while suspended or revoked, is a Class*
 34 *A traffic violation except as otherwise provided in ORS 811.182.*]

35 (4) **Except as otherwise provided in ORS 811.182, the offense described in this section,**
 36 **driving while suspended or revoked:**

37 (a) **Is a Class A misdemeanor; and**

38 (b) **For the second offense and subsequent offenses, is a Class A misdemeanor and the**
 39 **court shall impose a sentence requiring the person to serve at least 10 days imprisonment,**
 40 **which shall be served consecutively. The court may not suspend execution of a sentence**
 41 **unless justice requires otherwise.**

42 **SECTION 15.** ORS 810.530 is amended to read:

43 810.530. (1) A weighmaster or motor carrier enforcement officer in whose presence an offense
 44 described in this subsection is committed may arrest or issue a citation for the offense in the same
 45 manner as under ORS 810.410 as if the weighmaster or motor carrier enforcement officer were a

1 police officer. This subsection applies to the following offenses:

- 2 (a) Violation of maximum weight limits under ORS 818.020.
- 3 (b) Violation of posted weight limits under ORS 818.040.
- 4 (c) Violation of administratively imposed weight or size limits under ORS 818.060.
- 5 (d) Violation of maximum size limits under ORS 818.090.
- 6 (e) Exceeding maximum number of vehicles in combination under ORS 818.110.
- 7 (f) Violation of posted limits on use of road under ORS 818.130.
- 8 (g) Violation of towing safety requirements under ORS 818.160.
- 9 (h) Operating with sifting or leaking load under ORS 818.300.
- 10 (i) Dragging objects on highway under ORS 818.320.
- 11 (j) Unlawful use of devices without wheels under ORS 815.155.
- 12 (k) Unlawful use of metal objects on tires under ORS 815.160.
- 13 (L) Operation without pneumatic tires under ORS 815.170.
- 14 (m) Operation in violation of vehicle variance permit under ORS 818.340.
- 15 (n) Failure to carry and display permit under ORS 818.350.
- 16 (o) Failure to comply with commercial vehicle enforcement requirements under ORS 818.400.
- 17 (p) Violation of any provision of ORS chapter 825.
- 18 (q) Operation without proper fenders or mudguards under ORS 815.185.

19 (r) Vehicle operating without driving privileges in violation of ORS 807.010 if the person is op-
 20 erating a commercial motor vehicle and the person does not have a commercial driver license or
 21 does not have an appropriate permit.

22 (s) [*Violation*] Driving while suspended or revoked in violation of ORS 811.175 if the person is
 23 operating a commercial motor vehicle while the person's commercial driver license is suspended or
 24 revoked.

25 (t) Failure to use vehicle traction tires or chains in violation of ORS 815.140 if the person is
 26 operating a motor vehicle subject to ORS chapter 825 or 826.

27 (2) A weighmaster or motor carrier enforcement officer in whose presence an offense described
 28 in this subsection is committed by a person operating a commercial motor vehicle may issue a ci-
 29 tation for the offense. A weighmaster or motor carrier enforcement officer who finds evidence that
 30 an offense described in this subsection has been committed by a person operating a commercial
 31 motor vehicle or by a motor carrier for which the person is acting as an agent may issue a citation
 32 for the offense. A weighmaster or motor carrier enforcement officer issuing a citation under this
 33 subsection has the authority granted a police officer issuing a citation under ORS 810.410. A citation
 34 issued under this subsection to the operator of a commercial motor vehicle shall be considered to
 35 have been issued to the motor carrier that owns the commercial motor vehicle if the operator is not
 36 the owner. This subsection applies to the following offenses, all of which are Class A traffic vio-
 37 lations under ORS 825.990 (1):

- 38 (a) Repeatedly violating or avoiding any order or rule of the Department of Transportation.
- 39 (b) Repeatedly refusing or repeatedly failing, after being requested to do so, to furnish service
 40 authorized by certificate.
- 41 (c) Refusing or failing to file the annual report as required by ORS 825.320.
- 42 (d) Refusing or failing to maintain records required by the department or to produce such re-
 43 cords for examination as required by the department.
- 44 (e) Failing to appear for a hearing after notice that the carrier's certificate or permit is under
 45 investigation.

1 (f) Filing with the department an application that is false with regard to the ownership, pos-
 2 session or control of the equipment being used or the operation being conducted.

3 (g) Delinquency in reporting or paying any fee, tax or penalty due to the department under ORS
 4 chapter 825 or 826.

5 (h) Refusing or failing to file a deposit or bond as required under ORS 825.506.

6 (i) Failing to comply with the applicable requirements for attendance at a motor carrier educa-
 7 tion program as required by ORS 825.402.

8 (3) A weighmaster or motor carrier enforcement officer who finds evidence that a person oper-
 9 ating a commercial motor vehicle has committed the offense of failure to pay the appropriate reg-
 10 istration fee under ORS 803.315 may issue a citation for the offense in the same manner as under
 11 ORS 810.410 as if the weighmaster or motor carrier enforcement officer were a police officer.

12 (4) The authority of a weighmaster or motor carrier enforcement officer to issue citations or
 13 arrest under this section is subject to ORS chapter 153.

14 (5)(a) A person is a weighmaster for purposes of this section if the person is a county
 15 weighmaster or a police officer.

16 (b) A person is a motor carrier enforcement officer under this section if the person is duly au-
 17 thorized as a motor carrier enforcement officer by the Department of Transportation.

18 (6) A weighmaster or motor carrier enforcement officer may accept security in the same manner
 19 as a police officer under ORS 810.440 and 810.450 and may take as security for the offenses, in ad-
 20 dition to other security permitted under this section, the sum fixed as the base fine for the offense.

21 (7) A weighmaster or motor carrier enforcement officer may arrest a person for the offense of
 22 failure to appear in a violation proceeding under ORS 153.992 if the violation is based upon a cita-
 23 tion for any offense described in subsection (1) or (3) of this section except those described in sub-
 24 section (1)(p) of this section.

25 (8) A weighmaster or motor carrier enforcement officer may exercise the same authority as a
 26 police officer under ORS 810.490 to enforce vehicle requirements and detain vehicles. A person who
 27 fails to comply with the authority of a weighmaster or motor carrier enforcement officer under this
 28 subsection is subject to penalty under ORS 818.400.

29