

House Bill 3194

Sponsored by Representative BARTON, Senator SCHRADER; Representatives KENNEMER, TOMEI, Senator DEVLIN (at the request of Clackamas County)

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**.

Includes prior juvenile adjudications for driving while under influence of intoxicants as predicates for felony enhancement.

A BILL FOR AN ACT

1
2 Relating to driving while under the influence of intoxicants; creating new provisions; and amending
3 ORS 813.010, 813.326 and 813.328.

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

5 **SECTION 1.** ORS 813.010 is amended to read:

6 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if
7 the person drives a vehicle while the person:

8 (a) Has 0.08 percent or more by weight of alcohol in the blood of the person as shown by
9 chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

10 (b) Is under the influence of intoxicating liquor, a controlled substance or an inhalant; or

11 (c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled
12 substance.

13 (2) A person may not be convicted of driving while under the influence of intoxicants on the
14 basis of being under the influence of a controlled substance or an inhalant unless the fact that the
15 person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory
16 instrument and is either proved at trial or is admitted by the person through a guilty plea.

17 (3) A person convicted of the offense described in this section is subject to ORS 813.020 in ad-
18 dition to this section.

19 (4) Except as provided in subsection (5) of this section, the offense described in this section,
20 driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon
21 any premises open to the public.

22 (5)(a) Driving while under the influence of intoxicants is a Class C felony if the current offense
23 was committed in a motor vehicle and the [*defendant has been convicted*] **person has**, at least three
24 times in the 10 years prior to the date of the current offense, **been convicted of, or been found**
25 **to be within the jurisdiction of the juvenile court for an act that if committed by an adult**
26 **would be**, [*of*] any of the following offenses in any combination:

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

28 (i) This section; or

29 (ii) The statutory counterpart to this section in another jurisdiction.

30 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the
31 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor,

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 a controlled substance, an inhalant or any combination thereof.

2 (C) A driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a
 3 boat while having a blood alcohol content above that jurisdiction’s permissible blood alcohol con-
 4 tent.

5 (b) For the purposes of paragraph (a) of this subsection, a conviction **or adjudication** for a
 6 driving offense in another jurisdiction based solely on a person under 21 years of age having a blood
 7 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a
 8 person 21 years of age or older does not constitute a prior conviction **or adjudication**.

9 (6) In addition to any other sentence that may be imposed, the court shall impose a fine on a
 10 person convicted of driving while under the influence of intoxicants as follows:

11 (a) For a person’s first conviction, a minimum of \$1,000.

12 (b) For a person’s second conviction, a minimum of \$1,500.

13 (c) For a person’s third or subsequent conviction, a minimum of \$2,000 if the person is not sen-
 14 tenced to a term of imprisonment.

15 (7) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on a
 16 person convicted of driving while under the influence of intoxicants if:

17 (a) The current offense was committed in a motor vehicle; and

18 (b) There was a passenger in the motor vehicle who was under 18 years of age and was at least
 19 three years younger than the person driving the motor vehicle.

20 **SECTION 2.** ORS 813.326 is amended to read:

21 813.326. (1) In a prosecution for felony driving while under the influence of intoxicants under
 22 ORS 813.010, the state shall plead the prior convictions and shall prove the prior convictions unless
 23 the defendant stipulates to that fact prior to trial. If the defendant so stipulates and the trial is by
 24 jury:

25 (a) The court shall accept the stipulation regardless of whether or not the state agrees to it;

26 (b) The defendant’s stipulation to the prior convictions constitutes a judicial admission to that
 27 element of the accusatory instrument. The stipulation shall be made a part of the record of the case,
 28 but shall not be offered or received in the presence of the jury;

29 (c) For the purpose of establishing the prior convictions solely as an element of the crime under
 30 ORS 813.010, neither the court nor the state shall reveal to the jury the prior convictions, but the
 31 prior convictions are established in the record by the defendant’s stipulation; and

32 (d) The court shall not submit the accusatory instrument or evidence of the prior convictions
 33 to the jury.

34 (2) In a proceeding under ORS 813.010, the state may offer, and the court may receive and sub-
 35 mit to the jury, evidence of the prior convictions for impeachment of the defendant or another pur-
 36 pose, other than establishing the prior convictions as an element of the offense, when the evidence
 37 of the prior convictions is otherwise admissible for that purpose. When evidence of the prior con-
 38 victions has been admitted by the court, the state may comment upon, and the court may give in-
 39 structions about, the evidence of the prior convictions only to the extent that the comments or
 40 instructions relate to the purpose for which the evidence was admitted.

41 (3) When the defendant stipulates to the prior convictions required as an element of felony
 42 driving while under the influence of intoxicants under ORS 813.010, if the jury finds the defendant
 43 guilty upon instruction regarding the balance of the elements of the crime, the court shall enter a
 44 judgment of guilty of felony driving while under the influence of intoxicants.

45 **(4) As used in this section, “conviction” includes a juvenile adjudication.**

1 **SECTION 3.** ORS 813.328 is amended to read:

2 813.328. (1) A defendant who challenges the validity of prior convictions alleged by the state
3 as an element of felony driving while under the influence of intoxicants must give notice of the in-
4 tent to challenge the validity of the prior convictions at least seven days prior to the first date set
5 for trial on the felony charge. The validity of the prior convictions shall be determined prior to trial
6 by the court.

7 (2) **As used in this section, “conviction” includes a juvenile adjudication.**

8 **SECTION 4.** The amendments to ORS 813.010, 813.326 and 813.328 by sections 1, 2 and 3
9 of this 2009 Act apply to offenses committed on or after the effective date of this 2009 Act.

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