

**B-Engrossed**  
**House Bill 3601**

Ordered by the House February 22  
Including House Amendments dated February 12 and February 22

Sponsored by Representative STIEGLER; Representatives BARKER, CLEM, GARRETT, GELSER, HUFFMAN, KAHL, KOMP, ROBLAN, SCHAUFLE, 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. **Provides exception.**

*[Sunsets January 1, 2014.]*

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

*[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; and amending  
3 ORS 813.410 and 813.412.

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

8 **(4) Except as provided in subsection (5) of this section,** a hearing required by this section  
9 is subject to all of the following:

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

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

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

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

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

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

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

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

34 **(5)(a) A person or a police officer may request that a hearing required by this section**  
35 **be conducted in person.**

36 **(b) The department, by rule, shall establish the manner and time limitation requirements**  
37 **by which a person or a police officer may request that a hearing be conducted in person.**

38 **(c) Unless there is an agreement between the person and the department that the hear-**  
39 **ing be conducted elsewhere, a hearing requested under this subsection shall be held either**  
40 **in the county where the alleged offense occurred or at any place within 100 miles of the place**  
41 **where the offense is alleged to have occurred, as established by the department by rule.**

42 **(d) In connection with the hearing, the department or its authorized representative may**  
43 **administer oaths and shall issue subpoenas for the attendance of witnesses at the hearing**  
44 **requested under this subsection by the person and the production of relevant documents.**

45 *[(5)]* **(6)** This subsection shall be narrowly construed so as to effect the legislative purpose of

1 limiting the scope of hearings under this section. The scope of a hearing under this section shall  
2 be limited to whether the suspension is valid as described in this subsection. A suspension under this  
3 section is valid if all of the following requirements have been met:

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

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

10 (c) The person refused a test under ORS 813.100, or took a breath or blood test and the test  
11 disclosed that the level of alcohol in the person's blood at the time of the test was:

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

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

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

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

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

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

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

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

24 [(6)] (7) A suspension imposed under this section shall remain in effect pending any appeal or  
25 remand of a final order issued under this section and there shall be no stay of the suspension  
26 pending appeal or remand.

27 [(7)] (8) Unless a person fails, without just cause, to appear [*in person*] **personally** or through  
28 an attorney at a hearing requested under this section, a person shall have the right to appeal any  
29 final order by the department after a hearing under this section by filing a petition. The following  
30 apply to this subsection:

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

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

37 **SECTION 2.** ORS 813.412 is amended to read:

38 813.412. Notwithstanding ORS 9.160 and 9.320, in any hearing under ORS 813.410 in which a city  
39 attorney or district attorney does not appear, [*the peace officer who issued the citation for*] **a police**  
40 **officer actively involved in the investigation of** the offense may present evidence, examine and  
41 cross-examine witnesses and make arguments relating to:

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

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

44 (3) The admissibility of evidence; and

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

1        **SECTION 3.** The amendments to ORS 813.410 and 813.412 by sections 1 and 2 of this 2010  
2        Act apply to arrests made on or after the effective date of this 2010 Act.  
3        \_\_\_\_\_