

Enrolled
House Bill 2427

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to implied consent; creating new provisions; and amending ORS 153.630, 813.095 and 813.130.

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

SECTION 1. ORS 813.095 is amended to read:

813.095. (1) A person commits the offense of refusal to take a [*breath*] test **for intoxicants** if the person refuses to:

(a) Take a breath test when requested to do so in accordance with the provisions of ORS 813.100[.]; **or**

(b) **Take a urine test when requested to do so in accordance with the provisions of ORS 813.131 and 813.132.**

(2) The offense described in this section, refusal to take a [*breath*] test **for intoxicants**, is a traffic offense punishable by a fine of at least \$500 and not more than \$1,000. The fine described in this section is in addition to any other consequence prescribed by law for refusal to take a [*breath*] test **for intoxicants**.

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.

(f) If the person refuses a breath test under ORS 813.100, **or refuses a urine test under ORS 813.131 and 813.132**, 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)] (i) If the person is issued a temporary driving permit under ORS 813.100, the **information provided to the person shall include the** number of hours before the driving permit will be effective and the number of days the permit will be effective.

[(B)] (j) The **information provided to the person shall include the** number of days within which a person must request a hearing under ORS 813.410.

[(C)] (k) The **information provided to the person shall include the** number of days within which a hearing under ORS 813.410 will be held.

(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. ORS 153.630 is amended to read:

153.630. (1) Costs and one-half of all fines collected in traffic offense cases by any court having jurisdiction of the traffic offense shall be paid as follows:

(a) If collected in a circuit court, to be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the state.

(b) If collected in a justice court, to be credited and distributed under ORS 137.293 and 137.295 to the treasurer of the county in which the offense occurred, as a monetary obligation payable to the county.

(c) If collected in a municipal court, to be credited and distributed under ORS 137.293 and 137.295 to the city treasurer, as a monetary obligation payable to the city.

(2) The other half of such fines shall be paid as follows:

(a) If resulting from prosecutions initiated by or from arrests or complaints made by a member of the Oregon State Police, to be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the state.

(b) If resulting from prosecutions initiated by or from arrests or complaints made by a motor carrier enforcement officer, to be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the state.

(c) If resulting from prosecutions initiated by or from arrests or complaints made by a city police officer, including a city marshal or a member of the police of a city or municipal or quasi-municipal corporation, to be credited and distributed under ORS 137.293 and 137.295:

(A) To the treasurer of the city or municipal or quasi-municipal corporation by which such police officer is employed, as a monetary obligation to that political subdivision of the state if the offense occurred within the boundaries of the city or municipal or quasi-municipal corporation; or

(B) As a monetary obligation payable to the state if the offense occurred outside the boundaries of the city or municipal or quasi-municipal corporation.

(d) If resulting from prosecutions initiated by or from arrests or complaints made by a sheriff, deputy sheriff or county weighmaster, to be credited and distributed under ORS 137.293 and 137.295 to the treasurer of the county in which the offense occurred, as a monetary obligation payable to that county and to be credited to the general fund of that county.

(e) If resulting from prosecutions for parking in a winter recreation parking location, to be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the state.

(f) In other cases, to be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation to the same entity to which payment is made of the half provided for in subsection (1) of this section.

(3) If provisions of subsection (2)(b) or (e) of this section are applicable, and if the fine or penalty imposed is remitted, suspended or stayed, or the offender against whom the fine or penalty was levied or imposed serves time in jail in lieu of paying the fine or penalty or a part thereof, the committing judge or magistrate shall certify the facts thereof in writing to the State Court Administrator in the case of a circuit court or the Department of Revenue in the case of a justice or municipal court not later than the 10th day of the month next following the month in which the fine was remitted or penalty suspended. If any part of the fine is thereafter paid, it shall be remitted to the judge or magistrate who imposed the fine or penalty, who shall distribute it as provided in subsections (1) and (2) of this section.

(4) If a fine is subject to division between two entities under this section and a sentence to pay a fine is imposed by the court, any remittance, suspension or stay of the fine portion of the sentence must be attributed on an equal basis to both of the entities entitled to a share of the fine.

(5) Distribution of fines and costs collected in a justice or municipal court under this section must be made not later than the last day of the month immediately following the month in which the fines and costs are collected.

(6) All fines collected as a result of citations issued [by a member of the Oregon State Police] for a violation of ORS 813.095 and credited and distributed to the state under subsections (1)(a) and (2)(a) of this section shall be deposited in the State Police Account established in ORS 181.175 to be used by the Department of State Police for the enforcement of laws concerning driving while under the influence of intoxicants.

SECTION 4. (1) The amendments to ORS 813.095 and 813.130 by sections 1 and 2 of this 2009 Act apply to offenses of driving while under the influence of intoxicants committed on or after the effective date of this 2009 Act.

(2) The amendments to ORS 153.630 by section 3 of this 2009 Act apply to citations issued on or after the effective date of this 2009 Act.

Passed by House March 3, 2009

Received by Governor:

Repassed by House June 4, 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 3, 2009

Filed in Office of Secretary of State:

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

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President of Senate

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Secretary of State