

# House Bill 2391

Sponsored by Representatives OLSON, WILLIAMSON; Representative KRIEGER (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 **as introduced**.

Authorizes court to issue hardship permit to person convicted of assault in second, third or fourth degree if person meets certain conditions.

Permits court to require person issued hardship permit to install ignition interlock device if alcohol contributed to commission of assault.

## A BILL FOR AN ACT

1  
2 Relating to hardship permits; creating new provisions; and amending ORS 807.240, 807.252, 813.600,  
3 813.604, 813.608, 813.610, 813.612 and 813.614.

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

5 **SECTION 1.** ORS 807.252 is amended to read:

6 807.252. (1) The Department of Transportation may not issue a hardship permit to a person  
7 whose driving privileges are suspended for conviction of assault in the second, third or fourth degree  
8 if the person, within 10 years preceding application for the permit, has been convicted of:

9 (a) Any degree of murder, manslaughter, criminally negligent homicide or assault resulting from  
10 the operation of a motor vehicle;

11 (b) Reckless driving, as defined in ORS 811.140;

12 (c) Driving while under the influence of intoxicants, as defined in ORS 813.010;

13 (d) Failure to perform the duties of a driver involved in an accident or collision, as described  
14 in ORS 811.700 or 811.705;

15 (e) Criminal driving while suspended or revoked, as defined in ORS 811.182;

16 (f) Fleeing or attempting to elude a police officer, as defined in ORS 811.540; or

17 (g) Aggravated vehicular homicide, as defined in ORS 163.149, or aggravated driving while sus-  
18 pended or revoked, as defined in ORS 163.196.

19 (2) A conviction arising out of the same episode as the current suspension is not considered a  
20 conviction for purposes of subsection (1) of this section.

21 (3) **Except as provided in section 3 of this 2015 Act**, the department may not issue a hardship  
22 permit to a person whose driving privileges are suspended for a conviction of assault in the second,  
23 third or fourth degree:

24 (a) For a period of four years from the date the department suspends driving privileges if the  
25 person's driving privileges are suspended for conviction of assault in the second degree and the  
26 person was not incarcerated for that conviction.

27 (b) For a period of four years from the date the person is released from incarceration for the  
28 conviction if the person's driving privileges are suspended for conviction of assault in the second  
29 degree and the person was incarcerated for that conviction.

30 (c) For a period of two years from the date the department suspends driving privileges if 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 person's driving privileges are suspended for conviction of assault in the third degree and the person  
 2 was not incarcerated for that conviction.

3 (d) For a period of two years from the date the person is released from incarceration for the  
 4 conviction if the person's driving privileges are suspended for conviction of assault in the third de-  
 5 gree and the person was incarcerated for that conviction.

6 (e) For a period of six months from the date the department suspends driving privileges if the  
 7 person's driving privileges are suspended for conviction of assault in the fourth degree and the  
 8 person is not incarcerated for that conviction.

9 (f) For a period of six months from the date the person is released from incarceration for the  
 10 conviction if the person's driving privileges are suspended for conviction of assault in the fourth  
 11 degree and the person was incarcerated for that conviction.

12 (4) A hardship permit issued to a person whose driving privileges are suspended because of a  
 13 conviction for assault in the second, third or fourth degree shall limit the person's driving privileges:

14 (a) To the times, places, routes and days the department determines to be minimally necessary  
 15 for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabili-  
 16 tation program or to obtain required medical treatment for the person or a member of the person's  
 17 immediate family; and

18 (b) To times, places, routes and days that are specifically stated.

19 (5) The person's driving privileges under the permit are subject to suspension or revocation if  
 20 the person does not maintain a good driving record, as defined by the administrative rules of the  
 21 department, during the term of the permit.

22 (6) The department may require the person to complete a driver improvement program under  
 23 ORS 809.480 as a condition of the permit.

