

**A-Engrossed**  
**Senate Bill 126**

Ordered by the Senate May 1  
Including Senate Amendments dated May 1

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**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.

*[Directs Department of Transportation to suspend commercial driver license of person when department receives notification that person tested positive for drugs or refused to take drug test other than preemployment test. Allows person to reinstate license if person meets certain qualifications.]*

*[Directs motor carrier to notify department when employee who holds commercial driver license tests positive for drugs or refuses to take drug test other than preemployment test.]*

*[Directs motor carrier to provide to department name of consortium if motor carrier belongs to consortium for purpose of providing drug tests.]*

*[Exempts department and motor carrier from civil liability for any damage resulting from specified actions relating to drug test.]*

**Allows motor carrier to notify Department of Transportation when employee who holds commercial driver license tests positive for drugs. Requires motor carrier to notify department, within specified period of time, when employee who holds license refuses to take drug test. Creates exception.**

**Creates notice and hearing procedures for employees who test positive for drugs or refuse to take test. Requires administrative law judge, if judge makes certain determinations, to order positive test result or refusal to take test to be entered into employment driving record of employee.**

**A BILL FOR AN ACT**

1  
2 Relating to testing of commercial drivers for controlled substances; amending ORS 802.200, 802.202,  
3 825.410 and 825.412.

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

5 **SECTION 1.** ORS 825.410 is amended to read:

6 825.410. (1) Every motor carrier must:

7 (a) Have an in-house drug and alcohol testing program that meets the federal requirements of  
8 49 C.F.R. part 382; or

9 (b) Be a member of a consortium, as defined in 49 C.F.R. 382.107, that provides testing that  
10 meets the federal requirements.

11 (2) At the time of registration or renewal of registration of a commercial vehicle or a commer-  
12 cial motor vehicle under any provision of ORS chapter 803 or 826, a motor carrier must certify to  
13 the Department of Transportation that the carrier is in compliance with subsection (1) of this sec-  
14 tion and, if the carrier belongs to a consortium, must provide the department with the *[names of*  
15 *persons who operate]* **name of** the consortium.

16 (3) When a medical review officer of a motor carrier's testing program or of the consortium the  
17 carrier belongs to determines that a positive test result is valid, the officer must report the finding  
18 to the department.

**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       **(4) When a motor carrier receives notice from a medical review officer that an employee**  
2 **required to take a drug test under 49 C.F.R. part 382 tested positive for drugs, the motor**  
3 **carrier may report the finding to the department.**

4       **(5) Except as provided in subsection (6) of this section, a motor carrier shall notify the**  
5 **department in writing within 10 business days of the date that an employee required to take**  
6 **a drug test under 49 C.F.R. part 382 refused to submit to a drug test.**

7       **(6) A motor carrier may not notify the department of a person's refusal to take a pre-**  
8 **employment drug test.**

9       **(7) A motor carrier shall notify the department under subsection (4) or (5) of this section**  
10 **on a form prescribed by rule by the department.**

11       **SECTION 2.** ORS 825.412 is amended to read:

12       825.412. (1) When the Department of Transportation receives a report under ORS 825.410, the  
13 department shall notify the person who is the subject of the report that the person has a right to  
14 a hearing to determine whether the test results reported **or refusal to submit to a test reported**  
15 under ORS 825.410 will be placed on the person's employment driving record.

16       (2) The notice shall inform the person of the procedure for requesting a hearing, including but  
17 not limited to the time in which a hearing must be requested and the manner of making the request.

