

SENATE AMENDMENTS TO HOUSE BILL 2238

By COMMITTEE ON JUDICIARY

June 3

1 On page 2 of the printed bill, delete lines 22 through 45 and delete page 3.

2 On page 4, delete lines 1 through 4 and insert:

3 “**SECTION 2.** ORS 813.130 is amended to read:

4 “813.130. This section establishes the requirements for information about rights and conse-
5 quences for purposes of ORS 813.100 and 813.410. The following apply to the information about
6 rights and consequences:

7 “(1) The information about rights and consequences shall be substantially in the form prepared
8 by the Department of Transportation. The department may establish any form it determines appro-
9 priate and convenient.

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

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

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

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

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

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

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

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

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

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

35 “(A) Whether the person is presently participating in a driving while under the influence

1 of intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation
2 program in this or another jurisdiction; or

3 **“(B) Whether within the five years preceding the date of arrest any of the following oc-
4 curred:**

5 **“(i) A suspension of the person’s driving privileges under ORS 813.410 or 482.540 (1981
6 Replacement Part) became effective;**

7 **“(ii) The person was convicted of driving while under the influence of intoxicants in vio-
8 lation of ORS 813.010 or the statutory counterpart to ORS 813.010 in another jurisdiction, as
9 described in ORS 813.430;**

10 **“(iii) The person was convicted of driving while under the influence of intoxicants in vi-
11 olation of a municipal ordinance in this state or another jurisdiction, as described in ORS
12 813.430; or**

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

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

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

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

26 **“(i) The following times:**

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

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

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

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

33 **“(3) If the person is driving a commercial motor vehicle, the information about rights and con-
34 sequences shall include, in addition to the provisions of subsection (2) of this section, substantially
35 the following:**

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

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

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

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

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

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

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

11 “(F) The person’s commercial driver license previously has been suspended or revoked for re-
12 fusal to submit to, or failure of, a breath or blood test under ORS 813.100; or

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

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

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