24 (7) The department shall condition the permit so that the permit will be revoked if the person  
 25 is convicted of any of the following:

26 (a) Reckless driving under ORS 811.140.

27 (b) Driving while under the influence of intoxicants under ORS 813.010.

28 (c) Failure to perform the duties of a driver under ORS 811.700 or 811.705.

29 (d) Fleeing or attempting to elude a police officer under ORS 811.540.

30 (e) Driving while suspended or revoked under ORS 811.175 or 811.182.

31 (f) Any degree of murder, manslaughter, criminally negligent homicide or assault resulting from  
 32 the operation of a motor vehicle.

33 (g) Aggravated vehicular homicide under ORS 163.149 or aggravated driving while suspended  
 34 or revoked under ORS 163.196.

35 **SECTION 2. Section 3 of this 2015 Act is added to and made a part of the Oregon Vehicle**  
 36 **Code.**

37 **SECTION 3. (1) A person whose driving privileges have been suspended for a conviction**  
 38 **of assault in the second, third or fourth degree may file a petition in the circuit court of the**  
 39 **county in which the person was convicted for an order reinstating the person's driving**  
 40 **privileges that authorizes the Department of Transportation to issue a hardship permit to**  
 41 **the person.**

42 **(2) The person shall provide a copy of the petition and any supporting documentation to**  
 43 **the district attorney of the county in which the person was convicted.**

44 **(3) The court shall hold a hearing on a petition filed in accordance with subsection (1)**  
 45 **of this section. Before the court may issue a notice of reinstatement, the person shall:**

- 1 (a) Provide verification that the person is employed;
- 2 (b) Agree to notify the court within one week if the person's employment is terminated  
3 for any reason; and
- 4 (c) Agree to install and maintain an ignition interlock device for a period of one year in  
5 any vehicle operated by the person if the court orders the person to install a device under  
6 subsection (5) of this section.
- 7 (4) At the hearing described in subsection (3) of this section, the court, in addition to  
8 confirming that the person has met the requirements of subsection (3) of this section, shall  
9 consider:
- 10 (a) The recommendation of the district attorney and the county sheriff;
- 11 (b) Other criminal and relevant noncriminal behavior of the petitioner both before and  
12 after the conviction that resulted in the suspension; and
- 13 (c) Any other relevant factors.
- 14 (5) The court may require as a condition of receiving a hardship permit under this sec-  
15 tion that an ignition interlock device be installed and used in any vehicle operated by the  
16 person for one year if the court finds that alcohol contributed to the commission of the  
17 crime bringing the person within the jurisdiction of the court.
- 18 (6) When a person is required to install an ignition interlock device under this section,  
19 the provider of the device shall provide notice of any installation or removal of the device  
20 or any tampering with the device to the court that ordered installation of the device.
- 21 (7) The court shall reissue a notice of suspension if:
- 22 (a) The court receives a notice from the person that the person's employment has ter-  
23 minated; or
- 24 (b) The court receives notice that the person has removed or tampered with the ignition  
25 interlock device during the time the person is required to use the device.
- 26 (8) If a court reissues a notice of suspension under subsection (7) of this section, the  
27 reissuance does not extend the person's original period of suspension.
- 28 (9) Upon receiving a court notice to reinstate a person's driving privileges, the depart-  
29 ment may issue a hardship permit if the department receives proof that the person has in-  
30 stalled an ignition interlock device if the court requires the device.
- 31 (10) A hardship permit issued to a person under this section shall limit the person's  
32 driving privileges:
- 33 (a) To the times, places, routes and days the department determines to be minimally  
34 necessary for the person to retain employment, to attend any alcohol or drug treatment or  
35 rehabilitation program or to obtain required medical treatment for the person or a member  
36 of the person's immediate family; and
- 37 (b) To times, places, routes and days that are specifically stated.
- 38 (11) The person's driving privileges under the hardship permit are subject to suspension  
39 or revocation if the person does not maintain a good driving record, as defined by the ad-  
40 ministrative rules of the department, during the term of the permit.
- 41 (12) The department shall condition the hardship permit so that the permit will be re-  
42 voked if the person is convicted of any of the following:
- 43 (a) Reckless driving under ORS 811.140.
- 44 (b) Driving while under the influence of intoxicants under ORS 813.010.
- 45 (c) Failure to perform the duties of a driver under ORS 811.700 or 811.705.

