

**A-Engrossed**  
**House Bill 3601**

Ordered by the House February 12  
Including House Amendments dated February 12

Sponsored by Representative STIEGLER; Representatives BARKER, CLEM, GARRETT, GELSER, HUFFMAN, KAHL, KOMP, ROBLAN, SCHAUFLER, J SMITH, VANORMAN, WHISNANT (Pre-session filed.)

**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 administrative law judge to conduct implied consent hearing by telephone or other two-way electronic communication device.

*[Establishes fee for requesting hearing. Directs Department of Transportation to waive or reduce fee for persons who are indigent.]*

**Sunsets January 1, 2014.**

Modifies qualifications for police officers authorized to present evidence and question witnesses at implied consent hearing.

*[Declares emergency, effective on passage.]*

**Takes effect on 91st day following adjournment sine die.**

**A BILL FOR AN ACT**

1  
2 Relating to driving while under the influence of intoxicants; creating new provisions; amending ORS  
3 813.410 and 813.412; and prescribing an effective date.

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

5 **SECTION 1.** ORS 813.410 is amended to read:

6 813.410. (1) If the Department of Transportation receives from a police officer a report that is  
7 in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of  
8 the person in this state on the 30th day after the date of arrest or, if the report indicates that the  
9 person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described  
10 under this section, the department determines that the suspension would not be valid as described  
11 in this section. A suspension of driving privileges imposed under this subsection shall be for a period  
12 of time established under ORS 813.420.

13 (2) If the department receives from a police officer a report pursuant to ORS 813.120 that dis-  
14 closes that the person holds a commercial driver license and that the person was driving a motor  
15 vehicle or commercial motor vehicle and refused to submit to a test under ORS 813.100 or that the  
16 person was driving a commercial motor vehicle and submitted to a breath or blood test and the  
17 person's blood, as shown by the test, had 0.04 percent or more by weight of alcohol, the department  
18 shall suspend the person's commercial driver license on the 30th day after the date of arrest or, if  
19 the report indicates that the person failed a blood test, on the 60th day after receipt of the report,  
20 unless, at a hearing described under this section, the department determines that the suspension  
21 would not be valid as described in this section. A commercial driver license suspension imposed  
22 under this subsection shall be for a period of time established under ORS 813.404.

23 (3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days

**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 from the date the department sends notice of suspension, the department receives a written request  
2 for a hearing from a person whose driving privileges or commercial driver license the department  
3 proposes to suspend under this section, the department shall provide a hearing in accordance with  
4 this section. Except as otherwise provided under this section, a hearing held by the department  
5 under this section shall be subject to the provisions for contested cases, other than appeal pro-  
6 visions, under ORS chapter 183. The applicable appeal provisions are as provided under ORS 813.450  
7 and section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS 809.430, the department is not  
8 required to give any notice of intent to suspend or suspension in addition to that provided under  
9 ORS 813.100.

10 (4) A hearing required by this section is subject to all of the following:

11 (a) The hearing shall be *[before]* **conducted by** an administrative law judge assigned from the  
12 Office of Administrative Hearings established under ORS 183.605.

13 *[(b) Unless there is an agreement between the person and the department that the hearing be con-  
14 ducted elsewhere, the hearing shall be held either in the county where the alleged offense occurred or  
15 at any place within 100 miles of the place where the offense is alleged to have occurred, as established  
16 by the department by rule.]*

17 **(b) The administrative law judge shall conduct the hearing by telephone or other two-way  
18 electronic communication device.**

19 (c) The department may authorize the administrative law judge to issue a final order in any  
20 case.

21 (d) A person who requests a hearing under this section and who fails, without just cause, to  
22 appear *[in person]* **personally** or through an attorney waives the right to a hearing. If a person  
23 waives a right to a hearing under this paragraph, the department is not required to make any  
24 showing at hearing.

25 (e) Except as provided in ORS 813.440 or upon remand under ORS 813.450, the department shall  
26 hold the hearing and issue a final order within 30 days of the date of the arrest or, if the person fails  
27 a blood test, within 60 days from the date the department received the report of the failure.

28 (f) In connection with the hearing, the department or its authorized representative may admin-  
29 ister oaths and shall issue subpoenas for the *[attendance]* **appearance** of witnesses **by telephone  
30 or other two-way electronic communication device** at the hearing requested by the person or the  
31 department and the production of relevant documents.

32 (g) The hearing shall be recorded by whatever means may be determined by the department and  
33 shall include testimony and exhibits, if any. The record of the proceedings shall not be transcribed  
34 unless requested by a party to the proceeding.