18       (3) A hearing under this section shall be limited to the following issues:

19       (a) Whether the person named in the report is the person who took the test **or refused to take**  
20 **the test.**

21       ***[(b) Whether the motor carrier or consortium has a program that meets the requirements of ORS***  
22 ***825.410.]***

23       ***[(c) Whether the medical review officer making the report correctly followed the procedures for***  
24 ***testing established by the motor carrier or consortium.]***

25       **(b) Whether the person named in the report is subject to the federal requirements under**  
26 **49 C.F.R. part 382.**

27       **(c) If positive test results were reported, whether the medical review officer making the**  
28 **report correctly followed the protocols under 49 C.F.R. parts 40 and 382 to verify or confirm**  
29 **the test results.**

30       **(d) If the person named in the report refused to take a drug test, other than a preem-**  
31 **ployment drug test, whether the circumstances constitute a refusal of a test under 49 C.F.R.**  
32 **part 382.**

33       ***[(4) If the administrative law judge determines that the person is the person named in the report,***  
34 ***that the motor carrier or consortium has a program meeting the requirements of ORS 825.410 and that***  
35 ***the medical review officer followed established procedures, the administrative law judge shall order the***  
36 ***positive test result to be entered into the employment driving record of the person.]***

37       **(4) The administrative law judge shall order the positive test result or refusal to take a**  
38 **test to be entered into the employment driving record of the person if the administrative law**  
39 **judge determines that the person is the person named in the report, that the person is sub-**  
40 **ject to the federal requirements under 49 C.F.R. part 382 and:**

41       **(a) That the medical review officer followed the protocols under 49 C.F.R. parts 40 and**  
42 **382 to verify or confirm the drug test results; or**

43       **(b) That, if the person refused to take a test, the circumstances constitute a refusal to**  
44 **take a test under 49 C.F.R. part 382.**

45       (5) The department shall adopt rules specifying requirements for requesting a hearing under this

1 section.

2 (6) If a hearing is not requested within the time limit established by rule, or if the person does  
3 not appear at a hearing, the department shall place the information about the positive test result  
4 **or refusal to take a test** on the employment driving record of the person.

5 *[(7) The department may not be held civilly liable for any damage resulting from placing informa-*  
6 *tion about a drug test result on the employment driving record as required by this section or for any*  
7 *damage resulting from release of the information by the department that occurs in the normal course*  
8 *of business.]*

9 **SECTION 3.** ORS 802.200, as amended by section 8, chapter 1, Oregon Laws 2008, is amended  
10 to read:

11 802.200. In addition to any other records the Department of Transportation may establish, the  
12 department is subject to the following provisions concerning records:

13 (1) The department shall maintain records concerning the titling of vehicles in this state. The  
14 records under this subsection shall include the following:

15 (a) For vehicles issued a title by this state, the records shall identify the vehicle and contain  
16 the following:

17 (A) The name of the vehicle owner and any security interest holders in order of priority, except  
18 that a security interest holder need not be identified if the debtor who granted the interest is in the  
19 business of selling vehicles and the vehicles constitute inventory held for sale;

20 (B) The name of any lessor of the vehicle;

21 (C) The vehicle description; and

22 (D) Whether a certificate of title was issued for the vehicle.

23 (b) If the vehicle is an antique vehicle that is reconstructed, the records shall indicate that the  
24 vehicle is reconstructed.

25 (c) If the vehicle is a replica, the records shall indicate that the vehicle is a replica.

26 (d) Any other information concerning the titling of vehicles that the department considers con-  
27 venient or appropriate.

28 (e) All odometer readings for a vehicle that are reported to the department under provisions of  
29 the vehicle code.

30 (f) If the vehicle has been reported to the department as a totaled vehicle under the provisions  
31 of ORS 819.012 or 819.014, the records shall indicate that the vehicle is a totaled vehicle unless the  
32 reason for the report was theft and the vehicle has been recovered.

33 (2) If a vehicle that has been registered or titled in another jurisdiction is registered or titled  
34 in this state, the department shall retain a record of any odometer readings shown on the title or  
35 registration documents submitted to the department at the time of registration or title.