1 (d) Fleeing or attempting to elude a police officer under ORS 811.540.

2 (e) Driving while suspended or revoked under ORS 811.175 or 811.182.

3 (f) Any degree of murder, manslaughter, criminally negligent homicide or assault re-  
4 sulting from the operation of a motor vehicle.

5 (g) Aggravated vehicular homicide under ORS 163.149 or aggravated driving while sus-  
6 pended or revoked under ORS 163.196.

7 (13) Notifications by a court to the department under this section shall be in a form  
8 prescribed by the department.

9 **SECTION 4.** ORS 807.240 is amended to read:

10 807.240. The Department of Transportation shall provide for issuance of hardship driver permits  
11 in a manner consistent with this section. A hardship driver permit grants the driving privileges  
12 provided in this section or under the permit. Except as otherwise provided in this section, a hardship  
13 driver permit is subject to the fees, provisions, conditions, prohibitions and penalties applicable to  
14 a license. The following apply to a hardship driver permit:

15 (1) The department may only issue a permit to a person whose driving privileges under the ve-  
16 hicle code have been suspended.

17 (2) Except as provided in ORS 813.520, the department may reinstate the privilege to operate a  
18 motor vehicle of any person whose license to operate a motor vehicle has been suspended by issuing  
19 the person a hardship permit described under this section if such person qualifies under this  
20 section[,] **and** ORS 807.250, 807.252 and 813.500 **and section 3 of this 2015 Act.** However, the de-  
21 partment may not issue a hardship permit authorizing a person to drive a commercial motor vehicle.

22 (3) To qualify for a hardship permit, a person must do all of the following in addition to any  
23 applicable provisions under ORS 807.250, 807.252 and 813.500 **and section 3 of this 2015 Act:**

24 (a) The person must submit to the department an application for the permit that demonstrates  
25 the person's need for the permit.

26 (b) The person must present satisfactory evidence, as determined by the department by rule:

27 (A) That the person must operate a motor vehicle as a requisite of the person's occupation or  
28 employment;

29 (B) That the person must operate a motor vehicle to seek employment or to get to or from a  
30 place of employment;

31 (C) That the person must operate a motor vehicle to get to or from an alcohol or drug treatment  
32 or rehabilitation program;

33 (D) That the person or a member of the person's immediate family requires medical treatment  
34 on a regular basis and that the person must operate a motor vehicle in order that the treatment  
35 may be obtained; or

36 (E) That the person's driving privileges are suspended for driving uninsured in violation of ORS  
37 806.010 or for violation of ORS 165.805 or 471.430 and are not suspended for any other reason and  
38 that the person must operate a motor vehicle in order to provide necessary services to the person  
39 or to a member of the person's family. The department shall determine by rule what constitutes  
40 necessary services for purposes of this subparagraph. The rule shall include as necessary services,  
41 but need not be limited to, grocery shopping, driving the person or the person's children to school,  
42 driving to medical appointments and caring for elderly family members.

43 (c) If the person is applying for a permit because the person or a member of the person's im-  
44 mediate family requires medical treatment on a regular basis, the person must present, in addition  
45 to any evidence required by the department under paragraph (b) of this subsection, a statement

1 signed by a licensed physician or certified nurse practitioner that indicates that the person or a  
 2 member of the person's immediate family requires medical treatment on a regular basis.

3 (d) The person must show that the person is not incompetent to drive nor a habitual incompe-  
 4 tent, reckless or criminally negligent driver as established by the person's driving record in this or  
 5 any other jurisdiction.