35 (5) This subsection shall be narrowly construed so as to effect the legislative purpose of limiting  
36 the scope of hearings under this section. The scope of a hearing under this section shall be limited  
37 to whether the suspension is valid as described in this subsection. A suspension under this section  
38 is valid if all of the following requirements have been met:

39 (a) The person, at the time the person was requested to submit to a test under ORS 813.100,  
40 was under arrest for driving while under the influence of intoxicants in violation of ORS 813.010 or  
41 a municipal ordinance.

42 (b) The police had reasonable grounds to believe, at the time the request was made, that the  
43 person arrested had been driving under the influence of intoxicants in violation of ORS 813.010 or  
44 of a municipal ordinance.

45 (c) The person refused a test under ORS 813.100, or took a breath or blood test and the test

1 disclosed that the level of alcohol in the person's blood at the time of the test was:

2 (A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;

3 (B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or

4 (C) Any amount if the person was under 21 years of age.

5 (d) If the report under ORS 813.120 indicates that the person was driving a commercial motor  
6 vehicle, the vehicle was in fact a commercial motor vehicle as defined in ORS 801.208.

7 (e) The person had been informed under ORS 813.100 of rights and consequences as described  
8 under ORS 813.130.

9 (f) The person was given written notice required under ORS 813.100.

10 (g) If the person arrested submitted to a test under ORS 813.100, the person administering the  
11 test was qualified to administer the test under ORS 813.160.

12 (h) If the person arrested submitted to a test under ORS 813.100, the methods, procedures and  
13 equipment used in the test complied with requirements under ORS 813.160.

14 (6) A suspension imposed under this section shall remain in effect pending any appeal or remand  
15 of a final order issued under this section and there shall be no stay of the suspension pending appeal  
16 or remand.

17 (7) Unless a person fails, without just cause, to appear [*in person*] **personally** or through an  
18 attorney at a hearing requested under this section, a person shall have the right to appeal any final  
19 order by the department after a hearing under this section by filing a petition. The following apply  
20 to this subsection:

21 (a) The person shall file the petition in the circuit court for the county where the person resides  
22 or, if the person does not reside in Oregon, in the circuit court of the county in which the arrest  
23 took place within 30 days after issuance of the final order of the department.

24 (b) The court upon receipt of the petition shall set the matter for hearing upon 10 days' notice  
25 to the department and the petitioner unless hearing is waived by both the department and the  
26 petitioner.

27 **SECTION 2.** ORS 813.410, as amended by section 1 of this 2010 Act, is amended to read:

28 813.410. (1) If the Department of Transportation receives from a police officer a report that is  
29 in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of  
30 the person in this state on the 30th day after the date of arrest or, if the report indicates that the  
31 person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described  
32 under this section, the department determines that the suspension would not be valid as described  
33 in this section. A suspension of driving privileges imposed under this subsection shall be for a period  
34 of time established under ORS 813.420.

35 (2) If the department receives from a police officer a report pursuant to ORS 813.120 that dis-  
36 closes that the person holds a commercial driver license and that the person was driving a motor  
37 vehicle or commercial motor vehicle and refused to submit to a test under ORS 813.100 or that the  
38 person was driving a commercial motor vehicle and submitted to a breath or blood test and the  
39 person's blood, as shown by the test, had 0.04 percent or more by weight of alcohol, the department  
40 shall suspend the person's commercial driver license on the 30th day after the date of arrest or, if  
41 the report indicates that the person failed a blood test, on the 60th day after receipt of the report,  
42 unless, at a hearing described under this section, the department determines that the suspension  
43 would not be valid as described in this section. A commercial driver license suspension imposed  
44 under this subsection shall be for a period of time established under ORS 813.404.

45 (3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days

1 from the date the department sends notice of suspension, the department receives a written request  
2 for a hearing from a person whose driving privileges or commercial driver license the department  
3 proposes to suspend under this section, the department shall provide a hearing in accordance with  
4 this section. Except as otherwise provided under this section, a hearing held by the department  
5 under this section shall be subject to the provisions for contested cases, other than appeal pro-  
6 visions, under ORS chapter 183. The applicable appeal provisions are as provided under ORS 813.450  
7 and section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS 809.430, the department is not  
8 required to give any notice of intent to suspend or suspension in addition to that provided under  
9 ORS 813.100.

10 (4) A hearing required by this section is subject to all of the following:

11 (a) The hearing shall be *[conducted by]* **before** an administrative law judge assigned from the  
12 Office of Administrative Hearings established under ORS 183.605.

