

House Bill 2870

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**.

Requires permanent revocation of driving privileges for persons convicted of certain crimes.

Requires person convicted of certain crimes to use ignition interlock device for 10 years after ending date of revocation of driving privileges. Punishes failure to use device by maximum fine of \$720.

A BILL FOR AN ACT

1
2 Relating to motor vehicles; creating new provisions; and amending ORS 802.550, 809.235, 809.409,
3 811.182 and 813.602.

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

5 **SECTION 1.** ORS 809.235 is amended to read:

6 809.235. (1)(a) [*Notwithstanding ORS 809.409 (2),*] The court shall order that a person's driving
7 privileges be permanently revoked if the person is convicted of any degree of murder or of
8 manslaughter in the first degree and the court finds that the person intentionally used a motor ve-
9 hicle as a dangerous weapon resulting in the death of the victim, **or if the person is convicted**
10 **of aggravated vehicular homicide, criminally negligent homicide resulting from the operation**
11 **of a motor vehicle or assault in the first degree resulting from the operation of a motor ve-**
12 **hicle.**

13 (b) The court shall order that a person's driving privileges be permanently revoked if the person
14 is convicted of felony driving while under the influence of intoxicants in violation of ORS 813.010
15 or if the person is convicted for a third or subsequent time of any of the following offenses in any
16 combination:

17 (A) Driving while under the influence of intoxicants in violation of:

18 (i) ORS 813.010; or

19 (ii) The statutory counterpart to ORS 813.010 in another jurisdiction.

20 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the
21 impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an
22 inhalant or any combination thereof.

23 (C) A driving offense in another jurisdiction that involved operating a vehicle while having a
24 blood alcohol content above that jurisdiction's permissible blood alcohol content.

25 (c) For the purposes of paragraph (b) of this subsection, a conviction for a driving offense in
26 another jurisdiction based solely on a person under 21 years of age having a blood alcohol content
27 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years
28 of age or older does not constitute a prior conviction.

29 (2)(a) A person whose driving privileges are revoked as described in subsection (1) of this sec-
30 tion may file a petition in the circuit court of the county in which the person resides for an order

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 restoring the person's driving privileges. A petition may be filed under this subsection no sooner
 2 than 10 years after the person is:

3 (A) Released on parole or post-prison supervision; or

4 (B) Sentenced to probation if the probation is not revoked and the person is thereafter dis-
 5 charged without the imposition of a sentence of imprisonment.

6 (b) The district attorney of the county in which the person resides shall be named and served
 7 as the respondent in the petition.

8 (3) The court shall hold a hearing on a petition filed in accordance with subsection (2) of this
 9 section. In determining whether to grant the petition, the court shall consider:

10 (a) The nature of the offense for which driving privileges were revoked.

11 (b) The degree of violence involved in the offense.

12 (c) Other criminal and relevant noncriminal behavior of the petitioner both before and after the
 13 conviction that resulted in the revocation.

14 (d) The recommendation of the person's parole officer, which shall be based in part on a psy-
 15 chological evaluation ordered by the court to determine whether the person is presently a threat to
 16 the safety of the public.

17 (e) Any other relevant factors.

18 (4) If, after a hearing described in subsection (3) of this section, the court is satisfied by clear
 19 and convincing evidence that the petitioner is rehabilitated and that the petitioner does not pose a
 20 threat to the safety of the public, the court shall order the petitioner's driving privileges restored.

21 **SECTION 2.** ORS 809.409 is amended to read:

22 809.409. (1)(a) Upon receipt of a record of conviction of an offense described in this section, the
 23 Department of Transportation shall revoke the driving privileges of the person convicted.

24 (b) A person is entitled to administrative review under ORS 809.440 of a revocation under this
 25 section.

26 (c) Except as otherwise provided in [*subsections (2) and (3)*] **subsection (2)** of this section, the
 27 revocation shall be for a period of one year from the date of revocation, except that the department
 28 may not reinstate driving privileges of any person whose privileges are revoked under this section
 29 until the person complies with future responsibility filings.