6 (e) The person must make a future responsibility filing.

7 (f) The person must submit any other information the department may require for purposes of  
 8 determining whether the person qualifies under this section[,] **and** ORS 807.250, 807.252, 813.500 and  
 9 813.520 **and section 3 of this 2015 Act.**

10 (4) If the department finds that the person meets the requirements of this section and any ap-  
 11 plicable requirements under ORS 807.250, 807.252, 813.500 and 813.520 **and section 3 of this 2015**  
 12 **Act**, the department may issue the person a hardship permit, valid for the duration of the suspension  
 13 or for a shorter period of time established by the department unless sooner suspended or revoked  
 14 under this section. If the department issues the permit for a period shorter than the suspension pe-  
 15 riod, renewal of the permit shall be on such terms and conditions as the department may require.  
 16 The permit:

17 (a) Shall limit the holder to operation of a motor vehicle only during specified times.

18 (b) May bear other reasonable limitations relating to the hardship permit or the operation of a  
 19 motor vehicle that the department deems proper or necessary. The limitations may include any  
 20 limitation, condition or requirement. Violation of a limitation is punishable as provided by ORS  
 21 811.175 or 811.182.

22 (5) The department, upon receiving satisfactory evidence of any violation of the limitations of  
 23 a permit issued under this section or limitations placed on a hardship permit under ORS 807.252 or  
 24 813.510 **or section 3 of this 2015 Act**, may suspend or revoke the hardship permit.

25 (6) The fee charged for application or issuance of a hardship driver permit is the hardship driver  
 26 permit application fee under ORS 807.370. The department may not refund the fee if the application  
 27 is denied or if the driver permit is suspended or revoked. The fee upon renewal of the driver permit  
 28 is the same fee as that charged for renewal of a license. The application fee charged under this  
 29 subsection is in addition to any fee charged for reinstatement of driving privileges under ORS  
 30 807.370.

31 (7) The department may issue a permit granting the same driving privileges as those suspended  
 32 or may issue a permit granting fewer driving privileges, as the department determines necessary to  
 33 assure safe operation of motor vehicles by the permit holder.

34 **SECTION 5.** ORS 813.600 is amended to read:

35 813.600. (1) The Department of Transportation, in consultation with the Transportation Safety  
 36 Committee, shall establish a program for the use of ignition interlock devices by persons **who:**

37 (a) **Have been** convicted of driving while under the influence of intoxicants and granted hard-  
 38 ship permits under ORS 807.240; [*and by persons*]

39 (b) [*Who*] Have entered into a driving while under the influence of intoxicants diversion  
 40 agreement[.]; **and**

41 (c) **Have been issued a hardship permit under section 3 of this 2015 Act and are required**  
 42 **to install an ignition interlock device by the court.**

43 (2) The department shall adopt rules that specify requirements for ignition interlock devices that  
 44 may be used and shall publish a list of devices that meet the requirements. The list may include  
 45 devices that:

- 1 (a) Do not impede the safe operation of the vehicle;
- 2 (b) Have the fewest opportunities to be bypassed;
- 3 (c) Correlate well with established measures of alcohol impairment;
- 4 (d) Work accurately and reliably in an unsupervised environment;
- 5 (e) Require a deep lung breath sample or other accurate measure of blood alcohol content
- 6 equivalence;
- 7 (f) Resist tampering and give evidence if tampering is attempted;
- 8 (g) Are difficult to circumvent, and require premeditation to do so;
- 9 (h) Minimize inconvenience to a sober user;
- 10 (i) Operate reliably over the range of automobile environments or automobile manufacturing
- 11 standards;
- 12 (j) Are manufactured by a party who is adequately insured for product liability; and
- 13 (k) Have a label affixed in a prominent location warning that any person tampering with, cir-
- 14 cumventing or otherwise misusing the device is subject to civil penalty.

