

House Bill 2143

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Transportation)

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**.

Classifies driving while under influence of intoxicants as Class C felony when person has previous conviction or juvenile adjudication for felony driving while under influence of intoxicants in this state or any other jurisdiction.

A BILL FOR AN ACT

1
2 Relating to felony driving while under the influence of intoxicants; creating new provisions; and
3 amending ORS 813.010, 813.215 and 813.220.

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

5 **SECTION 1.** ORS 813.010 is amended to read:

6 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if
7 the person drives a vehicle while the person:

8 (a) Has 0.08 percent or more by weight of alcohol in the blood of the person as shown by
9 chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

10 (b) Is under the influence of intoxicating liquor, a controlled substance or an inhalant; or

11 (c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled
12 substance.

13 (2) A person may not be convicted of driving while under the influence of intoxicants on the
14 basis of being under the influence of a controlled substance or an inhalant unless the fact that the
15 person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory
16 instrument and is either proved at trial or is admitted by the person through a guilty plea.

17 (3) A person convicted of the offense described in this section is subject to ORS 813.020 in ad-
18 dition to this section.

19 (4) Except as provided in subsection (5) of this section, the offense described in this section,
20 driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon
21 any premises open to the public.

22 (5)[(a)] Driving while under the influence of intoxicants is a Class C felony if:

23 (a) The current offense was committed in a motor vehicle and the person has, at least three
24 times in the 10 years prior to the date of the current offense, been convicted of, or been found to
25 be within the jurisdiction of the juvenile court for an act that if committed by an adult would be,
26 any of the following offenses in any combination:

27 (A) Driving while under the influence of intoxicants in violation of:

28 (i) This section; or

29 (ii) The statutory counterpart to this section in another jurisdiction.

30 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the

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 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor,
 2 a controlled substance, an inhalant or any combination thereof.

3 (C) A driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a
 4 boat while having a blood alcohol content above that jurisdiction’s permissible blood alcohol con-
 5 tent.

6 *[(b) For the purposes of paragraph (a) of this subsection, a conviction or adjudication for a driving*
 7 *offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol*
 8 *content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21*
 9 *years of age or older does not constitute a prior conviction or adjudication.]*

10 **(b) The person has a previous conviction or adjudication for felony driving while under**
 11 **the influence of intoxicants in violation of this section or its statutory counterpart in an-**
 12 **other jurisdiction.**

13 **(6) For the purposes of subsection (5)(a) of this section, a conviction or adjudication for**
 14 **a driving offense in another jurisdiction based solely on a person under 21 years of age having**
 15 **a blood alcohol content that is lower than the permissible blood alcohol content in that ju-**
 16 **risdiction for a person 21 years of age or older does not constitute a prior conviction or ad-**
 17 **judication.**

18 *[(6)]* (7) In addition to any other sentence that may be imposed, the court shall impose one or
 19 more of the following fines on a person convicted of driving while under the influence of intoxicants
 20 as follows:

- 21 (a) For a person’s first conviction, a minimum of \$1,000.
- 22 (b) For a person’s second conviction, a minimum of \$1,500.
- 23 (c) For a person’s third or subsequent conviction, a minimum of \$2,000 if the person is not sen-
 24 tenced to a term of imprisonment.
- 25 (d) For a person who drives a vehicle while the person has 0.15 percent or more by weight of
 26 alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the per-
 27 son made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.

28 *[(7)]* (8) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on
 29 a person convicted of driving while under the influence of intoxicants if:

- 30 (a) The current offense was committed in a motor vehicle; and
- 31 (b) There was a passenger in the motor vehicle who was under 18 years of age and was at least
 32 three years younger than the person driving the motor vehicle.

33 **(9) As used in this section, “previous conviction or adjudication” means convictions or**
 34 **juvenile adjudications occurring before, on or after January 1, 2012.**

35 **SECTION 2.** ORS 813.215 is amended to read:

36 813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following con-
 37 ditions:

38 (a) On the date the defendant filed the petition for a driving while under the influence of
 39 intoxicants diversion agreement, the defendant had no charge, other than the charge for the present
 40 offense, pending for:

- 41 (A) An offense of driving while under the influence of intoxicants in violation of:
- 42 (i) ORS 813.010; or
- 43 (ii) The statutory counterpart to ORS 813.010 in another jurisdiction;

44 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the
 45 impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an

1 inhalant or any combination thereof; or

2 (C) A driving offense in another jurisdiction that involved operating a vehicle while having a
3 blood alcohol content above that jurisdiction's permissible blood alcohol content.

4 (b) The defendant has not been convicted of an offense described in paragraph (a) of this sub-
5 section within the period beginning 15 years before the date of the commission of the present offense
6 and ending on the date the defendant filed the petition for a driving while under the influence of
7 intoxicants diversion agreement.

8 (c) The defendant has not been convicted of a felony offense described in ORS 813.010 [(5)(a)].