30 [*(2) The department shall take action under subsection (1) of this section upon receipt of a record*
 31 *of conviction of aggravated vehicular homicide or any degree of murder, manslaughter or criminally*
 32 *negligent homicide resulting from the operation of a motor vehicle or assault in the first degree re-*
 33 *sulting from the operation of a motor vehicle, except that the provisions of this subsection do not apply*
 34 *to a person whose driving privileges are ordered revoked under ORS 809.235. A person whose driving*
 35 *privileges are revoked under this subsection may apply for reinstatement of driving privileges:]*

36 [(a) *If the sentence for the offense includes incarceration, eight years from the date the person is*
 37 *released from incarceration for the offense; or]*

38 [(b) *If the sentence does not include incarceration, eight years from the date the department revoked*
 39 *the privileges under this subsection.]*

40 [(3)] **(2)** The department shall take action under subsection (1) of this section upon receipt of a
 41 record of conviction of failure to perform the duties of a driver to injured persons under ORS
 42 811.705. The department shall revoke driving privileges under this subsection for a period of five
 43 years if the court indicates on the record of conviction that a person was killed as a result of the
 44 accident. The person may apply for reinstatement of privileges five years after the date the person
 45 was released from incarceration, if the sentence includes incarceration. If the sentence does not

1 include incarceration, the person may apply for reinstatement five years from the date the revoca-
 2 tion was imposed under this subsection.

3 [(4)] (3) The department shall take action under subsection (1) of this section upon receipt of a
 4 record of conviction of perjury or the making of a false affidavit to the department under any law
 5 of this state requiring the registration of vehicles or regulating their operation on the highways.

6 [(5)] (4) The department shall take action under subsection (1) of this section upon receipt of a
 7 record of conviction of any felony with a material element involving the operation of a motor vehi-
 8 cle.

9 **SECTION 3.** ORS 813.602 is amended to read:

10 813.602. (1) **Except as provided in subsection (2) of this section**, when a person is convicted
 11 of driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal
 12 ordinance, the Department of Transportation, in addition to any other requirement, shall require
 13 that **the person install and use** an approved ignition interlock device [*be installed and used*] in any
 14 vehicle operated by the person:

15 (a) Before the person is eligible for a hardship permit. The requirement is a condition of the
 16 hardship permit for the duration of the hardship permit.

17 (b) For a first conviction, for one year after the ending date of the suspension or revocation
 18 caused by the conviction. Violation of the condition imposed under this paragraph is a Class A
 19 traffic violation.

20 (c) For a second or subsequent conviction, for two years after the ending date of the suspension
 21 or revocation caused by the conviction. Violation of the condition imposed under this paragraph is
 22 a Class A traffic violation.

23 **(d)(A) For 10 years after the ending date of the revocation caused by a conviction based**
 24 **on the same criminal episode for:**

25 **(i) Any degree of murder or of manslaughter in the first degree if the court finds that**
 26 **the person intentionally used a motor vehicle as a dangerous weapon resulting in the death**
 27 **of the victim; or**

28 **(ii) Criminally negligent homicide.**

29 **(B) Violation of the condition imposed under subparagraph (A) of this paragraph is a**
 30 **Class A traffic violation.**

31 **(2) When a person is convicted of aggravated vehicular homicide or assault in the first**
 32 **degree as described in ORS 163.185 (1)(c), the department, in addition to any other require-**
 33 **ment, shall require that the person install and use an approved ignition interlock device in**
 34 **any vehicle operated by the person:**

35 **(a) Before the person is eligible for a hardship permit. The requirement is a condition**
 36 **of the hardship permit for the duration of the hardship permit.**

37 **(b) For 10 years after the ending date of the revocation caused by the conviction. Vio-**
 38 **lation of the condition imposed under this paragraph is a Class A traffic violation.**

39 [(2)] (3) If the court determines that approved ignition interlock devices are reasonably avail-
 40 able, the court may require as a condition of a driving while under the influence of intoxicants di-
 41 version agreement that an approved ignition interlock device be installed in any vehicle operated
 42 by the person. Courts may not exercise authority under this subsection during any period the courts
 43 have notice from the Office of Economic Analysis of the Oregon Department of Administrative Ser-
 44 vices that there are not sufficient moneys in the Intoxicated Driver Program Fund to pay the costs
 45 under subsection [(4)] (5) of this section. The Office of Economic Analysis of the Oregon Department

1 of Administrative Services may not issue any notice under this subsection if federal funds are
 2 available to pay the cost of the interlock devices for indigents and costs of analysis of the use of
 3 interlock devices.

