

HOUSE AMENDMENTS TO HOUSE BILL 3601

By COMMITTEE ON JUDICIARY

February 12

1 On page 1 of the printed updated sponsors bill, delete line 3 and insert “813.410 and 813.412; and
2 prescribing an effective date”.

3 Delete lines 5 through 27 and delete pages 2 through 4 and insert:

4 “**SECTION 1.** ORS 813.410 is amended to read:

5 “813.410. (1) If the Department of Transportation receives from a police officer a report that is
6 in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of
7 the person in this state on the 30th day after the date of arrest or, if the report indicates that the
8 person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described
9 under this section, the department determines that the suspension would not be valid as described
10 in this section. A suspension of driving privileges imposed under this subsection shall be for a period
11 of time established under ORS 813.420.

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

22 “(3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days
23 from the date the department sends notice of suspension, the department receives a written request
24 for a hearing from a person whose driving privileges or commercial driver license the department
25 proposes to suspend under this section, the department shall provide a hearing in accordance with
26 this section. Except as otherwise provided under this section, a hearing held by the department
27 under this section shall be subject to the provisions for contested cases, other than appeal pro-
28 visions, under ORS chapter 183. The applicable appeal provisions are as provided under ORS 813.450
29 and section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS 809.430, the department is not
30 required to give any notice of intent to suspend or suspension in addition to that provided under
31 ORS 813.100.

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

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

35 “[*b*] *Unless there is an agreement between the person and the department that the hearing be*

1 *conducted elsewhere, the hearing shall be held either in the county where the alleged offense occurred*
2 *or at any place within 100 miles of the place where the offense is alleged to have occurred, as estab-*
3 *lished by the department by rule.]*

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

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

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

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

15 “(f) In connection with the hearing, the department or its authorized representative may ad-
16 minister oaths and shall issue subpoenas for the *[attendance]* **appearance** of witnesses **by telephone**
17 **or other two-way electronic communication device** at the hearing requested by the person or the
18 department and the production of relevant documents.

19 “(g) The hearing shall be recorded by whatever means may be determined by the department
20 and shall include testimony and exhibits, if any. The record of the proceedings shall not be tran-
21 scribed unless requested by a party to the proceeding.

22 “(5) This subsection shall be narrowly construed so as to effect the legislative purpose of limit-
23 ing the scope of hearings under this section. The scope of a hearing under this section shall be
24 limited to whether the suspension is valid as described in this subsection. A suspension under this
25 section is valid if all of the following requirements have been met:

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

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

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

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

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

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

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

39 “(e) The person had been informed under ORS 813.100 of rights and consequences as described
40 under ORS 813.130.

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

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

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

1 “(6) A suspension imposed under this section shall remain in effect pending any appeal or re-
2 mand of a final order issued under this section and there shall be no stay of the suspension pending
3 appeal or remand.

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

8 “(a) The person shall file the petition in the circuit court for the county where the person re-
9 sides or, if the person does not reside in Oregon, in the circuit court of the county in which the
10 arrest took place within 30 days after issuance of the final order of the department.

11 “(b) The court upon receipt of the petition shall set the matter for hearing upon 10 days’ notice
12 to the department and the petitioner unless hearing is waived by both the department and the
13 petitioner.

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

15 “813.410. (1) If the Department of Transportation receives from a police officer a report that is
16 in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of
17 the person in this state on the 30th day after the date of arrest or, if the report indicates that the
18 person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described
19 under this section, the department determines that the suspension would not be valid as described
20 in this section. A suspension of driving privileges imposed under this subsection shall be for a period
21 of time established under ORS 813.420.

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

32 “(3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days
33 from the date the department sends notice of suspension, the department receives a written request
34 for a hearing from a person whose driving privileges or commercial driver license the department
35 proposes to suspend under this section, the department shall provide a hearing in accordance with
36 this section. Except as otherwise provided under this section, a hearing held by the department
37 under this section shall be subject to the provisions for contested cases, other than appeal pro-
38 visions, under ORS chapter 183. The applicable appeal provisions are as provided under ORS 813.450
39 and section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS 809.430, the department is not
40 required to give any notice of intent to suspend or suspension in addition to that provided under
41 ORS 813.100.

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

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

45 “[*b*] *The administrative law judge shall conduct the hearing by telephone or other two-way elec-*

1 *tronic communication device.]*

2 **“(b) Unless there is an agreement between the person and the department that the**
3 **hearing be conducted elsewhere, the hearing shall be held either in the county where the**
4 **alleged offense occurred or at any place within 100 miles of the place where the offense is**
5 **alleged to have occurred, as established by the department by rule.**

6 **“(c) The department may authorize the administrative law judge to issue a final order in any**
7 **case.**

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

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

15 **“(f) In connection with the hearing, the department or its authorized representative may ad-**
16 **minister oaths and shall issue subpoenas for the [*appearance*] attendance of witnesses [*by telephone***
17 **or other two-way electronic communication device] at the hearing requested by the person or the de-**
18 **partment and the production of relevant documents.**

19 **“(g) The hearing shall be recorded by whatever means may be determined by the department**
20 **and shall include testimony and exhibits, if any. The record of the proceedings shall not be tran-**
21 **scribed unless requested by a party to the proceeding.**

22 **“(5) This subsection shall be narrowly construed so as to effect the legislative purpose of limit-**
23 **ing the scope of hearings under this section. The scope of a hearing under this section shall be**
24 **limited to whether the suspension is valid as described in this subsection. A suspension under this**
25 **section is valid if all of the following requirements have been met:**

26 **“(a) The person, at the time the person was requested to submit to a test under ORS 813.100,**
27 **was under arrest for driving while under the influence of intoxicants in violation of ORS 813.010 or**
28 **a municipal ordinance.**

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

32 **“(c) The person refused a test under ORS 813.100, or took a breath or blood test and the test**
33 **disclosed that the level of alcohol in the person’s blood at the time of the test was:**

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

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

36 **“(C) Any amount if the person was under 21 years of age.**

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

39 **“(e) The person had been informed under ORS 813.100 of rights and consequences as described**
40 **under ORS 813.130.**

41 **“(f) The person was given written notice required under ORS 813.100.**

42 **“(g) If the person arrested submitted to a test under ORS 813.100, the person administering the**
43 **test was qualified to administer the test under ORS 813.160.**

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

1 “(6) A suspension imposed under this section shall remain in effect pending any appeal or re-
2 mand of a final order issued under this section and there shall be no stay of the suspension pending
3 appeal or remand.

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

8 “(a) The person shall file the petition in the circuit court for the county where the person re-
9 sides or, if the person does not reside in Oregon, in the circuit court of the county in which the
10 arrest took place within 30 days after issuance of the final order of the department.

11 “(b) The court upon receipt of the petition shall set the matter for hearing upon 10 days’ notice
12 to the department and the petitioner unless hearing is waived by both the department and the
13 petitioner.

14 **“SECTION 3. The amendments to ORS 813.410 by section 2 of this 2010 Act become op-
15 erative on January 1, 2014.**

16 **“SECTION 4.** ORS 813.412 is amended to read:

17 “813.412. Notwithstanding ORS 9.160 and 9.320, in any hearing under ORS 813.410 in which a
18 city attorney or district attorney does not appear, [*the peace officer who issued the citation for*] **a**
19 **police officer involved in the investigation of** the offense may present evidence, examine and
20 cross-examine witnesses and make arguments relating to:

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

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

23 “(3) The admissibility of evidence; and

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

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

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