

Enrolled House Bill 2238

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Transportation)

CHAPTER

AN ACT

Relating to hardship permits; creating new provisions; and amending ORS 813.130 and 813.520.

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

SECTION 1. ORS 813.520 is amended to read:

813.520. In addition to any provisions of ORS 807.240 and 813.510 or 807.250, this section establishes limitations on the authority of the Department of Transportation to issue driving privileges under ORS 807.240. The department may not reinstate any driving privileges or issue any hardship permit under ORS 807.240 as provided under any of the following:

(1) For a period of 90 days after the beginning of the suspension if the suspension is for refusal of a test under ORS 813.100 and the person is not subject to an increase in the time before a permit may be issued for reasons described in ORS 813.430. This period of 90 days shall be reduced by the time the department refused to issue a hardship permit under subsection (5) or (6) of this section if the person's driving privileges were suspended based on the same occurrence.

(2) For a period of 30 days after the beginning of the suspension if the suspension is because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300 and the person is not subject to an increase in the time before a hardship permit may be issued for reasons described in ORS 813.430. This period of 30 days shall be reduced by the time the department refused to issue a hardship permit under subsection (5) or (6) of this section if the person's driving privileges were suspended based on the same occurrence.

(3) For a period of one year after the beginning of the suspension if the suspension is because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300 and the person is subject to an increase in the time before a hardship permit may be issued for reasons described under ORS 813.430. This period of one year shall be reduced by the time the department refused to issue a hardship permit under subsection (5) or (6) of this section if the person's driving privileges were suspended based on the same occurrence.

(4) For a period of [one year] **three years** after the beginning of the suspension if the suspension is for refusal of a test under ORS 813.100 and the person is subject to an increase in the time before a hardship permit may be issued for reasons described in ORS 813.430. This period of [one year] **three years** shall be reduced by the time the department refused to issue a hardship permit under subsection (5) or (6) of this section if the person's driving privileges were suspended based on the same occurrence.

(5) For a period of 90 days after the beginning of the suspension under ORS 813.400 if it is the person's second conviction for driving while under the influence of intoxicants if the suspension period is determined by ORS 809.428 (2)(b). This period of 90 days shall be reduced by the time the department refused to issue a hardship permit under subsection (1), (2), (3) or (4) of this section if the person's driving privileges were suspended based on the same occurrence.

(6) For a period of one year after the beginning of the suspension under ORS 813.400 for driving while under the influence of intoxicants if the suspension period is determined by ORS 809.428 (2)(c). This period of one year shall be reduced by the time the department refused to issue a hardship permit under subsection (1), (2), (3) or (4) of this section if the person's driving privileges were suspended based on the same occurrence.

(7) To any person who has a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle.

(8) If the suspension is based upon a conviction for a violation of ORS 813.010 or is imposed under ORS 813.410 based upon ORS 813.100 to a person who has available public or private transportation sufficient to fulfill the person's transportation needs while the person is suspended.

(9) For a period of 30 days following imposition of suspension, if the person, within the previous year, has been convicted of a traffic crime and the suspension is based upon a conviction for violation of ORS 813.010 or is imposed under ORS 813.410 based upon ORS 813.100.

SECTION 2. ORS 813.130 is amended to read:

813.130. This section establishes the requirements for information about rights and consequences for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and consequences:

(1) The information about rights and consequences shall be substantially in the form prepared by the Department of Transportation. The department may establish any form it determines appropriate and convenient.

(2) The information about rights and consequences shall be substantially as follows:

(a) Driving under the influence of intoxicants is a crime in Oregon, and the person is subject to criminal penalties if a test under ORS 813.100 shows that the person is under the influence of intoxicants. If the person refuses a test or fails, evidence of the refusal or failure may also be offered against the person.

(b) The person will fail a test under ORS 813.100 for purposes of criminal penalties if the test discloses a blood alcohol content of 0.08 percent or more by weight. The person will fail a test for purposes of the Motorist Implied Consent Law if the test discloses a blood alcohol content of:

(A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;

(B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or

(C) Any amount if the person was under 21 years of age.

(c) If the person refuses or fails a test under ORS 813.100, the person's driving privileges will be suspended. The outcome of a criminal charge for driving under the influence of intoxicants will not affect the suspension. The suspension will be substantially longer if the person refuses a test.

