

House Bill 3170

Sponsored by Representatives BENTZ, OLSON; Representatives ESQUIVEL, HACK, KRIEGER, STARK

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**.

Allows for blood to be taken to determine presence of controlled substances for purpose of Motorist Implied Consent Law.

A BILL FOR AN ACT

1
2 Relating to driving while under the influence of intoxicants; creating new provisions; and amending
3 ORS 813.095, 813.130, 813.131, 813.132, 813.150, 813.160 and 813.310.

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

5 **SECTION 1.** ORS 813.095 is amended to read:

6 813.095. (1) A person commits the offense of refusal to take a test for intoxicants if the person
7 refuses to:

8 (a) Take a breath test when requested to do so in accordance with the provisions of ORS
9 813.100; or

10 (b) Take a urine **or blood** test when requested to do so in accordance with the provisions of
11 ORS 813.131 and 813.132.

12 (2) The offense described in this section, refusal to take a test for intoxicants, is a specific fine
13 traffic violation. The presumptive fine for refusal to take a test for intoxicants is \$650. The fine
14 described in this section is in addition to any other consequence prescribed by law for refusal to
15 take a test for intoxicants.

16 **SECTION 2.** ORS 813.130 is amended to read:

17 813.130. This section establishes the requirements for information about rights and consequences
18 for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and
19 consequences:

20 (1) The information about rights and consequences shall be substantially in the form prepared
21 by the Department of Transportation. The department may establish any form it determines appro-
22 priate and convenient.

23 (2) The information about rights and consequences shall be substantially as follows:

24 (a) Driving under the influence of intoxicants is a crime in Oregon, and the person is subject
25 to criminal penalties if a test under ORS 813.100 shows that the person is under the influence of
26 intoxicants. If the person refuses a test or fails, evidence of the refusal or failure may also be offered
27 against the person.

28 (b) The person will fail a test under ORS 813.100 for purposes of criminal penalties if the test
29 discloses a blood alcohol content of 0.08 percent or more by weight. The person will fail a test for
30 purposes of the Motorist Implied Consent Law if the test discloses a blood alcohol content of:

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

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

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

3 (c) If the person refuses or fails a test under ORS 813.100, the person's driving privileges will
4 be suspended. The outcome of a criminal charge for driving under the influence of intoxicants will
5 not affect the suspension. The suspension will be substantially longer if the person refuses a test.

6 (d) If the person refuses a test or fails a breath test under ORS 813.100 and has an Oregon
7 driver license or permit, the license or permit will be taken immediately and, unless the person does
8 not currently have full valid driving privileges, a temporary driving permit will be issued to the
9 person.

10 (e) If the person refuses a test under ORS 813.100, the person is not eligible for a hardship
11 permit for at least 90 days, and possibly for three years, depending on the following factors set forth
12 in ORS 813.430:

13 (A) Whether the person is presently participating in a driving while under the influence of
14 intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program
15 in this or another jurisdiction; or

16 (B) Whether within the five years preceding the date of arrest any of the following occurred:

17 (i) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replace-
18 ment Part) became effective;

19 (ii) The person was convicted of driving while under the influence of intoxicants in violation of
20 ORS 813.010 or the statutory counterpart to ORS 813.010 in another jurisdiction, as described in
21 ORS 813.430;

22 (iii) The person was convicted of driving while under the influence of intoxicants in violation
23 of a municipal ordinance in this state or another jurisdiction, as described in ORS 813.430; or

24 (iv) The person commenced participating in a driving while under the influence of intoxicants
25 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or
26 another jurisdiction, as described in ORS 813.430.

27 (f) If the person refuses a breath test under ORS 813.100, or refuses a urine **or blood** test under
28 ORS 813.131 and 813.132, the person is subject to a fine of at least \$500 and not more than \$1,000.

29 (g) After taking a test under ORS 813.100, the person will have a reasonable opportunity, upon
30 request, for an additional chemical test for blood alcohol content to be performed at the person's
31 own expense by a qualified individual of the person's choosing.