13 *[(b) The administrative law judge shall conduct the hearing by telephone or other two-way elec-*  
14 *tronic communication device.]*

15 **(b) Unless there is an agreement between the person and the department that the hear-**  
16 **ing be conducted elsewhere, the hearing shall be held either in the county where the alleged**  
17 **offense occurred or at any place within 100 miles of the place where the offense is alleged**  
18 **to have occurred, as established by the department by rule.**

19 (c) The department may authorize the administrative law judge to issue a final order in any  
20 case.

21 (d) A person who requests a hearing under this section and who fails, without just cause, to  
22 appear *[personally]* **in person** or through an attorney waives the right to a hearing. If a person  
23 waives a right to a hearing under this paragraph, the department is not required to make any  
24 showing at hearing.

25 (e) Except as provided in ORS 813.440 or upon remand under ORS 813.450, the department shall  
26 hold the hearing and issue a final order within 30 days of the date of the arrest or, if the person fails  
27 a blood test, within 60 days from the date the department received the report of the failure.

28 (f) In connection with the hearing, the department or its authorized representative may admin-  
29 ister oaths and shall issue subpoenas for the *[appearance]* **attendance** of witnesses *[by telephone or*  
30 *other two-way electronic communication device]* at the hearing requested by the person or the de-  
31 partment and the production of relevant documents.

32 (g) The hearing shall be recorded by whatever means may be determined by the department and  
33 shall include testimony and exhibits, if any. The record of the proceedings shall not be transcribed  
34 unless requested by a party to the proceeding.

35 (5) This subsection shall be narrowly construed so as to effect the legislative purpose of limiting  
36 the scope of hearings under this section. The scope of a hearing under this section shall be limited  
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41 a municipal ordinance.

42 (b) The police had reasonable grounds to believe, at the time the request was made, that the  
43 person arrested had been driving under the influence of intoxicants in violation of ORS 813.010 or  
44 of a municipal ordinance.

45 (c) The person refused a test under ORS 813.100, or took a breath or blood test and the test

1 disclosed that the level of alcohol in the person's blood at the time of the test was:

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4 (C) Any amount if the person was under 21 years of age.

5 (d) If the report under ORS 813.120 indicates that the person was driving a commercial motor  
6 vehicle, the vehicle was in fact a commercial motor vehicle as defined in ORS 801.208.

7 (e) The person had been informed under ORS 813.100 of rights and consequences as described  
8 under ORS 813.130.

9 (f) The person was given written notice required under ORS 813.100.

10 (g) If the person arrested submitted to a test under ORS 813.100, the person administering the  
11 test was qualified to administer the test under ORS 813.160.

12 (h) If the person arrested submitted to a test under ORS 813.100, the methods, procedures and  
13 equipment used in the test complied with requirements under ORS 813.160.

14 (6) A suspension imposed under this section shall remain in effect pending any appeal or remand  
15 of a final order issued under this section and there shall be no stay of the suspension pending appeal  
16 or remand.

17 (7) Unless a person fails, without just cause, to appear [*personally*] **in person** or through an  
18 attorney at a hearing requested under this section, a person shall have the right to appeal any final  
19 order by the department after a hearing under this section by filing a petition. The following apply  
20 to this subsection:

21 (a) The person shall file the petition in the circuit court for the county where the person resides  
22 or, if the person does not reside in Oregon, in the circuit court of the county in which the arrest  
23 took place within 30 days after issuance of the final order of the department.

24 (b) The court upon receipt of the petition shall set the matter for hearing upon 10 days' notice  
25 to the department and the petitioner unless hearing is waived by both the department and the  
26 petitioner.

27 **SECTION 3. The amendments to ORS 813.410 by section 2 of this 2010 Act become oper-**  
28 **ative on January 1, 2014.**

29 **SECTION 4.** ORS 813.412 is amended to read:

30 813.412. Notwithstanding ORS 9.160 and 9.320, in any hearing under ORS 813.410 in which a city  
31 attorney or district attorney does not appear, [*the peace officer who issued the citation for*] **a police**  
32 **officer involved in the investigation of** the offense may present evidence, examine and cross-  
33 examine witnesses and make arguments relating to:

34 (1) The application of statutes and rules to the facts in the case;

35 (2) The literal meaning of the statutes or rules at issue in the case;

36 (3) The admissibility of evidence; and

37 (4) Proper procedures to be used in the hearing.

38 **SECTION 5. The amendments to ORS 813.410 and 813.412 by sections 1 and 4 of this 2010**  
39 **Act apply to arrests made on or after the effective date of this 2010 Act.**

40 **SECTION 6. This 2010 Act takes effect on the 91st day after the date on which the special**  
41 **session of the Seventy-fifth Legislative Assembly adjourns sine die.**

42