(d) If the person refuses a test or fails a breath test under ORS 813.100 and has an Oregon driver license or permit, the license or permit will be taken immediately and, unless the person does not currently have full valid driving privileges, a temporary driving permit will be issued to the person.

[(e) If the person refuses a test under ORS 813.100, the person will not be eligible for a hardship permit for at least 90 days, and possibly for one year, depending on the person's driving record. The person may possibly qualify for a hardship permit in 30 days if the person fails a test, depending on the person's driving record.]

(e) If the person refuses a test under ORS 813.100, the person is not eligible for a hardship permit for at least 90 days, and possibly for three years, depending on the following factors set forth in ORS 813.430:

(A) Whether the person is presently participating in a driving while under the influence of intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program in this or another jurisdiction; or

(B) Whether within the five years preceding the date of arrest any of the following occurred:

(i) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replacement Part) became effective;

(ii) The person was convicted of driving while under the influence of intoxicants in violation of ORS 813.010 or the statutory counterpart to ORS 813.010 in another jurisdiction, as described in ORS 813.430;

(iii) The person was convicted of driving while under the influence of intoxicants in violation of a municipal ordinance in this state or another jurisdiction, as described in ORS 813.430; or

(iv) The person commenced participating in a driving while under the influence of intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program in this or another jurisdiction, as described in ORS 813.430.

(f) If the person refuses a breath test under ORS 813.100, the person is subject to a fine of at least \$500 and not more than \$1,000.

(g) After taking a test under ORS 813.100, the person will have a reasonable opportunity, upon request, for an additional chemical test for blood alcohol content to be performed at the person's own expense by a qualified individual of the person's choosing.

(h) The person has a right to a hearing to challenge the validity of the suspension before the suspension becomes effective. The person must make a written request to the department for such a hearing. If the person wins at the hearing, the person's driving privileges will not be suspended. If the person loses at the hearing, the suspension will remain in effect during any court review of the hearing.

(i) The following times:

(A) If the person is issued a temporary driving permit under ORS 813.100, the number of hours before the driving permit will be effective and the number of days the permit will be effective.

(B) The number of days within which a person must request a hearing under ORS 813.410.

(C) The number of days within which a hearing under ORS 813.410 will be held.

(j) The person may possibly qualify for a hardship permit in 30 days if the person fails a test, depending on the person's driving record.

(3) If the person is driving a commercial motor vehicle, the information about rights and consequences shall include, in addition to the provisions of subsection (2) of this section, substantially the following:

(a) If the person refuses a test under ORS 813.100 or submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or more by weight, the person's commercial driver license or right to apply for a commercial driver license will be suspended and no hardship permit authorizing the person to drive a commercial motor vehicle will be issued. The suspension will be substantially longer if the person refuses a test.

(b) The suspension of the person's commercial driver license or right to apply for a commercial driver license will be for the person's lifetime if the person refuses a test under ORS 813.100 or submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or more by weight and:

(A) The person previously has been convicted of failure to perform the duties of a driver;

(B) The person previously has been convicted of a crime punishable as a felony and the person was driving a motor vehicle at the time the offense was committed;

(C) The person previously has been convicted of driving a commercial motor vehicle while the person's commercial driver license or right to apply for a commercial driver license was suspended or revoked;

(D) The person previously has been convicted of any degree of murder, manslaughter or criminally negligent homicide resulting from the operation of a commercial motor vehicle or assault in the first degree resulting from the operation of a commercial motor vehicle;

(E) The person previously has been convicted of driving while under the influence of intoxicants;

(F) The person's commercial driver license previously has been suspended or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100; or

(G) The person's right to apply for a commercial driver license previously has been suspended or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting from the operation of a commercial motor vehicle.

(4) Nothing in this section prohibits the department from providing additional information concerning rights and consequences that the department considers convenient or appropriate.

SECTION 3. The amendments to ORS 813.130 and 813.520 by sections 1 and 2 of this 2009 Act apply to persons who refuse to take a test under ORS 813.100 on or after the effective date of this 2009 Act.

Passed by House February 19, 2009

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Repassed by House June 9, 2009

.....M,....., 2009

Approved:

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Chief Clerk of House

.....M,....., 2009

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Speaker of House

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Governor

Passed by Senate June 5, 2009

Filed in Office of Secretary of State:

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President of Senate

.....M,....., 2009

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Secretary of State