32 (h) The person has a right to a hearing to challenge the validity of the suspension before the
33 suspension becomes effective. The person must make a written request to the department for such
34 a hearing. If the person wins at the hearing, the person's driving privileges will not be suspended.
35 If the person loses at the hearing, the suspension will remain in effect during any court review of
36 the hearing.

37 (i) If the person is issued a temporary driving permit under ORS 813.100, the information pro-
38 vided to the person shall include the number of hours before the driving permit will be effective and
39 the number of days the permit will be effective.

40 (j) The information provided to the person shall include the number of days within which a
41 person must request a hearing under ORS 813.410.

42 (k) The information provided to the person shall include the number of days within which a
43 hearing under ORS 813.410 will be held.

44 (L) The person may possibly qualify for a hardship permit in 30 days if the person fails a test,
45 depending on the person's driving record.

1 (3) If the person is driving a commercial motor vehicle, the information about rights and con-
2 sequences shall include, in addition to the provisions of subsection (2) of this section, substantially
3 the following:

4 (a) If the person refuses a test under ORS 813.100 or submits to a breath or blood test and the
5 level of alcohol in the person's blood is 0.04 percent or more by weight, the person's commercial
6 driver license or right to apply for a commercial driver license will be suspended and no hardship
7 permit authorizing the person to drive a commercial motor vehicle will be issued. The suspension
8 will be substantially longer if the person refuses a test.

9 (b) The suspension of the person's commercial driver license or right to apply for a commercial
10 driver license will be for the person's lifetime if the person refuses a test under ORS 813.100 or
11 submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or
12 more by weight and:

13 (A) The person previously has been convicted of failure to perform the duties of a driver;

14 (B) The person previously has been convicted of a crime punishable as a felony and the person
15 was driving a motor vehicle at the time the offense was committed;

16 (C) The person previously has been convicted of driving a commercial motor vehicle while the
17 person's commercial driver license or right to apply for a commercial driver license was suspended
18 or revoked;

19 (D) The person previously has been convicted of any degree of murder, manslaughter or
20 criminally negligent homicide resulting from the operation of a commercial motor vehicle or assault
21 in the first degree resulting from the operation of a commercial motor vehicle;

22 (E) The person previously has been convicted of driving while under the influence of intoxicants;

23 (F) The person's commercial driver license previously has been suspended or revoked for refusal
24 to submit to, or failure of, a breath or blood test under ORS 813.100; or

25 (G) The person's right to apply for a commercial driver license previously has been suspended
26 or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting
27 from the operation of a commercial motor vehicle.

28 (4) Nothing in this section prohibits the department from providing additional information con-
29 cerning rights and consequences that the department considers convenient or appropriate.

30 **SECTION 3.** ORS 813.130, as amended by section 27, chapter 237, Oregon Laws 2013, is
31 amended to read:

32 813.130. This section establishes the requirements for information about rights and consequences
33 for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and
34 consequences:

35 (1) The information about rights and consequences shall be substantially in the form prepared
36 by the Department of Transportation. The department may establish any form it determines appro-
37 priate and convenient.

38 (2) The information about rights and consequences shall be substantially as follows:

39 (a) Driving under the influence of intoxicants is a crime in Oregon, and the person is subject
40 to criminal penalties if a test under ORS 813.100 shows that the person is under the influence of
41 intoxicants. If the person refuses a test or fails, evidence of the refusal or failure may also be offered
42 against the person.

43 (b) The person will fail a test under ORS 813.100 for purposes of criminal penalties if the test
44 discloses a blood alcohol content of 0.08 percent or more by weight. The person will fail a test for
45 purposes of the Motorist Implied Consent Law if the test discloses a blood alcohol content of:

- 1 (A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;
- 2 (B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or
- 3 (C) Any amount if the person was under 21 years of age.

4 (c) If the person refuses or fails a test under ORS 813.100, the person's driving privileges will
5 be suspended. The outcome of a criminal charge for driving under the influence of intoxicants will
6 not affect the suspension. The suspension will be substantially longer if the person refuses a test.