15 **SECTION 6.** ORS 813.604 is amended to read:

16 813.604. (1) When a court orders installation of an ignition interlock device pursuant to ORS  
17 813.602 **or section 3 of this 2015 Act**, the court shall send a copy of the order to the Department  
18 of Transportation. The department shall note the requirement on the driving record of the person  
19 required to install the device.

20 (2) The department may not issue a hardship permit under ORS 807.240 to any person who is  
21 ordered to install an ignition interlock device on the person's vehicle until the person furnishes the  
22 department satisfactory proof that the device has been installed on any vehicle owned or operated  
23 by the person. The department shall determine by rule what constitutes satisfactory proof under this  
24 subsection.

25 (3) When the department issues a hardship permit to a person who is required to have an ig-  
26 nition interlock device, the department shall note on the permit that the device is required. The  
27 notation constitutes a limitation on the permit and a person who violates the limitation is  
28 punishable as provided in ORS 811.182 for criminal driving while suspended or revoked.

29 **SECTION 7.** ORS 813.608 is amended to read:

30 813.608. (1) A person commits the offense of knowingly furnishing a motor vehicle without an  
31 ignition interlock device to someone who is not authorized to drive such a vehicle if the person  
32 rents, leases, lends or otherwise furnishes a motor vehicle to someone the person knows to have  
33 been ordered or required under ORS 813.602 **or section 3 of this 2015 Act**, to install an ignition  
34 interlock device, and the motor vehicle is not equipped with such a device that is in working order.

35 (2) The offense described in this section, knowingly furnishing a motor vehicle without an ig-  
36 nition interlock device to someone who is not authorized to drive such a vehicle, is a Class A traffic  
37 violation.

38 **SECTION 8.** ORS 813.610 is amended to read:

39 813.610. (1) A person commits the offense of unlawfully soliciting another to blow into an ig-  
40 nition interlock device or start a motor vehicle equipped with an ignition interlock device if the  
41 person has such a device as a result of an order or requirement under ORS 813.602 **or section 3**  
42 **of this 2015 Act** and the person requests or solicits another to blow into the device or start the  
43 motor vehicle so as to circumvent the device.

44 (2) The offense described in this section, unlawfully soliciting another to blow into an ignition  
45 interlock device or start a motor vehicle equipped with an ignition interlock device, is a Class A

1 traffic violation.

2 **SECTION 9.** ORS 813.612 is amended to read:

3 813.612. (1) A person commits the offense of unlawfully blowing into an ignition interlock device  
4 or starting a motor vehicle equipped with an ignition interlock device if, for the purpose of providing  
5 an operable motor vehicle for someone required under ORS 813.602 **or section 3 of this 2015 Act**  
6 to have such a device, the person blows into an ignition interlock device or starts an automobile  
7 equipped with the device.

8 (2) This section does not apply to a person who is required to have an ignition interlock device  
9 and who blows into or starts the person's own vehicle that is so equipped.

10 (3) The offense described in this section, unlawfully blowing into an ignition interlock device  
11 or starting a motor vehicle equipped with an ignition interlock device, is a Class A traffic violation.

12 **SECTION 10.** ORS 813.614 is amended to read:

13 813.614. (1) A person commits the offense of tampering with an ignition interlock device if the  
14 person does anything to a device that was ordered installed pursuant to ORS 813.602 **or section 3**  
15 **of this 2015 Act** that circumvents the operation of the device.

16 (2) The offense described in this section, tampering with an ignition interlock device, is a Class  
17 A traffic violation.

18 **SECTION 11.** **Section 3 of this 2015 Act and the amendments to ORS 807.240, 807.252,**  
19 **813.600, 813.604, 813.608, 813.610, 813.612 and 813.614 by sections 1 and 4 to 10 of this 2015 Act**  
20 **apply to offenses occurring before, on or after the effective date of this 2015 Act.**

21