

Enrolled
House Bill 2968

Sponsored by Representative BARTON

CHAPTER

AN ACT

Relating to hearings for suspension of driving privileges; creating new provisions; and amending ORS 813.440.

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

SECTION 1. ORS 813.440 is amended to read:

813.440. (1) Notwithstanding ORS 813.410, the Department of Transportation may provide a hearing to determine the validity of a suspension under ORS 813.410 only if the time requirements under ORS 813.410 could not be met because of any of the following:

(a) The person’s physical incapacity, verified by a physician to the satisfaction of the department to be of a nature that would prevent the person from making the appropriate request or attending the hearing.

(b) A death in the immediate family of the person, verified to the satisfaction of the department.

(c) An error of the department.

(d) The inability of a subpoenaed police officer to appear due to the officer’s illness, vacation or official duty conflicts. The department shall set forth by rule the conditions that constitute “official duty conflicts.” A hearing may not be rescheduled more than once for reasons described in this paragraph.

(e) A request for a change of administrative law judge under ORS 183.645.

(f) The inability of the person’s attorney to appear due to the attorney’s illness, vacation or scheduling conflict arising from other court or administrative hearing appearances. A hearing must be rescheduled no later than 45 days after the date of the original hearing and may not be rescheduled more than once for reasons described in this paragraph.

[(f)] (g) Other just cause as defined by the department by administrative rule.

(2) A hearing held under this section is subject to the same provisions as a hearing held under ORS 813.410, except that the department is not required to hold the hearing and make the determination within the time required by ORS 813.410.

(3) The granting of a hearing under this section shall not delay the imposition of a suspension under ORS 813.410 within the time required under ORS 813.410. However, if a person establishes that the person was deprived by either department error or a subpoenaed police officer’s illness, vacation or official duty conflicts of an opportunity to appear at a hearing, the department shall rescind the suspension and shall promptly schedule a subsequent hearing to determine the validity of the suspension under ORS 813.410. In other cases under this section, when the department is unable to hold the hearing within the time required by ORS 813.410, the department shall rescind any suspension imposed under ORS 813.410 only if the department determines, at a hearing held under this section, that the suspension was not valid as described under ORS 813.410.

(4) The following apply to this section:

(a) The department shall issue a final order within 10 days after the hearing described in this section.

(b) If the department has rescinded a suspension under subsection (3) of this section and if the department, at the hearing described in this section, determines that the suspension is valid as described under ORS 813.410, the department shall reinstate the suspension effective five days after the final order is issued.

(c) Notwithstanding ORS 809.430, no additional notice or order of suspension need be given.

SECTION 2. The amendments to ORS 813.440 by section 1 of this 2009 Act apply to hearings scheduled to begin on or after the effective date of this 2009 Act.

Passed by House April 15, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 29, 2009

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President of Senate

Received by Governor:

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Approved:

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Governor

Filed in Office of Secretary of State:

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Secretary of State