4 [(3)] (4) Except as provided in subsection [(4)] (5) of this section, if an ignition interlock system
 5 is ordered or required under subsection [(1) or (2)] (1), (2) or (3) of this section, the person so or-
 6 dered or required shall pay to the provider the reasonable costs of leasing, installing and maintain-
 7 ing the device. A payment schedule may be established for the person by the department.

8 [(4)] (5) The department may waive, in whole or in part, or defer the defendant's responsibility
 9 to pay all or part of the costs under subsection [(3)] (4) of this section if the defendant meets the
 10 criteria for indigence established for waiving or deferring such costs under subsection [(5)] (6) of
 11 this section. If the defendant's responsibility for costs is waived, then notwithstanding ORS 813.270,
 12 the costs described in subsection [(3)] (4) of this section must be paid from the Intoxicated Driver
 13 Program Fund.

14 [(5)] (6) The department, by rule, shall establish criteria and procedures it will use for quali-
 15 fication to waive or defer costs described under subsection [(3)] (4) of this section for indigence. The
 16 criteria must be consistent with the standards for indigence adopted by the federal government for
 17 purposes of the food stamp program.

18 [(6)] (7) At the end of the suspension or revocation resulting from the conviction, the department
 19 shall suspend the driving privileges or right to apply for driving privileges of a person who has not
 20 submitted proof to the department that an ignition interlock device has been installed or who
 21 tampers with an ignition interlock device after it has been installed. If the suspension is for failing
 22 to submit proof of installation, the suspension continues until the department receives proof that the
 23 ignition interlock device has been installed or until one year after the ending date of the suspension
 24 resulting from the first conviction or two years after the ending date of the suspension resulting
 25 from a second or subsequent conviction, whichever comes first. If the suspension is for tampering
 26 with an ignition interlock device, the suspension continues until one year after the ending date of
 27 the suspension resulting from the first conviction or two years after the ending date of the suspen-
 28 sion resulting from a second or subsequent conviction. A person whose driving privileges or right
 29 to apply for privileges is suspended under this subsection is entitled to administrative review, as
 30 described in ORS 809.440, of the action.

31 [(7)] (8) The department shall adopt rules permitting medical exemptions from the requirements
 32 of installation and use of an ignition interlock device under [subsection (1)] **subsections (1) and (2)**
 33 of this section.

34 **SECTION 4.** ORS 802.550 is amended to read:

35 802.550. The following relate to the Driver License Compact under ORS 802.540:

36 (1) The Director of Transportation or the director's deputy shall act as the compact adminis-
 37 trator. The compact administrator shall not be entitled to any additional compensation on account
 38 of service as compact administrator, but shall be entitled to expenses incurred in connection with
 39 such service, payable the same as expenses in connection with services as the normal duties of the
 40 person.

41 (2) When reference in the compact is made to the executive head in this state, the reference
 42 applies to the Governor of this state.

43 (3) When reference in the compact is made to the licensing authority in this state, the reference
 44 applies to the Department of Transportation.

45 (4) In accordance with subdivision (c) of Article IV of the compact, the following offenses or

1 violations provided by Oregon law hereby are designated as offenses or violations of a substantially
 2 similar nature as the respective denominations and descriptions of conduct appearing in subdivision
 3 (a) of Article IV of the compact.

4 (a) [ORS 809.409 (1) and (2)] **ORS 809.235 (1)** - Article IV (a) (1).

5 (b) ORS 813.400 - Article IV (a) (2).

6 (c) ORS 809.409 [(5)] **(4)** - Article IV (a) (3).

