

## HOUSE AMENDMENTS TO A-ENGROSSED HOUSE BILL 3601

By JOINT COMMITTEE ON WAYS AND MEANS

February 22

1 On page 1 of the printed A-engrossed bill, line 2, after “provisions;” insert “and”.

2 In line 3, after “813.412” delete the rest of the line and insert a period.

3 Delete lines 5 through 23 and delete pages 2 through 5 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) **Except as provided in subsection (5) of this section**, a hearing required by this section  
33 is subject to all of the following:

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

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

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

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

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

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

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

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

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

25       “(b) **The department, by rule, shall establish the manner and time limitation require-**  
26 **ments by which a person or a police officer may request that a hearing be conducted in**  
27 **person.**

28       “(c) **Unless there is an agreement between the person and the department that the**  
29 **hearing be conducted elsewhere, a hearing requested under this subsection shall be held ei-**  
30 **ther in the county where the alleged offense occurred or at any place within 100 miles of the**  
31 **place where the offense is alleged to have occurred, as established by the department by rule.**

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

35       “[(5)] (6) This subsection shall be narrowly construed so as to effect the legislative purpose of  
36 limiting the scope of hearings under this section. The scope of a hearing under this section shall  
37 be limited to whether the suspension is valid as described in this subsection. A suspension under this  
38 section 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)~~] (7) A suspension imposed under this section shall remain in effect pending any appeal or  
15 remand of a final order issued under this section and there shall be no stay of the suspension  
16 pending appeal or remand.

17 "[~~(7)~~] (8) Unless a person fails, without just cause, to appear [*in person*] **personally** or through  
18 an attorney at a hearing requested under this section, a person shall have the right to appeal any  
19 final order by the department after a hearing under this section by filing a petition. The following  
20 apply to this subsection:

21 "(a) The person shall file the petition in the circuit court for the county where the person re-  
22 sides or, if the person does not reside in Oregon, in the circuit court of the county in which the  
23 arrest 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 813.412 is amended to read:

28 "813.412. Notwithstanding ORS 9.160 and 9.320, in any hearing under ORS 813.410 in which a  
29 city attorney or district attorney does not appear, [*the peace officer who issued the citation for*] **a**  
30 **police officer actively involved in the investigation of** the offense may present evidence, examine  
31 and cross-examine witnesses and make arguments relating to:

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

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

34 "(3) The admissibility of evidence; and

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

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