

# Senate Bill 126

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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 **as introduced**.

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.

## A BILL FOR AN ACT

1  
2 Relating to testing of commercial drivers for controlled substances; creating new provisions;  
3 amending ORS 802.200 and 825.410; and repealing ORS 825.412.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of the Oregon Vehicle**  
6 **Code.**

7 **SECTION 2. (1) Except as provided in subsection (2) of this section, the Department of**  
8 **Transportation shall suspend a person's commercial driver license when the department re-**  
9 **ceives a notification from a motor carrier as required under ORS 825.410 (3) that the person**  
10 **either:**

11 (a) **Tested positive for drugs; or**

12 (b) **Refused to submit to a drug test.**

13 (2) **A suspension for refusal to submit to a drug test under subsection (1) of this section**  
14 **does not apply to a person who refuses to take a preemployment drug test.**

15 (3) **The suspension shall remain in effect until the person satisfies the department that**  
16 **the person has taken the necessary steps to qualify to operate a commercial motor vehicle**  
17 **in accordance with 49 C.F.R. part 40. The steps include providing evidence of:**

18 (a) **Having a drug assessment evaluation conducted by a substance abuse professional;**

19 (b) **Receiving a negative result on a return-to-duty drug test; and**

20 (c) **Satisfactory participation in or completion of treatment, education and follow-up**  
21 **testing as recommended by the substance abuse professional.**

22 (4) **A driver suspended under this section may request a hearing. The hearing shall be**  
23 **limited to the following issues:**

24 (a) **Whether the driver is the person who is the subject of the notification from the mo-**  
25 **tor carrier;**

**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       **(b) Whether the motor carrier has a testing program that is subject to the federal re-**  
 2 **quirements under 49 C.F.R. part 382;**

3       **(c) Whether the medical review officer making the report accurately followed the proto-**  
 4 **cols established to verify or confirm the positive drug test results; and**

5       **(d) If the driver refused a drug test, whether the circumstances constitute the refusal**  
 6 **of a test under 49 C.F.R. part 382.**

7       **(5) The department shall adopt rules specifying requirements for requesting a hearing**  
 8 **under this section.**

9       **(6) If a hearing is not requested within the time limit established by rule or if the person**  
 10 **does not appear at a hearing, the person has waived the right to a hearing and the depart-**  
 11 **ment shall sustain the suspension.**

12       **SECTION 3.** ORS 825.410 is amended to read:

13       825.410. (1) Every motor carrier must:

14       (a) Have an in-house drug and alcohol testing program that meets the federal requirements of  
 15 49 C.F.R. part 382; or

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

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

23       [*(3) When a medical review officer of a motor carrier's testing program or of the consortium the*  
 24 *carrier belongs to determines that a positive test result is valid, the officer must report the finding to*  
 25 *the department.*]

26       **(3)(a) A motor carrier shall notify the department in writing within 10 business days after**  
 27 **receiving notice:**

28       **(A) From a medical review officer that an employee of the motor carrier required to take**  
 29 **a drug test under 49 C.F.R. part 382 tested positive for drugs; or**

30       **(B) From an employee or medical review officer that an employee of the motor carrier**  
 31 **required to take a drug test under 49 C.F.R part 382 refused to submit to a drug test.**

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

34       **(4) A motor carrier shall make the notification required by subsection (3) of this section**  
 35 **on a form provided by the department and shall include all the information required by the**  
 36 **department by rule.**

37       **(5) A motor carrier may not be held civilly liable for any damage resulting from reporting**  
 38 **information about a drug test result or refusal to take a drug test as required by this sec-**  
 39 **tion.**

40       **(6) The department may not be held civilly liable for any damage resulting from:**

41       **(a) Placing information about a drug test result or refusal to take a drug test on the**  
 42 **driving record; or**

43       **(b) The release of information about a drug test result or a refusal to take a drug test**  
 44 **by the department that occurs in the normal course of business.**

45       **SECTION 4.** ORS 802.200, as amended by section 8, chapter 1, Oregon Laws 2008, is amended

1 to read:

2 802.200. In addition to any other records the Department of Transportation may establish, the  
3 department is subject to the following provisions concerning records:

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

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

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

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

12 (C) The vehicle description; and

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

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

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

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

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

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

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

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

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

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

34 (B) The name of the vehicle owner;

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

36 (D) An indication that the vehicle is a totaled vehicle if it has been reported to the department  
37 as a totaled vehicle under the provisions of ORS 819.012 or 819.014, unless the reason for the report  
38 was theft and the vehicle has been recovered.