36 (3) Except as otherwise provided in ORS 826.003, the department shall maintain records con-  
37 cerning the registration of vehicles required to be registered by the department. The records con-  
38 cerning the registration of vehicles may be stored along with records concerning the titling of  
39 vehicles. The records under this subsection shall include the following:

40 (a) For vehicles registered by the department, the records shall identify the vehicle and contain  
41 the following:

42 (A) The registration plate number assigned by the department to the vehicle;

43 (B) The name of the vehicle owner;

44 (C) The vehicle description and vehicle identification number; and

45 (D) An indication that the vehicle is a totaled vehicle if it has been reported to the department

1 as a totaled vehicle under the provisions of ORS 819.012 or 819.014, unless the reason for the report  
2 was theft and the vehicle has been recovered.

3 (b) Any other information concerning the registration of vehicles that the department considers  
4 convenient or appropriate.

5 (4) The department shall maintain separate records for the regulation of vehicle dealers. The  
6 records required under this subsection shall include the following information about persons issued  
7 dealer certificates:

8 (a) The person's application for a vehicle dealer certificate.

9 (b) An alphabetical index of the name of each person applying for a vehicle dealer certificate.

10 (c) A numerical index according to the distinctive number assigned to each vehicle dealer.

11 (5) The department shall maintain a file on vehicles for which the title record is canceled under  
12 ORS 819.030. The records required under this subsection shall disclose the last registered owner of  
13 each vehicle, any security interest holder or holders and lessors of each vehicle as shown by the  
14 canceled title record for each vehicle and the make and year model for each vehicle.

15 (6) The department shall maintain a record of each agreement or declaration under ORS 802.500  
16 and 802.520.

17 (7) The department shall maintain separate and comprehensive records of all transactions af-  
18 fecting the Revolving Account for Emergency Cash Advances described under ORS 802.100.

19 (8) The department shall maintain suitable records of driver licenses, driver permits and iden-  
20 tification cards. The records required under this subsection shall include all of the following:

21 (a) An index by name and number.

22 (b) Supporting documentation of all driver licenses, driver permits or identification cards issued.

23 (c) Every application for a driver license, driver permit or identification card.

24 (d) All driver licenses or driver permits that have been suspended or revoked.

25 (e) For each driver license, driver permit or identification card, the Social Security number of  
26 the person to whom the driver license, driver permit or identification card is issued or proof that  
27 the person is not eligible for a Social Security number.

28 (f) For each commercial driver license, the Social Security number of the person to whom the  
29 license is issued, or any other number or identifying information that the Secretary of the United  
30 States Department of Transportation determines appropriate to identify the person.

31 (9) The Department of Transportation shall maintain a two-part driving record consisting of an  
32 employment driving record and a nonemployment driving record for each person as required under  
33 this subsection. All of the following apply to the records required under this subsection:

34 (a) The department shall maintain driving records on:

35 (A) Every person who is granted driving privileges under a driver license, driver permit or a  
36 statutory grant of driving privileges under ORS 807.020;

37 (B) Every person whose driving privileges have been suspended, revoked or canceled under this  
38 vehicle code;

39 (C) Every person who has filed an accident report under ORS 811.725 or 811.730; and

40 (D) Every person who is required to provide future responsibility filings under ORS 806.200,  
41 806.220, 806.230 or 806.240.

42 (b) In addition to other information required by this paragraph, the employment driving record  
43 shall include all reports of drug test results **and refusals to submit to tests** that are made to the  
44 department under ORS 825.410. Notwithstanding any other provision of law, release of the portion  
45 of the employment driving record that shows drug test results **and refusals to submit to tests**

1 reported under ORS 825.410 is permitted only in accordance with ORS 802.202. The employment  
2 driving record shall also include all motor vehicle accidents that the person is required to report  
3 under ORS 811.720, all suspensions of driving privileges required to be placed on the record under  
4 ORS 809.280, all suspensions of the person's commercial driver license that result from operation  
5 or use of a commercial motor vehicle and all convictions of the person for violation of motor vehicle  
6 laws except convictions for offenses requiring mandatory revocation or suspension of driving privi-  
7 leges under ORS 809.409, 809.411, 809.413 and 813.400, but shall include only such accidents, sus-  
8 pensions and convictions that occur while the person is driving a motor vehicle:

9 (A) In the course of the person's employment when the person is employed by another for the  
10 principal purpose of driving a motor vehicle;

11 (B) Carrying persons or property for compensation;

12 (C) In the course of the person's employment in the collection, transportation or delivery of mail  
13 if the vehicle is government owned or marked for the collection, transportation or delivery of mail  
14 in accordance with government rules;

15 (D) That is an authorized emergency vehicle;

16 (E) That is a commercial motor vehicle; or

17 (F) In the course of the person's employment with a federal, state or local government in a  
18 public works project involving repair or maintenance of water, sewer or road systems.

