

HB 2117

Relating to driving under the influence of intoxicants

HB 2117 clarifies that nothing in the implied consent law precludes a police officer from obtaining a chemical test of a person's breath or blood through lawful means for use in a criminal or civil proceeding. This measure is a response to the recent United States Supreme Court decision, *Missouri v. McNeely*.

There is no fiscal impact as a result of this measure.

The Public Safety Subcommittee recommends HB 2117 be amended and reported out to pass, as amended.

Joint Committee on Ways and Means

Carrier – House: Rep. Williamson
Carrier – Senate: Sen. Winters

Revenue:

Fiscal: No fiscal impact

Action: Do Pass the A-Engrossed Measure as Amended and be Printed B-Engrossed

Vote:

House

Yeas:

Nays:

Exc:

Senate

Yeas:

Nays:

Exc:

Prepared By: John Terpening, Legislative Fiscal Office

Meeting Date: June 28, 2013

WHAT THE MEASURE DOES: Clarifies that nothing in the implied consent law precludes a police officer from obtaining a chemical test of a person's breath or blood through lawful means for use in a criminal or civil proceeding.

ISSUES DISCUSSED:

- Fiscal impact of the measure
- Proposed amendment

EFFECT OF COMMITTEE AMENDMENT: Replaces the original measure.

BACKGROUND: The change to HB 2117 is a response to the United State Supreme Court decision, Missouri v. McNeely, decided April 17, 2013. The measure reiterates the informed consent law.

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2117**

1 On page 1 of the printed A-engrossed bill, delete line 3 and insert “813.100
2 and 813.140; and declaring an emergency.”.

3 Delete lines 5 through 22 and delete pages 2 through 10 and insert:

4 **“SECTION 1.** ORS 813.100 is amended to read:

5 “813.100. (1) Any person who operates a motor vehicle upon premises open
6 to the public or the highways of this state shall be deemed to have given
7 consent, subject to the implied consent law, to a chemical test of the person’s
8 breath, or of the person’s blood if the person is receiving medical care in a
9 health care facility immediately after a motor vehicle accident, for the pur-
10 pose of determining the alcoholic content of the person’s blood if the person
11 is arrested for driving a motor vehicle while under the influence of
12 intoxicants in violation of ORS 813.010 or of a municipal ordinance. A test
13 shall be administered upon the request of a police officer having reasonable
14 grounds to believe the person arrested to have been driving while under the
15 influence of intoxicants in violation of ORS 813.010 or of a municipal ordi-
16 nance. Before the test is administered the person requested to take the test
17 shall be informed of consequences and rights as described under ORS 813.130.

18 “(2) No chemical test of the person’s breath or blood shall be given, under
19 subsection (1) of this section, to a person under arrest for driving a motor
20 vehicle while under the influence of intoxicants in violation of ORS 813.010
21 or of a municipal ordinance, if the person refuses the request of a police of-
22 ficer to submit to the chemical test after the person has been informed of

1 consequences and rights as described under ORS 813.130.

2 “(3) If a person refuses to take a test under this section or if a breath test
3 under this section discloses that the person, at the time of the test, had a
4 level of alcohol in the person’s blood that constitutes being under the influ-
5 ence of intoxicating liquor under ORS 813.300, the person’s driving privileges
6 are subject to suspension under ORS 813.410 and the police officer shall do
7 all of the following:

8 “(a) Immediately take custody of any driver license or permit issued by
9 this state to the person to grant driving privileges.

10 “(b) Provide the person with a written notice of intent to suspend, on
11 forms prepared and provided by the Department of Transportation. The
12 written notice shall inform the person of consequences and rights as de-
13 scribed under ORS 813.130.

14 “(c) If the person qualifies under ORS 813.110, issue to the person, on
15 behalf of the department, a temporary driving permit described under ORS
16 813.110.

17 “(d) Within a period of time required by the department by rule, report
18 action taken under this section to the department and prepare and cause to
19 be delivered to the department a report as described in ORS 813.120, along
20 with the confiscated license or permit and a copy of the notice of intent to
21 suspend.

22 “(4) If a blood test under this section discloses that the person, at the
23 time of the test, had a level of alcohol in the person’s blood that constitutes
24 being under the influence of intoxicating liquor under ORS 813.300, the
25 person’s driving privileges are subject to suspension under ORS 813.410 and
26 the police officer shall report to the department within 45 days of the date
27 of arrest that the person failed the blood test.

28 **“(5) Nothing in this section precludes a police officer from obtaining**
29 **a chemical test of the person’s breath or blood through any lawful**
30 **means for use as evidence in a criminal or civil proceeding including,**

1 **but not limited to, obtaining a search warrant.**

2 **“SECTION 2.** ORS 813.140 is amended to read:

3 “813.140. Nothing in ORS 813.100 is intended to preclude the adminis-
4 tration of a chemical test described in this section. A police officer may ob-
5 tain a chemical test of the **breath or** blood to determine the amount of
6 alcohol in any person’s blood or a test of the person’s blood or urine, or both,
7 to determine the presence of a controlled substance or an inhalant in the
8 person as provided in the following:

9 “(1) If, when requested by a police officer, the person expressly consents
10 to such a test.

11 “(2) Notwithstanding subsection (1) of this section, from a person without
12 the person’s consent if:

13 “(a) The police officer has probable cause to believe that the person was
14 driving while under the influence of intoxicants and that evidence of the
15 offense will be found in the person’s blood or urine; and

16 “(b) The person is unconscious or otherwise in a condition rendering the
17 person incapable of expressly consenting to the test or tests requested.

18 **“SECTION 3.** The amendments to ORS 813.100 and 813.140 by
19 sections 1 and 2 of this 2013 Act apply to offenses that occur on or after
20 the effective date of this 2013 Act.

21 **“SECTION 4.** This 2013 Act being necessary for the immediate
22 preservation of the public peace, health and safety, an emergency is
23 declared to exist, and this 2013 Act takes effect on its passage.”.

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