

# House Bill 2427

Sponsored by COMMITTEE ON JUDICIARY

## 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**.

Provides that person commits offense of refusal to take test for intoxicants if person refuses to submit to urine or blood test when requested to do so under implied consent law. Punishes by fine of at least \$500 and not more than \$1,000.

Provides that all fines collected for offense of refusal to take test for intoxicants that are distributed to state be used by Department of State Police for enforcement of laws concerning driving while under influence of intoxicants, whether or not resulting from citations issued by state police.

## A BILL FOR AN ACT

1  
2 Relating to implied consent; creating new provisions; and amending ORS 153.630, 813.095 and  
3 813.130.

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

5 **SECTION 1.** ORS 813.095 is amended to read:

6 813.095. (1) A person commits the offense of refusal to take a [*breath*] test **for intoxicants** if the  
7 person refuses to:

8 (a) Take a breath test when requested to do so in accordance with the provisions of ORS  
9 813.100[.];

10 (b) **Submit to a blood test when requested to do so in accordance with the provisions of**  
11 **ORS 813.100; or**

12 (c) **Take a urine test when requested to do so in accordance with the provisions of ORS**  
13 **813.131 and 813.132.**

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

18 **SECTION 2.** ORS 813.130 is amended to read:

19 813.130. This section establishes the requirements for information about rights and consequences  
20 for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and  
21 consequences:

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

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

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

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

- 4 (A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;
- 5 (B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or
- 6 (C) Any amount if the person was under 21 years of age.

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

10 (d) If the person refuses a test or fails a breath **or blood** test under ORS 813.100 and has an  
 11 Oregon driver license or permit, the license or permit will be taken immediately and, unless the  
 12 person does not currently have full valid driving privileges, a temporary driving permit will be is-  
 13 sued to the person.

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

18 (f) If the person refuses a breath **or blood** test under ORS 813.100, **or refuses a urine test**  
 19 **under ORS 813.131 and 813.132**, the person is subject to a fine of at least \$500 and not more than  
 20 \$1,000.

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

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

29 *[(i) The following times:]*

30 *[(A)]* (i) If the person is issued a temporary driving permit under ORS 813.100, the **information**  
 31 **provided to the person shall include the** number of hours before the driving permit will be effec-  
 32 tive and the number of days the permit will be effective.

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

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

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

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

45 (b) The suspension of the person's commercial driver license or right to apply for a commercial

1 driver license will be for the person's lifetime if the person refuses a test under ORS 813.100 or  
 2 submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or  
 3 more by weight and:

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

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

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

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

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

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

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

19 (4) Nothing in this section prohibits the department from providing additional information con-  
 20 cerning rights and consequences that the department considers convenient or appropriate.

21 **SECTION 3.** ORS 153.630 is amended to read:

22 153.630. (1) Costs and one-half of all fines collected in traffic offense cases by any court having  
 23 jurisdiction of the traffic offense shall be paid as follows:

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

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

29 (c) If collected in a municipal court, to be credited and distributed under ORS 137.293 and  
 30 137.295 to the city treasurer, as a monetary obligation payable to the city.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **SECTION 4. (1) The amendments to ORS 813.095 and 813.130 by sections 1 and 2 of this**  
 32 **2009 Act apply to offenses of driving while under the influence of intoxicants committed on**  
 33 **or after the effective date of this 2009 Act.**

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

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