

House Bill 2968

Sponsored by Representative BARTON

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**.

Authorizes postponement of implied consent hearing if person's attorney is ill, on vacation or has certain scheduling conflict at time hearing must otherwise be held.

A BILL FOR AN ACT

1
2 Relating to hearings for suspension of driving privileges; creating new provisions; and amending
3 ORS 813.440.

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

5 **SECTION 1.** ORS 813.440 is amended to read:

6 813.440. (1) Notwithstanding ORS 813.410, the Department of Transportation may provide a
7 hearing to determine the validity of a suspension under ORS 813.410 only if the time requirements
8 under ORS 813.410 could not be met because of any of the following:

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

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

13 (c) An error of the department.

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

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

19 **(f) The inability of the person's attorney to appear due to the attorney's illness, vacation**
20 **or scheduling conflict arising from other court or administrative hearing appearances. A**
21 **hearing may not be rescheduled more than once for reasons described in this paragraph.**

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

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

26 (3) The granting of a hearing under this section shall not delay the imposition of a suspension
27 under ORS 813.410 within the time required under ORS 813.410. However, if a person establishes
28 that the person was deprived by either department error or a subpoenaed police officer's illness,
29 vacation or official duty conflicts of an opportunity to appear at a hearing, the department shall
30 rescind the suspension and shall promptly schedule a subsequent hearing to determine the validity
31 of the suspension under ORS 813.410. In other cases under this section, when the department is

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 unable to hold the hearing within the time required by ORS 813.410, the department shall rescind
2 any suspension imposed under ORS 813.410 only if the department determines, at a hearing held
3 under this section, that the suspension was not valid as described under ORS 813.410.

4 (4) The following apply to this section:

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

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

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

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

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