7 (d) ORS 809.409 [(3)] **(2)** - Article IV (a) (4).

8 (5) Offenses or violations other than those referred to in subsection (4) of this section reported
 9 to the department pursuant to Article III of the compact shall be given effect within the purpose
 10 of Article IV (b) of the compact as the other laws of this state provide.

11 **SECTION 5.** ORS 811.182 is amended to read:

12 811.182. (1) A person commits the offense of criminal driving while suspended or revoked if the
 13 person violates ORS 811.175 and the suspension or revocation is one described in this section, or if
 14 the hardship or probationary permit violated is based upon a suspension or revocation described in
 15 subsection (3) or (4) of this section.

16 (2) Affirmative defenses to the offense described in this section are established under ORS
 17 811.180.

18 (3) The offense described in this section, criminal driving while suspended or revoked, is a Class
 19 B felony if the suspension or revocation resulted from any degree of murder, manslaughter,
 20 criminally negligent homicide or assault resulting from the operation of a motor vehicle, if the sus-
 21 pension or revocation resulted from aggravated vehicular homicide or if the revocation resulted
 22 from a conviction for felony driving while under the influence of intoxicants.

23 (4) The offense described in this section, criminal driving while suspended or revoked, is a Class
 24 A misdemeanor if the suspension or revocation is any of the following:

25 (a) A suspension under ORS 809.411 (2) resulting from commission by the driver of any degree
 26 of recklessly endangering another person, menacing or criminal mischief, resulting from the opera-
 27 tion of a motor vehicle.

28 (b) A revocation under ORS 809.409 [(4)] **(3)** resulting from perjury or the making of a false af-
 29 fidavit to the Department of Transportation.

30 (c) A suspension under ORS 813.410 resulting from refusal to take a test prescribed in ORS
 31 813.100 or for taking a breath or blood test the result of which discloses a blood alcohol content
 32 of:

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

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

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

36 (d) A suspension of a commercial driver license under ORS 809.413 (1) resulting from failure to
 37 perform the duties of a driver under ORS 811.700 while driving a commercial motor vehicle.

38 (e) A suspension of a commercial driver license under ORS 809.413 (12) where the person's
 39 commercial driving privileges have been suspended or revoked by the other jurisdiction for failure
 40 of or refusal to take a chemical test to determine the alcoholic content of the person's blood under
 41 a statute that is substantially similar to ORS 813.100.

42 (f) A suspension of a commercial driver license under ORS 809.404.

43 (g) A revocation resulting from habitual offender status under ORS 809.640.

44 (h) A suspension resulting from any crime punishable as a felony with proof of a material ele-
 45 ment involving the operation of a motor vehicle, other than a crime described in subsection (3) of

1 this section.

2 (i) A suspension for failure to perform the duties of a driver under ORS 811.705.

3 (j) A suspension for reckless driving under ORS 811.140.

4 (k) A suspension for fleeing or attempting to elude a police officer under ORS 811.540.

5 (L) A suspension or revocation resulting from misdemeanor driving while under the influence
6 of intoxicants under ORS 813.010.

7 (m) A suspension for use of a commercial motor vehicle in the commission of a crime punishable
8 as a felony.

9 (5) In addition to any other sentence that may be imposed, if a person is convicted of the offense
10 described in this section and the underlying suspension resulted from driving while under the influ-
11 ence of intoxicants, the court shall impose a fine of at least \$1,000 if it is the person's first con-
12 viction for criminal driving while suspended or revoked and at least \$2,000 if it is the person's
13 second or subsequent conviction.

14 (6) The Oregon Criminal Justice Commission shall classify a violation of this section that is a
15 felony as crime category 6 of the rules of the Oregon Criminal Justice Commission.

16 **SECTION 6. The amendments to ORS 802.550, 809.235, 809.409 and 813.602 by sections 1**
17 **to 4 of this 2009 Act apply to persons whose conviction of any degree of murder,**
18 **manslaughter in the first degree, aggravated vehicular homicide, criminally negligent**
19 **homicide or assault in the first degree occurs on or after the effective date of this 2009 Act.**

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