7 (d) If the person refuses a test or fails a breath test under ORS 813.100 and has an Oregon
8 driver license or permit, the license or permit will be taken immediately and, unless the person does
9 not currently have full valid driving privileges, a temporary driving permit will be issued to the
10 person.

11 (e) If the person refuses a test under ORS 813.100, the person is not eligible for a hardship
12 permit for at least 90 days, and possibly for three years, depending on the following factors set forth
13 in ORS 813.430:

14 (A) Whether the person is presently participating in a driving while under the influence of
15 intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program
16 in this or another jurisdiction; or

17 (B) Whether within the five years preceding the date of arrest any of the following occurred:

18 (i) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replace-
19 ment Part) became effective;

20 (ii) The person was convicted of driving while under the influence of intoxicants in violation of
21 ORS 813.010 or the statutory counterpart to ORS 813.010 in another jurisdiction, as described in
22 ORS 813.430;

23 (iii) The person was convicted of driving while under the influence of intoxicants in violation
24 of a municipal ordinance in this state or another jurisdiction, as described in ORS 813.430; or

25 (iv) The person commenced participating in a driving while under the influence of intoxicants
26 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or
27 another jurisdiction, as described in ORS 813.430.

28 (f) If the person refuses a breath test under ORS 813.100, or refuses a urine **or blood** test under
29 ORS 813.131 and 813.132, the person is subject to a fine of at least \$500 and not more than \$1,000.

30 (g) After taking a test under ORS 813.100, the person will have a reasonable opportunity, upon
31 request, for an additional chemical test for blood alcohol content to be performed at the person's
32 own expense by a qualified individual of the person's choosing.

33 (h) The person has a right to a hearing to challenge the validity of the suspension before the
34 suspension becomes effective. The person must make a written request to the department for such
35 a hearing. If the person wins at the hearing, the person's driving privileges will not be suspended.
36 If the person loses at the hearing, the suspension will remain in effect during any court review of
37 the hearing.

38 (i) If the person is issued a temporary driving permit under ORS 813.100, the information pro-
39 vided to the person shall include the number of hours before the driving permit will be effective and
40 the number of days the permit will be effective.

41 (j) The information provided to the person shall include the number of days within which a
42 person must request a hearing under ORS 813.410.

43 (k) The information provided to the person shall include the number of days within which a
44 hearing under ORS 813.410 will be held.

45 (L) The person may possibly qualify for a hardship permit in 30 days if the person fails a test,

1 depending on the person's driving record.

2 (3) If the person is driving a commercial motor vehicle, the information about rights and con-
 3 sequences shall include, in addition to the provisions of subsection (2) of this section, substantially
 4 the following:

5 (a) If the person refuses a test under ORS 813.100 or submits to a breath or blood test and the
 6 level of alcohol in the person's blood is 0.04 percent or more by weight, the person's commercial
 7 driving privileges or right to apply for commercial driving privileges will be suspended and no
 8 hardship permit authorizing the person to drive a commercial motor vehicle will be issued. The
 9 suspension will be substantially longer if the person refuses a test.

10 (b) The suspension of the person's commercial driving privileges or right to apply for commercial
 11 driving privileges will be for the person's lifetime if the person refuses a test under ORS 813.100 or
 12 submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or
 13 more by weight and:

14 (A) The person previously has been convicted of failure to perform the duties of a driver;

15 (B) The person previously has been convicted of a crime punishable as a felony and the person
 16 was driving a motor vehicle at the time the offense was committed;

17 (C) The person previously has been convicted of driving a commercial motor vehicle while the
 18 person's commercial driving privileges or right to apply for commercial driving privileges was sus-
 19 pended or revoked for offenses committed while operating a commercial motor vehicle;

20 (D) The person previously has been convicted of any degree of murder, manslaughter or
 21 criminally negligent homicide resulting from the operation of a commercial motor vehicle or assault
 22 in the first degree resulting from the operation of a commercial motor vehicle;

23 (E) The person previously has been convicted of driving while under the influence of intoxicants;

24 (F) The person's commercial driving privileges previously have been suspended or revoked for
 25 refusal to submit to, or failure of, a breath or blood test under ORS 813.100; or

26 (G) The person's right to apply for commercial driving privileges previously has been suspended
 27 or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting
 28 from the operation of a commercial motor vehicle.