9 (d) The defendant was not participating in a driving while under the influence of intoxicants
10 diversion program or in any similar alcohol or drug rehabilitation program, other than a program
11 entered into as a result of the charge for the present offense, in this state or in another jurisdiction
12 on the date the defendant filed the petition for a driving while under the influence of intoxicants
13 diversion agreement.

14 (e) The defendant did not participate in a diversion or rehabilitation program described in par-
15 agraph (d) of this subsection, other than a program entered into as a result of the charge for the
16 present offense, within the period beginning 15 years before the date of the commission of the
17 present offense and ending on the date the defendant filed the petition for a driving while under the
18 influence of intoxicants diversion agreement.

19 (f) The defendant had no charge of an offense of aggravated vehicular homicide or of murder,
20 manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor
21 vehicle pending in this state or in another jurisdiction on the date the defendant filed the petition
22 for a driving while under the influence of intoxicants diversion agreement.

23 (g) The defendant has not been convicted of an offense described in paragraph (f) of this sub-
24 section within the period beginning 15 years before the date of the commission of the present offense
25 and ending on the date the defendant filed the petition for a driving while under the influence of
26 intoxicants diversion agreement.

27 (h) The defendant did not hold a commercial driver license on the date of the commission of the
28 offense.

29 (i) The defendant was not operating a commercial motor vehicle at the time of the offense.

30 (j) The present driving while under the influence of intoxicants offense did not involve an acci-
31 dent resulting in:

32 (A) Death of any person; or

33 (B) Physical injury as defined in ORS 161.015 to any person other than the defendant.

34 (2) For the purposes of subsection (1)(a) of this section, a conviction for a driving offense in
35 another jurisdiction based solely on a person under 21 years of age having a blood alcohol content
36 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years
37 of age or older does not constitute a prior conviction.

38 (3) A defendant is eligible for a second or subsequent diversion if the defendant meets all of the
39 conditions of subsection (1) of this section and the defendant has not been convicted of any other
40 criminal offense involving a motor vehicle within the period beginning 15 years before the date of
41 the commission of the present offense and ending on the date the defendant filed the petition for the
42 second or subsequent driving while under the influence of intoxicants diversion agreement.

43 **SECTION 3.** ORS 813.220 is amended to read:

44 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request
45 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether

1 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-
 2 ment. In making a determination under this section, the court:

3 (1) Shall consider whether the diversion will be of benefit to the defendant and the community.

4 (2) May take into consideration whether there was an early recognition by the defendant during
 5 the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug
 6 dependency would be beneficial.

7 (3) May take into consideration whether there is a probability that the defendant will cooperate
 8 with the diagnostic assessment and treatment agencies.

9 (4) May take into consideration whether the defendant will observe the restrictions contained
 10 in the diversion agreement.

11 (5) May take into consideration whether the offense was committed in a motor vehicle and
 12 whether there was a passenger in the motor vehicle who was under 18 years of age and at least
 13 three years younger than the defendant.

14 (6) Shall deny the petition for a driving while under the influence of intoxicants diversion
 15 agreement if the defendant failed to appear at an arraignment on the present offense without good
 16 cause.

17 (7) Shall deny the petition for a driving while under the influence of intoxicants diversion
 18 agreement if, after the date the defendant filed the petition, the defendant was charged with or
 19 convicted of:

20 (a) An offense of driving while under the influence of intoxicants in violation of:

21 (A) ORS 813.010; or

22 (B) The statutory counterpart to ORS 813.010 in another jurisdiction;

23 (b) A driving under the influence of intoxicants offense in another jurisdiction that involved the
 24 impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an
 25 inhalant or any combination thereof; or

26 (c) A driving offense in another jurisdiction that involved operating a vehicle while having a
 27 blood alcohol content above that jurisdiction's permissible blood alcohol content.

28 (8) Shall deny the petition for a driving while under the influence of intoxicants diversion
 29 agreement if the defendant participated in a driving while under the influence of intoxicants diver-
 30 sion program or in any similar alcohol or drug rehabilitation program, other than a program entered
 31 into as a result of the charge for the present offense, in this state or in another jurisdiction after
 32 the date the defendant filed the petition.

33 (9) Shall deny the petition for a driving while under the influence of intoxicants diversion
 34 agreement if the defendant was charged with or convicted of an offense of aggravated vehicular
 35 homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the
 36 operation of a motor vehicle in this state or in another jurisdiction after the date the defendant filed
 37 the petition.

38 (10) Shall deny the petition for a driving while under the influence of intoxicants diversion
 39 agreement if the defendant has been convicted of a felony offense described in ORS 813.010 [(5)(a)].

40 (11) For the purposes of subsection (7) of this section, may not consider a conviction for a
 41 driving offense in another jurisdiction based solely on a person under 21 years of age having a blood
 42 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a
 43 person 21 years of age or older as a prior conviction.

44 **SECTION 4. The amendments to ORS 813.010 by section 1 of this 2011 Act apply to crimes**
 45 **committed on or after the effective date of this 2011 Act by a person with a previous con-**

1 **viction or adjudication, as defined in ORS 813.010 (9), for felony driving while under the in-**
2 **fluence of intoxicants.**

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