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

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

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

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

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

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

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

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

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

12 (a) An index by name and number.

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

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

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

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

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

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

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

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

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

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

31 (D) Every person who is required to provide future responsibility filings under ORS 806.200,  
32 806.220, 806.230 or 806.240.

33 (b) *[In addition to other information required by this paragraph, the employment driving record*  
34 *shall include all reports of drug test results that are made to the department under ORS 825.410.]*

35 Notwithstanding any other provision of law, release of the portion of the employment driving record  
36 that shows drug test results reported under ORS 825.410 **prior to January 1, 2010**, is permitted only  
37 in accordance with ORS 802.202. The employment driving record shall *[also]* include all motor ve-  
38 hicle accidents that the person is required to report under ORS 811.720, all suspensions of driving  
39 privileges required to be placed on the record under ORS 809.280, all suspensions of the person's  
40 commercial driver license that result from operation or use of a commercial motor vehicle and all  
41 convictions of the person for violation of motor vehicle laws except convictions for offenses requir-  
42 ing mandatory revocation or suspension of driving privileges under ORS 809.409, 809.411, 809.413  
43 and 813.400, but shall include only such accidents, suspensions and convictions that occur while the  
44 person is driving a motor vehicle:

45 (A) In the course of the person's employment when the person is employed by another for the

1 principal purpose of driving a motor vehicle;

2 (B) Carrying persons or property for compensation;

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

6 (D) That is an authorized emergency vehicle;

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

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

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

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

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

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

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

19 (d) The department may record other entries to indicate correspondence, interviews, partic-  
20 ipation in driver improvement programs or other matters concerning the status of the driving priv-  
21 ileges of the person.

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

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

32 (g) The Department of Transportation, in consultation with the Department of State Police, shall  
33 devise and implement a method of noting suspensions and revocations of driving privileges on the  
34 record in such a way that police agencies can determine directly from the record what class of of-  
35 fense, as provided by law, is committed by a person who drives in violation of the suspension or  
36 revocation. If the Department of Transportation and the Department of State Police devise a mutu-  
37 ally agreeable alternative method of informing police agencies of the nature of a suspension or re-  
38 vocation and the consequences of its violation, the implementation of that method shall satisfy the  
39 duty of the Department of Transportation under this paragraph.

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

42 (11) The department shall maintain accident reports filed with the department under ORS  
43 810.460 and 811.725 to 811.735.

44 (12) The department shall maintain records of bank checks or money orders returned under ORS  
45 802.110.

1 (13) The department shall maintain records of trip permits issued by the department under ORS  
2 803.600, as provided under this subsection. The records required by this subsection shall include the  
3 following:

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

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

6 (c) When the permit was issued.

7 (d) The type of permit issued.

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

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

11 **SECTION 5. Section 2 of this 2009 Act and the amendments to ORS 825.410 by section 3**  
12 **of this 2009 Act apply to drug tests taken or refused on or after the effective date of this 2009**  
13 **Act.**

14 **SECTION 6. ORS 825.412 is repealed.**

15 **SECTION 7. The repeal of ORS 825.412 by section 6 of this 2009 Act does not act to ter-**  
16 **minate any action under ORS 825.412 pending on the effective date of this 2009 Act. Any**  
17 **action under ORS 825.412 pending on the effective date of this 2009 Act may continue to final**  
18 **resolution as authorized under ORS 825.412 as set forth in the 2007 Edition of Oregon Revised**  
19 **Statutes.**

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