29 (4) Nothing in this section prohibits the department from providing additional information con-
 30 cerning rights and consequences that the department considers convenient or appropriate.

31 **SECTION 4.** ORS 813.131 is amended to read:

32 813.131. (1) Any person who operates a motor vehicle upon premises open to the public or the
 33 highways of this state shall be deemed to have given consent, subject to the Motorist Implied Con-
 34 sent Law, to a chemical test of the person's urine **or blood** for the purpose of determining the
 35 presence of a controlled substance or an inhalant in the person's body if the person is arrested for
 36 driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordi-
 37 nance and either:

38 (a) The person takes the breath test described in ORS 813.100 and the test discloses a blood
 39 alcohol content of less than 0.08 percent; or

40 (b) The person is involved in an accident resulting in injury or property damage. A urine **or**
 41 **blood** test may be requested under this paragraph regardless of whether a breath test has been re-
 42 quested and regardless of the results of a breath test, if one is taken.

43 (2) A police officer may not request a urine **or blood** test unless the officer is certified by the
 44 [Board on Public Safety Standards and Training] **Department of Public Safety Standards and**
 45 **Training** as having completed at least eight hours of training in recognition of drug impaired driv-

1 ing and the officer has a reasonable suspicion that the person arrested has been driving while under
 2 the influence of a controlled substance, an inhalant or any combination of an inhalant, a controlled
 3 substance and intoxicating liquor.

4 (3) A person asked to give a urine sample shall be given privacy and may not be observed by
 5 a police officer when producing the sample.

6 (4)(a) At the trial of any civil or criminal action, suit or proceeding arising out of the acts
 7 committed by a person driving a motor vehicle while under the influence of intoxicants, a valid
 8 chemical analysis of a person's urine **or blood** is admissible as evidence and may be used with other
 9 evidence, if any, to determine whether the person was driving while under the influence of
 10 intoxicants.

11 (b) A chemical analysis of a person's urine **or blood** is valid under this subsection if analysis is
 12 performed in an accredited or licensed toxicology laboratory.

13 **SECTION 5.** ORS 813.132 is amended to read:

14 813.132. (1) Except as otherwise provided in this section, a refusal to take a urine **or blood** test
 15 requested under ORS 813.131 shall be treated for all purposes as a refusal to take a breath test. A
 16 suspension imposed for refusal to take a urine **or blood** test shall be consecutive to any other sus-
 17 pension imposed under the Motorist Implied Consent Law. If a person is subject to consecutive
 18 suspensions, the length of time that must elapse before the Department of Transportation may
 19 reinstate driving privileges or issue a hardship permit under ORS 813.520 shall be doubled.

20 (2) Before any test of urine **or blood** may be administered under ORS 813.131, in addition to
 21 information described in ORS 813.130, the person asked to take the test shall be informed that if the
 22 person refuses the test, the person's driving privileges will be suspended for the same time period
 23 and with the same consequences as if the person had refused the breath test and that a suspension
 24 for refusal of the urine **or blood** test will be consecutive to any other suspension under the Motorist
 25 Implied Consent Law.

26 (3) Notwithstanding subsection (1) of this section, no suspension of driving privileges shall be
 27 imposed for refusal to provide a urine **or blood** sample if the person provides documentation from
 28 a physician licensed by this state showing that the person has a medical condition that makes it
 29 impossible for the person to provide a sample.

30 **SECTION 6.** ORS 813.150 is amended to read:

31 813.150. In addition to a chemical test of the breath, blood or urine administered under ORS
 32 813.100, **813.131** or 813.140, upon the request of a police officer, a person shall be permitted upon
 33 request, at the person's own expense, reasonable opportunity to have any licensed physician and
 34 surgeon, licensed professional nurse or qualified technician, chemist or other qualified person of the
 35 person's own choosing administer a chemical test or tests of the person's breath or blood for the
 36 purpose of determining the alcoholic content of the person's blood or a chemical test or tests of the
 37 person's blood or urine, or both, for the purpose of determining the presence of a controlled sub-
 38 stance or an inhalant in the person. The failure or inability to obtain such a test or tests by a
 39 person shall not preclude the admission of evidence relating to a test or tests taken upon the re-
 40 quest of a police officer.