19 (c) The nonemployment driving record shall include the person's:

20 (A) Motor vehicle accidents that the person is required to report under ORS 811.720, other than  
21 the motor vehicle accidents that are included on the person's employment driving record;

22 (B) Suspensions, cancellations and revocations of licenses, permits and driving privileges;

23 (C) Convictions for violation of the motor vehicle laws other than those included in the em-  
24 ployment driving record including, for each violation of ORS 811.100 or 811.111, the speed at which  
25 the person was convicted of traveling and the posted speed, the speed limit or the speed that con-  
26 stitutes prima facie evidence of violation of the basic speed rule, as appropriate; and

27 (D) Diversion agreements entered into under ORS 813.220 within the preceding 10 years.

28 (d) The department may record other entries to indicate correspondence, interviews, partic-  
29 ipation in driver improvement programs or other matters concerning the status of the driving privi-  
30 leges of the person.

31 (e) When a person from another jurisdiction applies for a driver license or driver permit issued  
32 by this state, the department shall request a copy of the person's driving record from the other ju-  
33 risdiction. At the time the person is issued a license in Oregon, the record from the other jurisdic-  
34 tion shall become part of the driver's record in this state with the same force and effect as though  
35 entered on the driver's record in this state in the original instance. The department by rule may  
36 specify methods for converting entries from out-of-state records for use in Oregon.

37 (f) When a suspension of a driver permit, driver license or other driving privilege is placed on  
38 the driving record under ORS 809.280 for failure to appear in court on a traffic crime, the depart-  
39 ment shall note on the record that the suspension was for failure to appear in court and shall also  
40 note the offense charged against the person on which the person failed to appear.

41 (g) The Department of Transportation, in consultation with the Department of State Police, shall  
42 devise and implement a method of noting suspensions and revocations of driving privileges on the  
43 record in such a way that police agencies can determine directly from the record what class of of-  
44 fense, as provided by law, is committed by a person who drives in violation of the suspension or  
45 revocation. If the Department of Transportation and the Department of State Police devise a mutu-

1 ally agreeable alternative method of informing police agencies of the nature of a suspension or re-  
2 vocation and the consequences of its violation, the implementation of that method shall satisfy the  
3 duty of the Department of Transportation under this paragraph.

4 (10) The Department of Transportation shall maintain records of judgments or convictions sent  
5 to the department under ORS 810.375.

6 (11) The department shall maintain accident reports filed with the department under ORS  
7 810.460 and 811.725 to 811.735.

8 (12) The department shall maintain records of bank checks or money orders returned under ORS  
9 802.110.

10 (13) The department shall maintain records of trip permits issued by the department under ORS  
11 803.600, as provided under this subsection. The records required by this subsection shall include the  
12 following:

13 (a) A description of the vehicle sufficient to identify the vehicle.

14 (b) The person to whom the permit was issued.

15 (c) When the permit was issued.

16 (d) The type of permit issued.

17 (e) For registration weight trip permits, the maximum allowable registration weight permitted  
18 for operation under the permit.

19 (f) Any other information the department determines appropriate or convenient.

20 **SECTION 4.** ORS 802.202 is amended to read:

21 802.202. The Department of Transportation shall disclose information about a drug test result  
22 **or refusal to submit to a test** that is made to the department under ORS 825.410 only if the person  
23 who requests the information provides the department with written permission from the person who  
24 is the subject of the report.