41 **SECTION 7.** ORS 813.160 is amended to read:

42 813.160. (1) A chemical analysis is valid under ORS 813.300 if:

43 (a) It is an analysis of a person's blood for alcohol content and is performed in:

44 (A) A laboratory certified or accredited under 42 C.F.R. part 493 and approved for toxicology
 45 testing;

1 (B) A laboratory licensed under ORS 438.110 and approved for toxicology testing; or

2 (C) A forensic laboratory established by the Department of State Police under ORS 181.080 that
3 is accredited by a national forensic accrediting organization.

4 (b) It is an analysis of a person's breath and is performed by an individual possessing a valid
5 permit to perform chemical analyses issued by the Department of State Police and is performed ac-
6 cording to methods approved by the Department of State Police. For purposes of this paragraph,
7 the Department of State Police shall do all of the following:

8 (A) Approve methods of performing chemical analyses of a person's breath.

9 (B) Prepare manuals and conduct courses throughout the state for the training of police officers
10 in chemical analyses of a person's breath, which courses shall include, but are not limited to, ap-
11 proved methods of chemical analyses, use of approved equipment and interpretation of test results
12 together with a written examination on these subjects.

13 (C) Test and certify the accuracy of equipment to be used by police officers for chemical ana-
14 lyses of a person's breath before regular use of the equipment and periodically thereafter at inter-
15 vals of not more than 90 days. Tests and certification required by this subparagraph must be
16 conducted by trained technicians. Certification under this subparagraph does not require a signed
17 document.

18 (D) Ascertain the qualifications and competence of individuals to conduct chemical analyses in
19 accordance with one or more methods approved by the department.

20 (E) Issue permits to individuals according to their qualifications. Permits may be issued to police
21 officers only upon satisfactory completion of the prescribed training course and written examination.
22 A permit must state the methods and equipment that the police officer is qualified to use. Permits
23 are subject to termination or revocation at the discretion of the Department of State Police.

24 (2) In conducting a chemical test of the blood, only a duly licensed physician or a person acting
25 under the direction or control of a duly licensed physician may withdraw blood or pierce human
26 tissue. A licensed physician, or a qualified person acting under the direction or control of a duly
27 licensed physician, is not civilly liable for withdrawing any bodily substance, in a medically ac-
28 ceptable manner, at the request of a peace officer.

29 (3) An individual who performs a chemical analysis of breath or blood under ORS 813.100,
30 **813.131** or 813.140 shall prepare and sign a written report of the findings of the test that must in-
31 clude the identification of the police officer upon whose request the test was administered.

32 (4) Any individual having custody of the report mentioned in subsection (3) of this section shall,
33 upon request of the person tested, furnish that person or that person's attorney, a copy of the report.

34 (5) The expense of conducting a chemical test as provided by ORS 813.100, **813.131** or 813.140
35 must be paid by the governmental unit on whose equipment the test is conducted or by the gov-
36 ernmental unit upon whose request the test was administered if no governmental unit's equipment
37 is used to conduct the test.

38 **SECTION 8.** ORS 813.310 is amended to read:

39 813.310. If a person refuses to submit to a chemical test under ORS 813.100 or refuses to consent
40 to chemical tests under ORS **813.131** or 813.140, evidence of the person's refusal is admissible in any
41 civil or criminal action, suit or proceeding arising out of acts alleged to have been committed while
42 the person was driving a motor vehicle on premises open to the public or the highways while under
43 the influence of intoxicants.

44 **SECTION 9. The amendments to ORS 813.095, 813.130, 813.131, 813.132, 813.150, 813.160 and**
45 **813.310 by sections 1 to 8 of this 2015 Act apply to offenses committed on or after the effec-**

1 **tive date of this 2015 Act.**

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